

**Amendment to the International Traffic in Arms
Regulations: The United States Munitions List,
73 Fed. Reg. 19778 (April 11, 2008)**

**Comments on the Notice of Proposed Rulemaking
Submitted by email to DDTCResponseTeam@state.gov**

**Submitted by the
Aviation Suppliers Association**

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May 12, 2008

Department of State
Directorate of Defense Trade Controls
Office of Defense Trade Controls Policy
ATTN: Regulatory Change, ITAR Section 121
SA-1, 12th Floor
Washington, DC 20522-0112

Dear Sir or Madam:

Please accept these comments on the proposed rule, Amendment to the International Traffic in Arms Regulations: The United States Munitions List, which was offered to the public for comment at 73 Fed. Reg. 19778 on April 11, 2008.

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Who is ASA?

Founded in 1993, ASA represents the aviation parts distribution industry, and has become known as an organization that fights for safety in the aviation marketplace. ASA primarily represents parts distributors.

ASA members buy and sell aircraft parts. These aircraft parts transactions take place domestically and internationally. Many distributors engage in “one-time transactions” that may reflect a single part number going to a single customer. Compliance is very important to these distributors but compliance costs can be quite high. In the area of export control, many distributors have found that manufacturers may be unwilling to provide export information to an independent distributor. This means that the entire burden of identifying the right export compliance standards rests on the shoulders of the distributor-exporter.

As a consequence, it is vitally important for aircraft parts distributors to have uniform and simple standards for identifying the Department with jurisdiction over their exports.

Comments on the Proposed Rule

General Comments

According to the proposed rule preamble, the purpose of the proposed rule is to reinstate the Section 17(c) reference in the ITAR to assist exporters in understanding the scope and application of the Section 17(c) criteria to parts and components for civil aircraft.

It has generally been US policy that exports should be controlled only (1) when necessary to prevent risk to the U.S. national security, (2) to further foreign policy goals, and (3) to avoid a domestic short supply situation.

The proposals in these comments are meant to support US national security by eliminating doubt about the jurisdiction over exports that clearly do not threaten US national security. This allows the United States to focus its limited government resources on exports that may affect US national security.

The proposals in these comments further US foreign policy goals by promoting export of civil aircraft parts that do not reasonably need to be subject to State

Department oversight. By subjecting the parts described in these comments to the export standards of the Commerce Department, the United States adds better predictability to such exports and also facilitates exports of civil aircraft part. Exporting such civil aircraft parts articles is, itself, an important part of US trade policy.

Permitting PMA and TSOA parts to be exported more easily will neither create nor exacerbate a domestic short supply situation.

For these reasons, greater clarity concerning the types of parts discussed in these comments would promote US interests.

PMA Parts

ASA echoes and supports the comments filed by the Modification and Replacement Parts Association (MARPA) concerning the need to address PMA parts in the rule. ASA fully supports the proposed language of those comments

TSOA Parts

ASA further suggests that the State Department also clarify that non-SME articles that are designed and produced under FAA Technical Standard Orders (TSOs) should also be considered to be civil aircraft parts subject to the export jurisdiction of the Commerce Department EARs.

Under the proposed rule, non-SME parts and components that (a) are standard equipment; (b) are covered by a civil aircraft type certificate (including amended type certificates and supplemental type certificates) issued by the Federal Aviation Administration for civil, non-military aircraft; and (c) are an integral part of such civil aircraft, are subject to the Export Administration Regulations (EARs).

As with the PMA analysis made in the MARPA Comments, the problem with the proposed rule is that certain well-established civil aircraft parts that should clearly fall within the scope of the EARs for export jurisdiction remain ambiguously assigned because they do not fit neatly into the proposed language of the regulatory note.

The FAA publishes Technical Standard Orders (TSOs) for certain types of articles. These TSOs reflect standards for certain classes of articles, such as avionics (aircraft electronic components used for navigation and/or communication), life-saving equipment, and interior equipment like seats and seatbelts. TSOs are published to reflect equipment that tends to be common across the civil aircraft fleet, and that therefore may be manufactured extrinsic of a direct relation to a particular type certificate. The decision about whether a

particular TSOed item is eligible for installation in a particular aircraft is usually made at the time of installation (or shortly before) by the installer, based on a safety analysis that is particularized to the specific installation.

The FAA approval that permits a manufacturer to produce an article in compliance with a TSO is known as a Technical Standard Order Authorization (TSOA).

TSOA articles are certainly manufactured to a standard (the TSO standard published by the FAA) as well as to a particular design that has been found by the FAA to comply with the standard. Once installed, they become integral parts of the aircraft. However (unlike PMAs), the design approval is issued by the FAA exclusive of a relationship between the TSOed product and the civil aircraft type certificate. This will make it even more difficult for exporters of TSOed components to assert that their items meet the requirements for treatment under the EARs.

Requiring a multitude of (potentially duplicative) commodity jurisdiction requests, from distributors seeking to export various TSOAed items, is not efficient.

In the name of regulatory efficiency, and in an effort to provide truly clear guidance to a sector of the industry that finds itself increasingly confused by the maze of regulatory requirements, we recommend that the State Department add explanatory language addressing TSOA parts. The sentence would be added to the note in the proposed rule and would state:

“For purposes of this rule, an aircraft part or component manufactured under a Technical Standard Order Authorization, shall be considered (1) ‘standard equipment’ meeting the TSO standards published by the FAA, (2) covered by civil aviation type certificates generally, and (3) an integral part of type certificated civil aircraft, if the TSOA was issued by the Federal Aviation Administration (FAA) or if the FAA issued a letter of TSO Design Approval covering the aircraft part or component in question.”

This formulation would more clearly exclude most TSOA products from State Department (ITAR) export jurisdiction, since most such products are designed exclusively for civil aircraft. Under the proposed rule, Significant Military Equipment (SME) being exported would continue to be subject to the restrictions found in the ITARs and other State Department rules and policies.

Significant Military Equipment

The purpose of this rule is to provide guidance in the wake of the Export Administration Act of 1979. That Act expired August 20, 2001. 50 U.S.C. App’x § 2419. However, when it was still active legislation, the Act provided explicit

guidance about the export of civil aircraft parts. See, 50 U.S.C. App'x § 2416(c) (expired August 20, 2001). The explicit guidance found in the Act specified that

“any product (1) which is standard equipment, certified by the Federal Aviation Administration, in civil aircraft and is an integral part of such aircraft, and (2) which is to be exported to a country other than a controlled country, shall be subject to export controls exclusively under [the Export Administration Act]. Any such product shall not be subject to controls under section 38(b)(2) of the Arms Export Control Act [the implementing law behind the ITARs and the USML].”

The original language of the Export Administration Act provided no exclusion for significant military equipment (SME). SMEs that were included in a FAA approved type design as integral, standard equipment in a civil aircraft would appear to be subject to the export controls of the Commerce Department regulations under this language (assuming they also met the destination requirements).

There is a simple policy reason that explains the exclusion of an SME Provision in the original law. The civil aviation industry generally does not rely on new technologies until they have been fully proven to reflect the safety needs of the flying public. This means that, as a practical matter, the designs and productions techniques are usually well known and could be duplicated by the unscrupulous (although this may violate certain intellectual property laws). Such articles are generally already in production outside the United States. Which means that State Department regulation of such exports imposes a significant burden on exporters without providing a real security benefit to the United States.

Once an article that was once considered to be a SME has been incorporated into a civilian aircraft it is often a practical impossibility to prevent that technology from being available to foreign parties, which means that State Department regulation of the article is unlikely to have much practical effect. Nonetheless, the State Department has exercised jurisdiction over such articles in the past ... often this can mean that the State Department is exercising jurisdiction over an article that reflects technology that is no longer on the cutting edge from the point of view of the military.

In the most extreme cases, this can lead to State Department jurisdiction over articles that represent well-known and well-entrenched technologies. An example of this can be seen in the C-12 Honeywell directional gyro. Honeywell determined at one time in the past that this was a military gyro.

Since at least 1972, though, this gyro has been used in civilian applications. For decades it has been the gyro of choice for survey operators globally as well as for operators in the polar regions.

Although we do not have access to the complete history of this gyro, it appears that this gyro was likely designed in the 1960s and now represents a technology that is between 40 and 50 years old.

The C-12 was marketed for many years as a retrofit product in the civilian market. It represents what is known as “spinning mass technology,” which is a legacy system.

There is no good policy reason for the C-12 to continue to be protected as a State Department regulated export.

The sort of companies that today deal with an item like the C-12 are usually small businesses that have neither the knowledge level nor the resources to apply for a commodity jurisdiction request in order to get the C-12 recharacterized. As a consequence, the C-12 remains within the State Department’s export jurisdiction, even though that characterization no longer makes good policy sense now that the technology is so widely used (in fact, spinning mass technology is being rapidly superseded by solid state gyros).

Once an item has become available to the civilian market for installation in civil aircraft, it no longer makes good policy sense to define the article as a “Significant Military Equipment” (or “SME”) that should remain within the State Department’s jurisdiction.

In fact, a policy that permits such items to be analyzed as potential civilian articles that are subject to the Commerce Department’s export jurisdiction (under the same terms as those of the now-expired Export Administration Act) would permit the State Department to easily reclassify legacy technology as no longer State-Department controlled without the resource-intensive process of commodity jurisdiction requests for each export. This also helps to make the industry more aware of the status of such parts – because a commodity jurisdiction request seeking the removal of an item from USML/ITAR control will usually not be well publicized to the aviation industry, while the civil aviation industry can easily identify a part or component as being standard equipment in a civil aircraft by reference to an ordinary illustrated parts catalog published by the manufacturer.

For these reasons, ASA recommends that the SME limitation be removed from the explanatory note, and the explanatory note instead follow the standards found in the (now expired) Export Administration Act.

ASA does agree that there is some value to retaining an explicit statement that parts and components of civil aircraft that are covered by Article VIII of the USML should continue to be regulated (for export purposes) by the State Department. In the conclusion we recommend language to accomplish this inclusion, once references to SMEs have been removed from the note.

Conclusion

ASA fully supports the MARPA proposal to add PMA- explanatory language addressing PMA parts. The sentence would be added to the note in the proposed rule and would state:

“For purposes of this rule, an aircraft part or component manufactured under a Parts Manufacturer Approval (PMA), shall be considered (1) ‘standard equipment’ meeting the airworthiness standards published by the FAA, (2) covered by the civil aviation type certificate referenced in the PMA Supplement, and (3) an integral part of that type certificated civil aircraft, if the PMA was issued or accepted by the Federal Aviation Administration (FAA).”

ASA suggests that the State Department should also provide clear guidance to the aviation sector concerning jurisdictional questions concerning export of TSOA articles. The sentence would be added to the note in the proposed rule and would state:

“For purposes of this rule, an aircraft part or component manufactured under a Technical Standard Order Authorization, shall be considered (1) ‘standard equipment’ meeting the TSO standards published by the FAA, (2) covered by civil aviation type certificates generally, and (3) an integral part of type certificated civil aircraft, if the TSOA was issued by the Federal Aviation Administration (FAA) or if the FAA issued a letter of TSO Design Approval covering the aircraft part or component in question.”

Finally, we recommend that all references and distinctions concerning SMEs in the note be removed, in order to permit parts and components that have moved into the civil aircraft market to be exported under the restrictions of the Commerce Department regulations. We also recommend replacing the references to and distinctions among the SMEs with a single statement that

“Unless the State Department has issued a contrary commodity jurisdiction statement, civil aircraft parts and components that fall within the scope of Article VIII of the United States Munitions List, shall be regulated for export purposes by the State Department under section 38(b)(2) of the Arms Export Control Act.”

Thank you for affording industry this opportunity to help improve the proposed rule to make it better serve the needs of the flying public (and the industry that serves them). We appreciate the efforts of the State Department in this regard.

Your consideration of these comments is greatly appreciated.

Respectfully Submitted,

A handwritten signature in black ink that reads "Jason Dickstein". The signature is written in a cursive style with a large, prominent "J" and "D".

Jason Dickstein
General Counsel
Aviation Suppliers Association