



**Amendment to the International Traffic in Arms Regulations:
Replacement Parts/Components and Incorporated Articles**
Comments on the Notice of Proposed Rulemaking
published at 76 Fed. Reg. 13928 (March 15, 2011).

Submitted to the State Department
by email to *DDTCResponseTeam@state.gov*

**Submitted by the
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April 22, 2011

PM/DDTC, SA-1, 12th Floor
Directorate of Defense Trade Controls
Office of Defense Trade Controls Policy
Attn: Regulatory Changes—Replacement Parts/Components and Incorporated Articles
Bureau of Political Military Affairs, U.S. Department of State
Washington, DC 20522-0112

Dear Sir or Madam:

Please accept these comments in response to the Amendment to the International Traffic in Arms Regulations: Replacement Parts/Components and Incorporated Articles Notice of Proposed Rulemaking, which was published for public comment at 76 Fed. Reg. 76 Fed. Reg. 13928 (March 15, 2011).

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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 and ASA's members are committed to safety, and seek to give input to the United States Government regarding government policies so that the aviation industry and the government can work collaboratively to create the best possible guidance for the industry and the flying public.

ASA has devoted considerable resources to educating its membership about export regulations and about export compliance strategies.

ASA's members can be found along the spectrum that runs from small independent distributors to major manufacturers. ASA's members share one characteristic - they all sell aircraft parts. A significant percentage of ASA's members export aircraft parts to air carriers and to foreign defense customers.

ASA members have a special interest in sound export guidance. Many aircraft parts are subject to export controls, and many aircraft parts are used in both civil and defense aircraft. ASA members devote considerable resources to export regulatory compliance and rules that are confusing or that are unfair are a source of problems for these companies.

Comments

The State Department Should Assure that the Export Regulations Reflect a Level Playing Field

The State Department has proposed to exempt from the State Department's export licensing requirements certain parts and components that are sent as replacements for an end unit that was previously legally exported. The proposed exemption would permit original equipment manufacturers (OEMs), but not distributors, to sell and export replacement parts without obtaining a license. The failure to account for all market participants would reduce the competitiveness of the industry as a whole.

The Proposed Rule Negatively Impacts Distributors By Creating Unequal Burdens on U.S. Exporters

The proposed update of ITAR part 123 would that companies may export parts without a license as long as “[t]he exporter was the applicant of a previously approved authorization to export the U.S.-origin end-item as defined in § 121.8(a).” 76 Fed. Reg. 13928, 13930 (March 15, 2011).

In the aerospace industry, end-items are generally aircraft and/or engines. It is normal for the aircraft/engine manufacturers to be the exporters of these items. The original license may include spare parts as well, but after the original license expires, the exporter must apply for a receive a subsequent license to continue to export parts.

Independent distributors also export parts to support these products. Distributors typically buy excess inventory of parts from the OEMs and store them in warehouses, making them uniquely positioned to respond to fluctuations in demand in export markets. The variety of distributors also ensures that parts are available from more than once source, thereby enhancing competition. They may also obtain the parts from the original equipment manufacturer, or they may obtain them from a third party who has been added to the customer's qualified source list.

By restricting the application of the proposed rule to only companies authorized to export the “U.S.-origin end-item,” the rule would leave out independent distributors, currently vital participants in the market for exported aircraft parts.

Distributors are able to invest in the time and expense of applying for and acquiring licenses to export aircraft parts. Today, they compete on a level playing field with original equipment manufacturers who must also maintain licenses to export the same parts.

A removal of the license requirement only for previously-licensed original equipment manufacturers would severely harm ASA members. These distributors, faced with a burdensome expense not borne by OEMs, would then be faced with lower-cost competition in the market for parts with expired licenses, losing their ability to play on a level playing field in that market. Consequently, this rule would remove the incentives for non-OEMs to seek export licenses, and many distributors would be unable to compete in the export business against their unlicensed competition.

Unequal Treatment of Distributors and OEMs Disrupts an Efficient Market

At present, obtaining a license for an export is a burden on commerce. Where all similarly situated parties have an equal burden, there is a level playing field that enables companies that invest in specialized services to bring efficiencies into the market.

Under the proposed rule, OEMs would participate in the market for replacement parts with a special regulatory exemption that would allow them to undercut distributors' prices because of their special advantage (the ability to export without a license).

There is no good policy reason for providing cost benefits to OEMs at the expense of distributors. Distributors and OEMs offer identical products, so imposing licensing requirements on some, but not all sellers of those products does not meet the goals of the licensing regime to regulate the flow of goods.

Rather, such a change would yield only negative consequences for U.S. export volume.

If independent distributors are driven out of the market by an unfavorable regulation, OEMs will be the predominant or only exporters of replacement parts. Though they may be able to offer parts at a lower cost than distributors, these OEMs will still lack the ability to store a variety of parts for long periods of time, thus making them unable to expand their output when demand rises. And without the ability to sell excess parts to distributors, risk-averse OEMs will begin manufacturing fewer parts as a whole.

Therefore, even though the regulation might lower the price of U.S. parts in international markets, it would reduce the industry's competitiveness by removing efficiencies.

The Regulation Should Impose the Same License Requirements on OEMs and Distributors.

In order to preserve the competitive dynamic of the replacement parts export market, this regulation must maintain the level playing field for OEMs and distributors.

If the goal of this proposed rule is to remove barriers in the export market, it should remove these barriers for all parts-exporting companies, including distributors. Such a change would actually increase U.S. competitiveness abroad, while maintaining the current market dynamic that rewards efficiency and specialization.

✧ One way to accomplish this might be to remove the licensing requirements for all parts when they are exported by a registered exporter and shipped to support an end-use product that was previously legally exported. This would permit OEMs, distributors and third party manufacturers to all export on a level playing field.

✧ Another way to accomplish this would be to permit the issue of unlimited and non-expiring licenses for parts exported to support an end-use product that was previously legally exported. In such a case, all parties would have to apply once for the license, but they would not be required to recurrently apply for new licenses based on the expiration or consumption of the prior licenses.

If there are other reasons that necessitate maintaining licensing requirements for distributors, the licensing requirements should be maintained for OEMs as well. Although maintaining the status quo would keep the "burdensome requirements"

identified in the proposed rule, it would avoid the even greater consequences of a less competitive market.

The rule will be disruptive and counterproductive unless the State Department takes steps to account for all market participants.

ASA Supports the Proposed *De Minimis* Exception

The State Department has proposed to exempt from the State Department's export licensing requirements certain defense items that are incorporated in to a higher-level assembly when the higher assembly meets certain criteria, including being subject to the Export Administration Regulations (EARs). One of those conditions is that the defense-related item must reflect a *de minimis* proportion of the value of the higher-level assembly that is subject to the EARs (less than 1% of the value). This proposal is found in new proposed regulation § 126.19(a).

ASA supports this licensing exemption in cases where the higher level assembly is subject to the EARs. In many cases, assemblies with clear civilian purposes, that are designed and manufactured for civilian aircraft use, may have a *de minimis* content that is regulated as a defense related articles under the USML. Often, these parts are being exported by a distributor, and the distributor may have no reasonable way of knowing about the minor defense related articles contained in the higher level assembly.

State May Wish to Consider a Requirement that Manufacturers Must Share USML Categorization Data for Aerospace (or all) Articles

The industry has encountered resistance from major aerospace manufacturers who have expressed an unwillingness to share data about whether their parts are subject to BIS or DDTC export regulations, and under which USML category or ECCN those items might fall based on the agency with export jurisdiction. This is especially true when independent distributors seek this information from the original equipment manufacturers.

Recently, ASA polled several major airframe, engine and component manufacturers in the aviation industry, seeking ECCNs for their parts (and identification of USML applicability for DDTC-regulated parts), and not one of these manufacturers was willing to share this data. As a consequence, distributors are often left with little guidance with respect to the task of identifying the proper export characterization of an aircraft part. Because of this, distributors often have no reasonable way to identify when the export characterization of the components of a unit for export may differ from the export characterization of the complete unit.

With this in mind, we recommend that the State Department consider amending the rules to require that this sort of information be made publically available, in much the same way that OSHA requires Material Safety Data Sheets to be made available.

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