

Government Contracts Blog

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Proposed ITAR Rule To Relax ITAR Licensing For Components Incorporated Into Commercial Products

By [Curtis M. Dombek](#)

On March 15, the State Department Directorate of Defense Trade Controls published a [proposed](#) new rule that marks a significant change in the approach to ITAR regulation. Historically, ITAR controls have always applied to commercial end products incorporating any ITAR controlled components. This was the basis of the highly publicized QRS chip case, in which the State Department asserted continuing ITAR control over avionics chips that had originated on a military program but had come to be widely used in civilian jet aircraft. That case resulted eventually in a special exception to allow jet aircraft to remain in production and passenger service with the QRS chip and without ITAR licensing.

The new rule, §126.19, sets out conditions under which an ITAR license will not be required for the export or reexport of a defense article incorporated into an end-item that is subject to the EAR. The conditions are that:

1. The defense article would be destroyed (*i.e.*, rendered useless beyond the possibility of restoration) by its removal from the end-item, or the end-item would be rendered inoperable by the removal of the defense article and the value of the defense article is less than 1% of the value of the end-item;
2. No technical data for development or production are transferred with the defense article; and
3. The incorporation of the defense article does not provide and is not related to a military application.

The rule provides expressly that export of the ITAR controlled components as replacement parts would remain subject to ITAR licensing.

The new rule will not go into effect until the Department of Commerce amends the EAR such that the ITAR and CCL provide complimentary coverage of the articles in question. The Federal

Register notice invites comments on the new rule through April 14, 2011.

Once it takes effect, this ITAR change has the potential to create new opportunities for commercial exploitation of technology in U.S. manufacturing by allowing EAR controlled equipment made in the United States to incorporate ITAR controlled components meeting the above conditions and be exported without ITAR licensing. The need for continued ITAR licensing of replacement parts will largely limit its impact, however, to products where repair and maintenance could be structured to provide for replacement of the entire EAR controlled end item or assembly.

If you have questions about this ITAR change and the new exporting opportunities it may create, please feel free to contact us.

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