

**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
Modification and Replacement Parts Association**
2233 Wisconsin Ave, NW, Suite 503
Washington, DC 20007

For more information, please contact:
Jason Dickstein
President
(202) 628-6776



MODIFICATION AND REPLACEMENT PARTS ASSOCIATION

2233 Wisconsin Avenue, NW, Suite 503

Washington, DC 20007

Tel: (202) 628-6777

Fax: (202) 628-8948

<http://www.pmamarpa.com>

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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 MARPA?

The Modification and Replacement Parts Association was founded to support PMA manufacturers and their customers. Aircraft parts are a vital sector of the aviation industry, and MARPA acts to represent the interests of the manufacturers of this vital resource before the FAA and other government agencies.

MARPA is a Washington, D.C.-based, non-profit association that supports its members' business efforts by promoting excellence in production standards for PMA parts. The Association represents its members before aviation policy makers, giving them a voice in Washington D.C. to prevent unnecessary or unfair regulatory burden while at the same time working with the FAA to help improve the aviation industry's already-impressive safety record.

The only major trade group exclusively representing the PMA industry, MARPA represents a diverse group of interests all dedicated to excellence in producing aircraft parts. Board members and other individuals involved in the association have years of expertise in the PMA world, and all MARPA member companies benefit from the collective experience within the group.

Summary of the Comments

The proposed rule does not adequately account for aircraft parts manufactured under FAA Parts Manufacturer Approval (PMA). MARPA would appreciate an amendment that adequately accounts for these parts. Draft language for such an amendment is included in the conclusion to these comments.

Comments on the Rule

There is a growing marketplace segment for FAA-approved aftermarket aircraft parts. These replacement and modification parts are designed specifically for use on civilian aircraft. These parts are known as PMA parts, based on the acronym for the FAA approval associated with the parts (Parts Manufacturer Approval).

According to data published by Aerostrategy, the market for PMA parts reflected about 2.1% of the market for civil aircraft parts in 2006. This market is expected to double by the year 2011. A part of this rapid growth is the growing acceptance of these parts in the European and Asian marketplaces. The United States has negotiated Bilateral Airworthiness Safety Agreement Implementation Procedures for Airworthiness (BASA-IPA) with a number of other countries to assure that these US exports are accepted as airworthy parts under foreign civil

airworthiness regulations. Because these PMA parts are now being accepted outside the US, it is important to make sure that they are adequately reflected in the US export laws.

The design and production aspects of the part are specifically approved for use on civilian aircraft, and the FAA approval does not intrinsically make the part eligible for use on defense-related aircraft, even when the Department of Defense has purchased the civilian product for Defense Department use. In fact, passing off PMA parts as if they were eligible for installation in defense aircraft can reflect a fraud. *U.S. v. Murphy*, 483 F.3d 639 (9th Cir. 2007) was appeal of just such a case.

In order to use a PMA part on a U.S. defense aircraft, the appropriate defense unit must affirmatively decide to approve that PMA part for use on defense aircraft. The Air Force has begun to actively examine and approve for Air Force use certain PMA parts on Air Force aircraft that have civilian corollaries. It would not make sense for such parts to start life subject to Commerce Department export jurisdiction, and then later need to be examined under a State Department commodity jurisdiction request merely because the Air Force has chosen to begin purchasing commercially available parts for its own aircraft. Where PMA parts were clearly subject to Commerce Department before the Air Force started to purchase them, they should continue to be subject to Commerce Department jurisdiction after the start to be purchased by the Air Force.

The proposed rule assigns export control of certain aircraft items to the Commerce Department (the EARs), but it limits those parts to parts “covered by a civil aircraft type certificate.” This definition specifically includes parts covered by amended type certificates and supplemental type certificates. Excluded from this list are parts manufactured under a FAA Parts Manufacturer Approval (PMA). A PMA represents FAA approval of both design and production, in a single FAA approval document. As such, the FAA may issue a PMA without the PMA parts being covered under either an amended type certificate or a supplemental type certificate. PMA parts often reflect parts manufactured in competition with parts manufactured by the type certificate holder, so the type certificate holder has an economic incentive to avoid listing the PMA part in the type certificate.

There is no separate statutory authority for PMAs – they are defined by FAA regulations. See 14 CFR § 21.301 et seq. PMAs are authorized as extensions of the FAA’s authority to issue type certificates. See 14 CFR § 21.303 (requiring PMA for certain parts intended for installation on type certificated products); see also Parts Manufacturer Approval Procedures, FAA Order 8110.42B, ¶ 2-5(k) (Sept. 9, 2005) (requiring the applicant to identify at least one type certificated product on which the part will be installed).

In order to remedy this situation, we recommend adding an explanatory sentence that states

“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).”

This sentence would be added to the note in the proposed rule. The “or accepted” language of this explanation permits FAA reliance on other PMA issuance routines, like acceptance of foreign approved civil aircraft components under existing Bilateral Airworthiness Safety Agreement Implementation Procedures for Airworthiness (BASA-IPA).

In summary, PMAs are normal civil aircraft parts that are specifically designed for use on civil aircraft, that meet the FAA’s standards as well as the manufacturer’s standards and that are meant to be integral parts of the aircraft, and as such the scope of the rule should be broadened to explicitly recognize this category of parts. They are generally outside the scope of the USML at the time they are first produced, although subsequent adoption of the design by a unit of the Defense Department could render ambiguous their position vis-à-vis this rule. In order to avoid disputes over whether a PMA part is within or without the scope of the EARs, it would be advisable to specifically address such parts in this rule, so that non-SME PMAs will be considered to fall within the scope of the EARs.

Conclusion

In order to be certain that PMA parts are adequately considered, and in order to clarify the status of PMA parts in the export community, MARPA recommends adding an explanatory sentence 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).”

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 "D" and "S".

Jason Dickstein
President

Modification and Replacement Parts Association