



April 14, 2011

Mr. Nick Memos  
PM/DDTC SA-1  
12<sup>th</sup> Floor  
Directorate of Defense Trade Controls  
Office of Defense Trade Policy  
ATTN: Regulatory Changes—Replacement Parts/Components and Incorporated Articles  
Bureau of Political-Military Affairs  
U.S. Department of State  
Washington, D.C. 20522 – 0112

RE: Public Notice 7258 RIN 1400-AC70

Dear Mr. Memos:

AIA wishes to express thanks to the Department for engagement in the overall export control reform initiative and their specific efforts to modify processes that are duplicative and time consuming without a corresponding benefit to U.S. national security or foreign policy. AIA wishes to submit comments in response to the proposed ITAR regulatory changes regarding replacement parts/components §123.28 and incorporated articles §126.19.

### **ITAR Part 123.28**

AIA welcomes relief from the duplicative review and approval of export licenses for piece parts and components.

In order to maximize the value of the proposed revision for the Department and industry, we submit the following for your consideration:

1. Clarify that the definition of parts and components, per ITAR Part 121.8, includes parts and components of end items, as well as parts and components of accessories, attachments and firmware.
2. Clarify that the scope of the revision includes both U.S. origin and foreign origin parts and components located physically in the U.S. to be exported by the U.S. exporter.
3. Clarify whether the scope applies to both classified and unclassified parts and components, including those items identified as SME on the USML.
4. Clarify the definition and standard for “normal logistical support” references in (a)(4).
5. Clarify the term used in 123.28(a)(9) – “consistent with the U.S. Government authorized maintenance activities.” Does that refer to activities authorized by DDTC under a TAA for the U.S. exporter to provide maintenance related defense services and technical data? Does it mean that the cognizant U.S. Service (e.g. Air Force) or U.S. prime contractor has referenced the parts/components or the maintenance procedures in their Use/Operation/Repair Manual? Could/should it be both?

6. Clarify that the scope of this proposed exemption is not limited to governments but to all authorized end-users on a license. The language in the FRN suggests that it is only for sales to governments ("The exporter must have in its possession a copy of the purchase order from the foreign government end-user..."). However, the existing spare parts exemptions in Part 123.16(b)(2) and 123.17(a) are not restricted only to exports directly to governments. There seems to be little reason to restrict this new exemption to governments alone.
7. Add the following language to 123.28(a) (to align the language with 123.4(a)): "...permit the export without a license of parts or components of U.S.-origin end-items (including parts or components of any items manufactured abroad pursuant to U.S. Government approval), as defined..."
8. Add the following language to 123.28(a)(2) (to address an overly broad recommendation from DTAG but a concept DDTC is willing to consider – 1<sup>st</sup> tier suppliers to the end-item): "The exporter was the applicant, or identified in Block 15 "Manufacturer of Commodity" or Block 17 "Source of Commodity" of the DSP-5, of a previously approved..."
9. Clarify the phrase "value of the purchase order or contract for the export" under 123.28(a)(5). Is DDTC's intention to limit that threshold to the PO or contract on hand or the totality of the program to include those articles, data and services provided under previous authorizations and exemptions. Without clarification, industry will be left to decide on their own with some looking at the totality of the program while others will only consider the individual PO or contract on-hand.
10. Add the following language to 123.28(a)(6): "The consignee of the shipment is a foreign licensee or the foreign government approved under the original export authorization; and." This should allow exports, transfers, retransfers that would have been previously permitted against a prior authorization. Rarely is the foreign government conducting their own maintenance operations; and as written, that private maintenance provider is not authorized to receive or possess the parts or components.
11. Add the following language to 123.28(b)(1) to assure the exemption can be used to support foreign government requirements at their authorized repair facilities, e.g., "...Be in possession of a purchase order from the foreign government end-user or a foreign government authorized repair facility that includes written authorization from the foreign government end-user in the form of an end use statement."
12. Identify within the scope or guidance notes that this license exemption can be utilized for subsequent exports of parts and components, after an export license is sought specifically for parts and components, if the U.S. Exporter of the parts and components could not initially utilize the exemption because the end item or platform was exported by a U.S. prime contractor or via the Foreign Military Sales program. (That was the original intent in conversations with DDTC regarding the exemption). We believe that failure to address this concern clearly in the exemption language would have a potential effect of curtailing use by small and medium size manufacturers/exporters of parts and components, as they are typically never the end item exporter. During the product life cycle, particularly once the warranty period has expired, the end user typically does not order parts and components from the prime contractor of the end item, but, rather contracts with the individual U.S. parts manufacturers. Also, we propose that the language be modified to authorize U.S. exporters who are freight forwarders of foreign embassies to cite the exemption provided they can provide the license information from the DSP-94 authorizing export of the original end item.
13. AIA encourages DDTC to permit the use of this exemption for those programs that DDTC has already granted approved program status.

## **ADDITIONAL COMPANY COMMENTS ON THE PROPOSED RULE:**

### **ITAR 123.28:**

FMS Sales - The exemption as written appears to exclude parts and components that are destined for end-items that were originally exported under the Foreign Military Sales ("FMS") program. We recommend that subsection (a)(2) be revised to reflect that in the case of the FMS program, the exporter of the U.S. origin end-item may not always be the applicant of a previously approved authorization.

Reexport -The usefulness of 123.28 would be enhanced if it also covered the reexport and retransfers by previously authorized intermediate consignees.

DDTC One-time Authority - We also recommend allowing suppliers to use the exemption if specifically authorized by the Directorate of Defense Trade Controls. For example, suppliers could request a one-time authorization for a specific end-user, or they could receive a certification based on prior performance as trusted exporters.

### **ITAR Part 126.19**

AIA appreciates the Department's effort to codify the export and re-export requirements of USML articles embedded/incorporated into EAR controlled end items. This effort will help ensure equitable treatment under the regulations for all such items and U.S. exporters of those items. To maximize the benefit of the proposed revision for the Department and industry, we submit the following for your consideration:

1. 126.19(a)(3) - If the end item incorporating the USML article is controlled under the EAR, we agree the EAR language is the most operationally practical to evaluate the control of an end item already determined to be under jurisdiction of the EAR.
2. 126.19(a)(4) - The 1% valuation of an end-item calculation is ambiguous and seems disproportionate. The 1% valuation level could be reasonably raised to 10% - in line with the EAR 10% de minimis threshold. We suggest that any ambiguity be eliminated by clearly answering the question, "10% of what?"; is it 10% of the value of the ultimate end item (i.e. system) or the immediate subsystem into which the USML item is incorporated? In addition, we recommend that the Department clearly state the methodology for de minimis calculations and valuation percentage as well as what records are required to substantiate those financial calculations.
3. In terms of the license determination for the end item incorporating the USML article, we agree with the language which sets forth the requirement for DDTC authorization to export the defense article if it is not incorporated into an EAR-controlled end item.
4. In the proposed rule please clarify the term "end-item" when referring to "...the end-item would be rendered inoperable..."
5. Under the proposed rule can parts be returned to the U.S. for repair using the 123.4(a) exemption if they were originally exported/incorporated into a Commerce controlled item?
6. Safety of Flight - The proposed policy regarding the incorporation of a defense article that does not provide or is not related to a military application could also be beneficial. Application of this policy could include the temporary use of an ITAR-controlled measurement tool for the purpose of enhancing commercial airplane safety features, or the incorporation of an item developed as part of a military program that increases the reliability of a commercial emergency system.

In closing, AIA wishes to express thanks to the Department for its efforts to solicit industry feedback on the impact of regulatory changes prior to publication of a final rule. Publication of proposed rules allows industry more time to evaluate required compliance process changes and comment on potential unintended operational consequences. We fully support the Department's objective for use of alternative export authorizations which are also operationally practical for the users while ensuring compliance with the intent of the AECA.

If there are any questions or further clarification is required, please contact the undersigned at [remy.nathan@aia-aerospace.org](mailto:remy.nathan@aia-aerospace.org).

Best Regards,

A handwritten signature in black ink, appearing to read "Remy Nathan", with a long horizontal flourish extending to the right.

Remy Nathan  
Vice President, International Affairs  
Aerospace Industries Association