



May 12, 2008

The Honorable John C. Rood
Acting Under Secretary for Arms Control and International Security
Department of State
Directorate of Defense Trade Controls (DDTC) Policy
ATTN: Regulatory Change, ITAR Section 121
SA-1
12th Floor
Washington, DC 20522-0112

RE: Public Comments on Proposed Amendments to the International Traffic in Arms Regulations (ITAR) Section 121 to Clarify Implementation of The Original Intent of Section 17(c) of the Export Administration Act (EAA)

SUBMITTED VIA ELECTRONIC MAIL

Secretary Rood:

These comments are submitted on behalf of the Industrial Fasteners Institute (IFI), which represents 85% of the North American production capacity for mechanical fasteners – the nuts, bolts, screws, and rivets that hold together everything we use in everyday life. These fasteners are particularly critical for assembling aircraft, and thus the application of export controls related to civil, non-military aircraft, such as contemplated by section 17(c) of the EAA, is of particular importance to fastener manufacturers. Most fastener manufacturers are small to medium-sized businesses, and in 2007, the U.S. fastener industry operated approximately 350 manufacturing facilities with approximately 40,000 employees.

IFI would like to thank the DDTC for the effort dedicated to reviewing this issue. The proposed rule makes clear that the Export Administration Regulations (EAR) administered by the Department of Commerce control items designed for civil, non-military aircraft and civil, non-military aircraft engines. It also states that non-Significant Military Equipment (SME) items which are: a) standard equipment; b) covered by a civil aircraft type certificate (including amended type certificates and supplemental type certificates) issued by the Federal Aviation Administration (FAA) for a civil, non-military aircraft; and c) an integral part of such civil aircraft are also subject to the EAR. Commercial fasteners used on civil, non-military aircraft meet this three-part test, and aerospace fastener manufacturers strongly agree that such commercial fasteners should be under the jurisdiction of the Department of Commerce's EAR.

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IFI does believe that some clarifications to the Note Section of the proposed rule are necessary to ensure the proposed rule will have the intended result. To that end, we offer the following specific comments:

- To ensure that the reader is not led to believe that the EAR ONLY controls civil, non-military aircraft items, the word “exclusively” should be deleted in the first sentence of the Note. The EAR controls items designed for both military and civilian aircraft, referred to in the EAR as “dual-use items”.
- We suggest that the phrase “of the item’s form, fit, or function” be added to the following sentence: “In determining whether the three criteria above have been met, consider whether the same item is common to both civil and military applications without modification **of the item’s form, fit, or function.**” This change is consistent with the DDTC’s long-standing position that an item’s jurisdictional status is not affected by a modification that does not affect the item’s form, fit, or function. In the case of fasteners, the same commercial fasteners are often used in civil and military applications with only a slight modification such as the use of a different lubricant or coating. The suggested change would ensure that those commercial fasteners would appropriately be considered as meeting the three-part test in this proposed rule.
- In the section defining “standard equipment”, it is important to change the term “industry specifications and standards” to **“manufacturer or industry specifications and standards”**. Published and non-published (i.e., proprietary) fastener specifications and standards can be set by the fastener manufacturer, the prime manufacturer, domestic and international industry standard-setting bodies such as ANSI, ASTM International, or ISO; as well as by the government in the case of MS, NAS, FAA-approved Parts Manufacturer Approvals (PMAs), or FAA Technical Standard Orders (TSOs).
- It is important to *delete the sentence* “A part or component is not standard equipment if there are any performance, manufacturing or testing requirements beyond such specifications and standards.” Civil, non-military fasteners are routinely tested beyond any applicable specifications and standards for purely civil purposes, such as gaining a competitive edge in the marketplace because the fastener exceeds the minimum specifications and standards, satisfying longer warranty obligations or other purely civilian situations.
- The definition of “integral” **must** be “a part or component **that is authorized for installation** according to the type design of the aircraft”. Without this minor change, the proposed rule would EXCLUDE many of the fasteners of different length and diameter that are authorized by the FAA type certificate for installation on the aircraft during construction or repair, as well as spare and replacement fasteners authorized by the FAA type certificate.

IFI believes that, with these suggested changes incorporated into a final rule, fastener manufacturers will have clear direction that commercial items meeting the three-part test provided in the rule are under the direction of the EAR.

IFI would like to note that many manufacturers make strictly commercial components for export only to customers located in countries other than controlled countries. Many, if not all, of these countries issue aircraft type certificates similar to FAA type certificates, and have reciprocal agreements with the FAA for flying into and out of the United States. In addition, the regulations of other government agencies such as the U.S. Customs & Border Protection allow for preferential duty-free treatment of civil aircraft parts pursuant to an FAA type certificate or that of a country recognized by the FAA. We recognize that 17(c) has traditionally only covered FAA-certified products. However, we would note that including type certificates from the aviation administration authority in countries with reciprocal agreements with the FAA in part (b) of the three-part test would provide uniformity with other U.S. import/export regulations affecting civil aircraft parts. This change would allow aerospace component manufacturers to know with certainty that commercial components made for export only but meeting the three-part test would also be controlled by the EAR, rather than having to go through the Commodity Jurisdiction (CJ) process unnecessarily.

Thank you for considering our comments on this proposed rule to clarify 17(c) of the EAA. If you have any questions, or require further information from the fastener manufacturing industry, please feel to contact Jennifer Baker at 202-842-2818 or jbaker@thelaurinbakergroup.com.

Sincerely,

A handwritten signature in black ink that reads "Robert J. Harris". The signature is written in a cursive style with a horizontal line underneath the name.

Robert J. Harris
Managing Director