

**May 12, 2008 Comments and Requested Edits  
of the Aerospace Industries Association  
to the U.S. State Department's Proposed Amendment  
to USML Category VIII (73 Fed. Reg. 19780 (Apr. 11, 2008))**

Sec. 121.1 General. The United States Munitions List.

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Category VIII--Aircraft and Associated Equipment

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(b) Military aircraft engines, except reciprocating engines, specifically designed or modified for the aircraft in paragraph (a) of this category, ~~and all specifically designed military hot section components (i.e., combustion chambers and liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; cooled augmenters; and cooled nozzles) and digital engine controls (e.g., Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC).~~

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(h) ~~Except as noted below, c~~Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for the articles in paragraphs (a) through (d) of this category, excluding aircraft tires and propellers used with reciprocating engines.

Note: The Export Administration Regulations (EAR) administered by the Department of Commerce control any part, ~~or~~ component (including propellers), ~~or other item~~ designed ~~exclusively~~ for civil, non-military aircraft (see ~~§Sec.~~ 121.3 for the definition of military aircraft) ~~and or~~ civil, non-military aircraft engines (see USML subcategory VIII(b) and VIII(f) for the definitions of ITAR-controlled military aircraft engines)

**Comment [k1]:** To avoid the multiple unintended consequences described in our cover letter, while still accomplishing the Department of State's goal of requiring CJ determinations for hot section components and digital engine controls, AIA proposes moving the reference to such components to the Note where it discusses the requirement of CJs for SME.

**Comment [k2]:** This addition is necessary to avoid an inconsistency between subcategory VIII(h) and the Note because, under the Note, a part that was specifically designed for a military aircraft is still EAR-controlled if it meets the three-part test.

**Comment [k3]:** The EAR uses the term "item" instead of "parts" or "components." Thus, the insertion of the word "item" here is to make the description of what the EAR controls consistent with the wording in the EAR. See EAR §§ 734.3 and 772.1. Otherwise, it suggests that the EAR might not control items (other than parts and components) that were specifically designed for dual-use end-items or civil applications.

**Comment [k4]:** The word "exclusively" needs to be removed because it erroneously suggests that parts specifically designed for both military and civilian aircraft – referred to in the EAR as "dual-use" items – are not subject to the EAR. Although it does not amend the ITAR or EAR, readers will be led to believe that DDTC holds a contrary position.

**Comment [k5]:** The draft note did not define military aircraft engines as it did military aircraft. This addition confirms that a civil aircraft engine is any aircraft engine not defined in VIII(b) or VIII(h). It tracks the definition of civil aircraft in the previous sentence.

Also, a non-SME component or part (as defined in ~~§§~~See. 121.8(b) and (d) of this subchapter) that is not controlled under another category of the USML, that:

- (a) Is standard equipment;
- (b) is covered by a civil aircraft type certificate (including amended type certificates and supplemental type certificates) issued by the Federal Aviation Administration for a civil, non-military aircraft (this expressly excludes military aircraft certified as restricted and any type certification of Military Commercial Derivative Aircraft (as described in FAA Order 8110.101)); and
- (c) is an integral part of such civil aircraft,

**Comment [k6]:** Because MCDA is not a defined in the export control, aviation, or any other law or regulation, readers generally do not know what this term means. The term is, however, described in this FAA order, which defines it as civil aircraft procured by the military.

is subject to the ~~control~~jurisdiction of the EAR.

In the case of any part or component designated as SME in this or any other USML category, and in the case of hot section parts and components (i.e., combustion chambers and liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; cooled augmenters; and cooled nozzles) specifically designed or modified for military applications, and in the case of digital engine controls (e.g., Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)) specifically designed or modified for military applications, a determination that such item may be excluded from USML coverage based on the three criteria above always requires a commodity jurisdiction determination by the Department of State under ~~§~~See. 120.4 of this subchapter. The only exception to this requirement is where such a part or component designated as SME in this category was integral to civil aircraft prior to [effective date of the final rule]. For such a part or component, U.S. exporters are not required to seek a commodity jurisdiction determination from State, unless doubt exists as to whether the item meets the three criteria above (See ~~See-§§~~ 120.3 and ~~See-~~ 120.4 of this subchapter).

**Comment [k7]:** The standard ITAR “specifically designed” phrase needs to be included to preclude the creation of the suggestion that DDTC takes the position that the ITAR controls all hot section parts and components.

**Comment [k8]:** The standard ITAR “specifically designed” phrase needs to be included to preclude the creation of the suggestion that DDTC takes the position that the ITAR controls all FADEC and DEEC.

Also, U.S. exporters are not required to seek a commodity jurisdiction determination from State regarding any non-SME component or part (as defined in ~~§§~~See. 121.8(b) and (d) of this subchapter) that is not controlled under another category of the USML, unless doubt exists as to whether the item meets the three criteria above (See ~~See-§§~~ 120.3 and ~~See-~~ 120.4 of this subchapter).

These commodity jurisdiction determinations will ensure compliance with this section and the criteria of Section 17(c) of the Export Administration Act of 1979. 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. Some examples of parts or components that are not common to both civil and military applications are tail hooks, rotodomes, radomes, and bomb bay doors, low observable rotor blades.

“Standard equipment” is defined as a part or component manufactured in compliance with an established and published industry or manufacturer's specification or standard or an established and published government specification or standard (e.g., AN, MS, NAS, TSO, or SAE).

**Comment [k9]:** This addition states explicitly 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. These terms are defined in sec. 120.4, so their addition will not create any ambiguity. The addition also helps clarify the scope of what types of modifications may cause an item's jurisdictional status to change.

**Comment [k10]:** A radome is only the structural, weatherproof enclosure used to protect the radar, antennae, and other equipment on the nose of an aircraft. Some radomes are “common to” civilian aircraft and their military derivatives. Only the electronic equipment behind the radome is specifically designed (or not) for military applications. Thus, “radome” in this context is not a good example. We have proposed a substitute example of something that is not common to military and civilian aircraft but similar to a radome – a “rotodome,” which is on the back of an AWACS.

**Comment [k11]:** Although LORBs are generally ITAR-controlled, this example doesn't create a threshold for what the properties are that would cause blades to be ITAR-controlled. Because it is ambiguous, a less ambiguous example is suggested to make the point.

**Comment [k12]:** This insert is necessary because many civil aircraft and civil aircraft parts manufacturers publish their own specifications for their own products. They are, thus, not “industry” standards.

**Comment [k13]:** Many parts on civil aircraft are manufactured to “standards,” which are slightly different than “specifications,” although the terms are often used interchangeably in the aircraft industry.

**Comment [k14]:** TSOs, Technical Standard Orders, are common FAA-published specifications that provide minimum performance standard for specified materials, parts and appliances used on civil aircraft. Because they are so common, they should be referenced here for the sake of clarity.

Parts and components that are manufactured and tested to established but unpublished (e.g., proprietary) civil aviation industry manufacturer's specifications ~~and~~ standards are also "standard equipment," e.g., pumps, actuators, bolts, and generators.

~~A part or component is not standard equipment if there are any performance, manufacturing or testing requirements beyond such specifications and standards.~~

Simply testing a part or component to meet a military specification or standard does not in and of itself change the jurisdiction of such part or component ~~unless the item was designed or modified to meet that specification or standard.~~

**Comment [k15]:** The addition of the word "proprietary" is merely to give the reader a common example of an unpublished specification.

**Comment [k16]:** "Civil aviation" should be removed from this sentence to (a) make it consistent with the standard pertaining to published specifications (which is not so limited) and (b) account for the fact that many parts used on civil aircraft are manufactured and tested to generic parts specifications and standards, which are not necessarily "civil aviation" specifications of standards. For example, a bolt used on a civil aircraft may be tested to a specification for bolts generally and, although used on an aircraft, may not refer to civil aircraft in the standard.

**Comment [k17]:** The word "industry" should be removed because unpublished specifications cannot be, by definition, "industry" specifications. Only a manufacturer would have a specification that is not published.

**Comment [k18]:** This addition of a sample "part" is recommended to avoid the implication that only minor components are within the scope of the definition of "standard equipment."

**Comment [k19]:** The entire first sentence needs to be removed because civil aircraft parts are routinely tested beyond the applicable specification for purely civil purposes, such as (a) confirming that a part certified for use on one part of an aircraft may be used in a more environmentally harsh portion of the aircraft, (b) satisfying longer warranty obligations; (c) "lifeing" the part to see how long it will last; (d) being able, for marketing reasons, to state to potential customers that the part is reliable because it exceeds specifications; and (e) confirming, particularly for new parts, that there is a margin of safety beyond the minimum specs. The proposed sentence would take all of these and other similarly purely civilian situations out from consideration of the definition of "standard equipment."

**Comment [k20]:** This clause needs to be removed because civil aircraft parts are often designed or modified to meet military specifications for purely civilian purposes and without any military applications in mind. Military specs are commonly used as civil aircraft industry standards for all the reasons described in the previous note. Leaving the proposed clause in would preclude the application of the note to parts designed or modified for civilian or dual-use purposes if the applicable specification happened to be a mil spec.

Integral is defined as a part or component that is installed in the aircraft or authorized for installation on the aircraft according to a FAA certification for the aircraft type (e.g., FAA-approved spares or parts in the supply chain).

When ~~in~~ determining whether a part or component may be considered as “standard equipment” and “integral” to a civil aircraft (e.g., latches, fasteners, APU, seats, flaps, grommets, and switches) it is important to review carefully ~~review all of the~~ criteria noted above. For example, a part approved solely on a non-interference/provisions basis under a type certificate issued by the Federal Aviation Administration would not qualify. Similarly, unique application parts or components not integral to the aircraft would also not qualify.

**Comment [k21]:** This edit is necessary in order to remove the implication of the proposed wording that a part or component is “integral” only if it is actually within – “installed in” -- the aircraft. Such an interpretation would lead to the illogical conclusion that a part or component could be EAR-controlled when inside the civil aircraft but potentially ITAR-controlled when outside the aircraft, such as a spare. Such a reading would also be contrary to the structure of the ITAR which, with one exception, does not determine the jurisdictional status of items based upon whether the item is or is not installed in an end-item. The proposed phrase resolves this spares issue by limiting the definition of “integral” to those parts *authorized for* installation in civil aircraft. The reference to the type design is a well-established FAA-defined term at section 21.31.

**Comment [k22]:** The addition of these examples is important to remove the implication that the amendment applies only to very small civil aircraft parts and components. It applies to all parts and components that fall within the scope of the three-part test, regardless of size.