

The following DTAG Working Group submits the attached report showing our track changes to the proposed ITAR §126.20 language and the associated presentation which was delivered at the July 7, 2010 Plenary:

Members

- Byron Angvall - Boeing
- Dave Bowman - ArvinMeritor
- Dennis Burnett – EADS North America, DTAG Working Group Chairperson
- Rebecca Conover - Intel Corporation
- Andrea Dynes - General Dynamics
- Peter S. Jordan - United Technologies Corporation
- Krista Larsen - FLIR
- Roger T. Mustian - Remington
- Dale Rill – Honeywell
- Joy Speicher - Space Systems Loral

**§ 126.20 Policy on the export and re-export of defense articles incorporated into commodities "Subject to the EAR"**

- (a) A license or other approval from the Department of State is not required for the export, re-transfer or re-export of a defense article(s) that is incorporated into an end item ~~under the regulatory~~ subject to the export licensing jurisdiction of the Department of Commerce, Bureau of Industry and Security, when all of the following conditions are met:
- (1) The end item would be rendered inoperable by the removal of the defense article(s); and
  - (2) The export, retransfer or re-export does not involve any ~~Technical data~~ (as defined by § 120.10) ~~about-related to development or production of the defense article(s) incorporated into the end item is not provided in EAR-controlled "technology" for the "production" and "use" of the end item; and~~
  - (3) Incorporation of the defense article(s) does not provide, nor is it related to, a military application.
- (b) A license or other approval from the Department of State is not required ~~for the export, retransfer or~~

ALTERNATE 1 – ADDITIONAL SECTION FOR EXPORT OF PARTS TO BE INCORPORATED INTO CIVIL ITEMS  
ABROAD

**§ 126.21 Policy on the export and re-export of defense articles incorporated into foreign commodities of a nature described on the CCL**

- (a) A license or other approval from the Department of State is not required for the export of a defense article if the defense article is exported solely for integration into an end item, which end item would be subject to the export licensing jurisdiction of the Department of Commerce, Bureau of Industry and Security if such end item were exported from the United States; provided that all of the following conditions are met:
- (1) The end item would be rendered inoperable by the removal of the defense article; and
  - (2) The export, retransfer or re-export does not involve any technical data (as defined by § 120.10) related to development or production of the defense article incorporated into the end item; and
  - (3) Incorporation of the defense article does not provide, nor is it related to, a military application.
- (b) A license or other approval from the Department of State is not required for the export of a defense article if the defense article is exported solely to be embedded and incorporated into a higher level assembly that is not an end-item and such higher level assembly would be subject to the export licensing jurisdiction of the Department of Commerce, Bureau of Industry and Security if such higher level assembly were exported from the United States. The term “embedded” means that the defense article(s) would be destroyed (useless beyond the possibility of restoration) by its removal from the higher level assembly.
- (c) A license or other approval from the Department of State is not required for the retransfer or re-export of a defense article incorporated into an end item as described in § 126.21(a) or incorporated and embedded in a higher level assembly that is not an end item as described in § 126.21(b).
- (d) A license or other approval from the Department of State is required for the export, re-transfer or re-export of a defense article that is not incorporated, at the time of such export, retransfer or re-export, into a higher level assembly, which assembly does not meet the requirements of § 126.20(a) through (c) or § 126.21(a) through (c).

ALTERNATE 2 – MODELED AFTER QRS-11 PROVISIONS

**§ 126.20 Policy on the export and re-export of defense articles incorporated into commodities “Subject to the EAR”**

- (a) A license or other approval from the Department of State is not required for the export, re-transfer or re-export to any country other than a country proscribed in § 126.1 of an article (other than material or software) that is subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls, if such article --
  - (1) is integrated into and included as an integral part of a higher level assembly, which assembly is subject to the export licensing jurisdiction of the Department of Commerce, Bureau of Industry and Security, or
  - (2) is exported solely for integration into and inclusion as an integral part of a higher level assembly, which assembly would be subject to the export licensing jurisdiction of the Department of Commerce, Bureau of Industry and Security if such higher level assembly were exported from the United States.
- (b) The provisions of § 126.20(a) shall not apply to technical data related to the development or production of articles subject to the licensing jurisdiction of the Department of State, Directorate of Defense Trade Controls. A license or other approval from the Department of State, Directorate of Defense Trade Controls shall be required for the export, retransfer or re-export of such technical data.
- (c) The provisions of § 126.20(a) shall not apply to any article subject to the licensing jurisdiction of the Department of State, Directorate of Defense Trade Controls that is a replacement for an article integrated into and integral to a higher level assembly, which assembly was previously exported, retransferred to re-exported pursuant to § 126.20(a). A license or other approval from the Department of State, Directorate of Defense Trade Controls shall be required for export, retransfer or re-export of any such article.



# Defense Trade Advisory Group (DTAG)

Plenary Session  
Working Group No. 3 Report  
July 7, 2010

# Working Group No. 3

## Members

- Byron Angvall - Boeing
- Dave Bowman - ArvinMeritor
- Dennis Burnett – EADS North America
- Rebecca Conover - Intel Corporation
- Andrea Dynes - General Dynamics
- Peter S. Jordan - United Technologies Corporation
- Krista Larsen - FLIR
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Why is a new §126.20 being proposed?

To avoid another QRS11!

The QRS11 is a Quartz MEMS solid-state gyroscope.

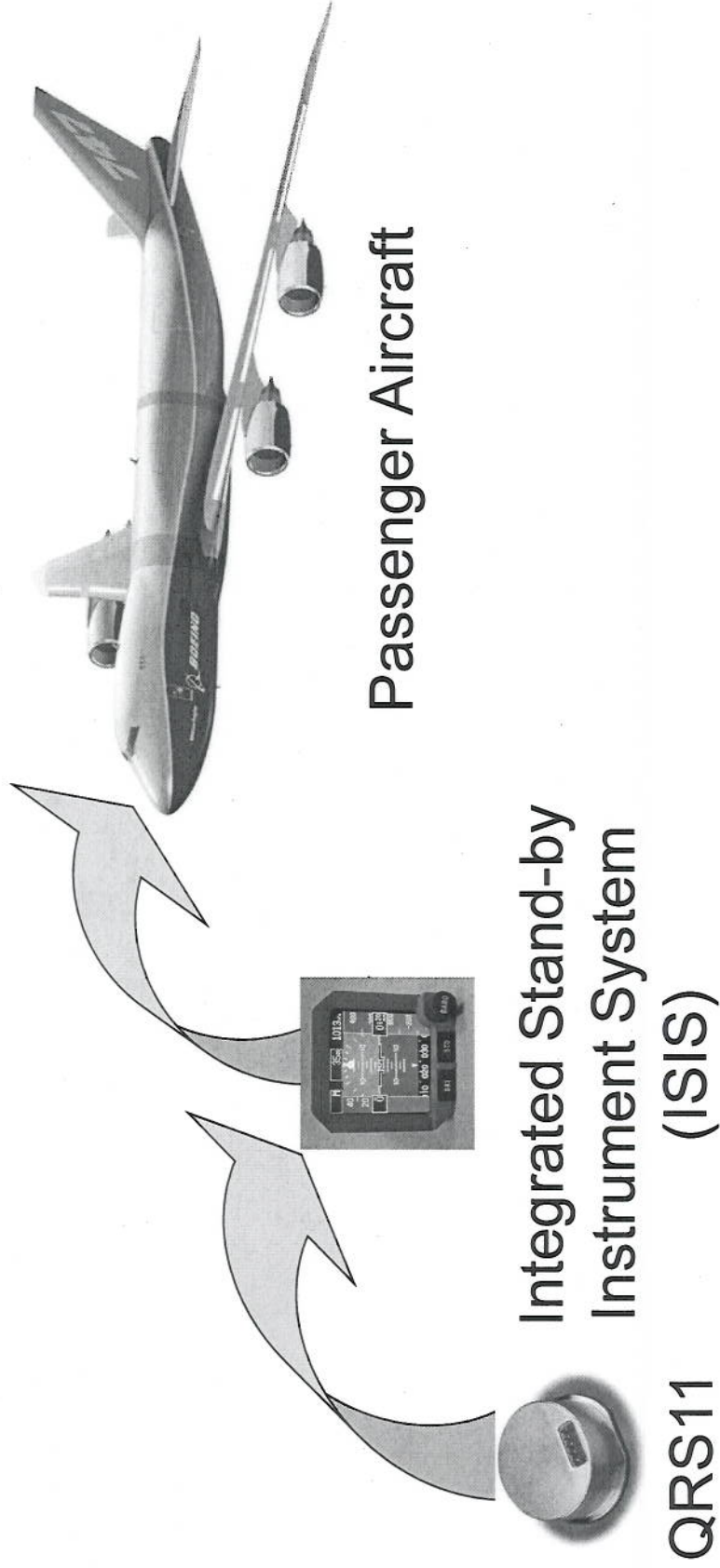
The QRS11 was originally designed for missile applications and is used in aircraft, missile and space systems.



# QRS11



# QRS11 was a Defense Article in the Civil Supply Chain



# ITAR Solution

## **Category VIII – Aircraft and Associated Equipment.**

### **Note:**

- (1) Category XII(d) or Category VIII(e) does not include quartz rate sensors if such items:
  - (i) Are integrated into and included as an integral part of a commercial primary or commercial standby instrument system for use on civil aircraft prior to export or exported solely for integration into such a commercial primary or standby instrument system, and
  - (ii) When the exporter has been informed in writing by the Department of State that a specific quartz rate sensor integrated into a commercial primary or standby instrument system has been determined to be subject to the licensing jurisdiction of the Department of Commerce in accordance with this section.
- (2) For controls in these circumstances, see the Commerce Control List. In all other circumstances, quartz rate sensors remain under the licensing jurisdiction of the Department of State under Category XII(d) or Category VIII(e) of the U.S. Munitions List and subject to the controls of the ITAR.

# EAR Solution

**7A994 Other navigation direction finding equipment, airborne communication equipment, all aircraft inertial navigation systems not controlled under 7A003 or 7A103, and other avionic equipment, including parts and components, n.e.s.**

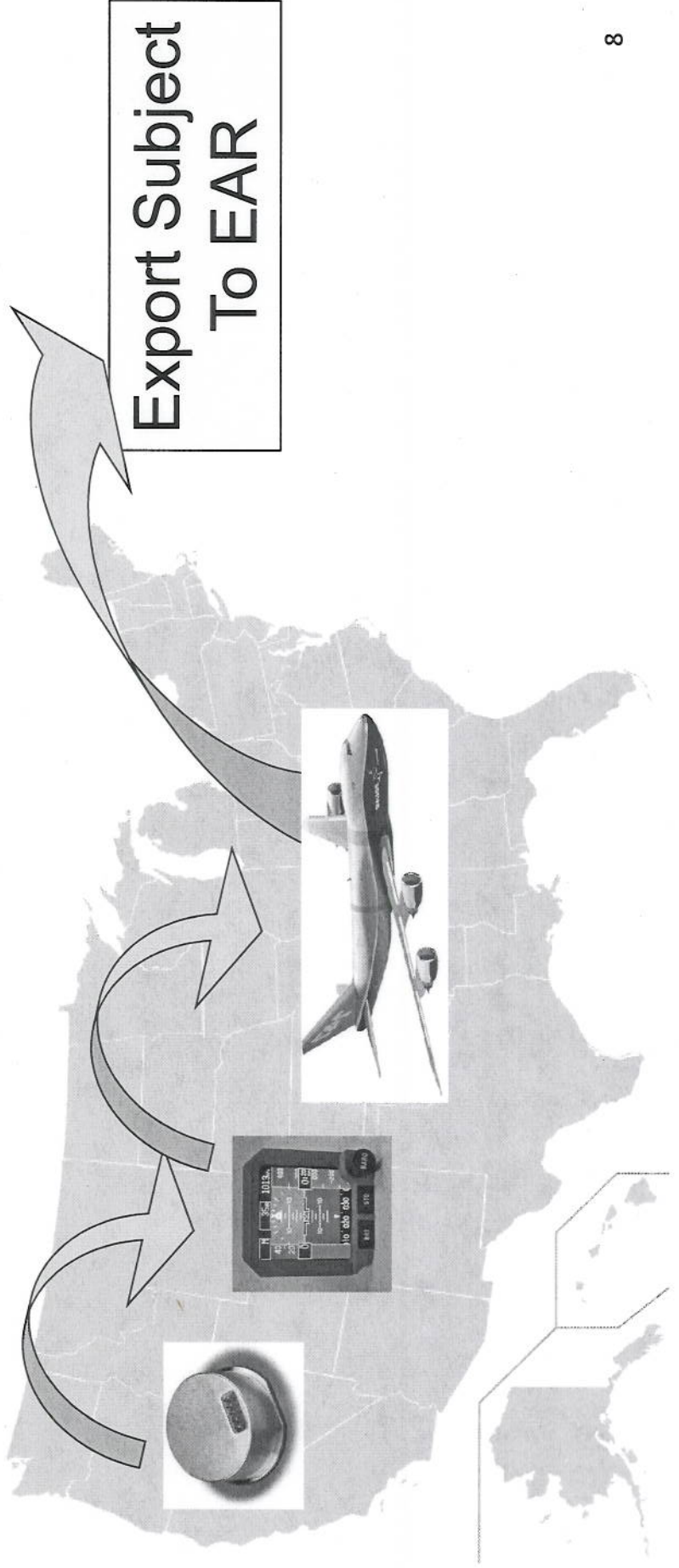
*License Requirement Notes: There is no de minimis level for foreign-made commercial primary or standby instrument systems that integrate QRS11-00100-100/101 or commercial automatic flight control systems that integrate QRS11-00050-443/569 Micromachined Angular Rate Sensors (see §734.4(a) of the EAR).*

Micromachined Angular Rate Sensors are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls, unless the QRS11-00100-100/101 is integrated into and included as an integral part of a commercial primary or standby instrument system of the type described in ECCN 7A994, or aircraft of the type described in ECCN 9A991 that incorporates such systems, or is exported solely for integration into such a system; or the QRS11-00050-443/569 is integrated into an automatic flight control system of the type described in ECCN 7A994, or aircraft of the type described in ECCN 9A991 that incorporates such systems, or are exported solely for integration into such a system.

# Case One of Four Cases

1. QRS11 incorporated into US manufactured commercial instrument or automated flight system, which is incorporated into US manufactured aircraft;

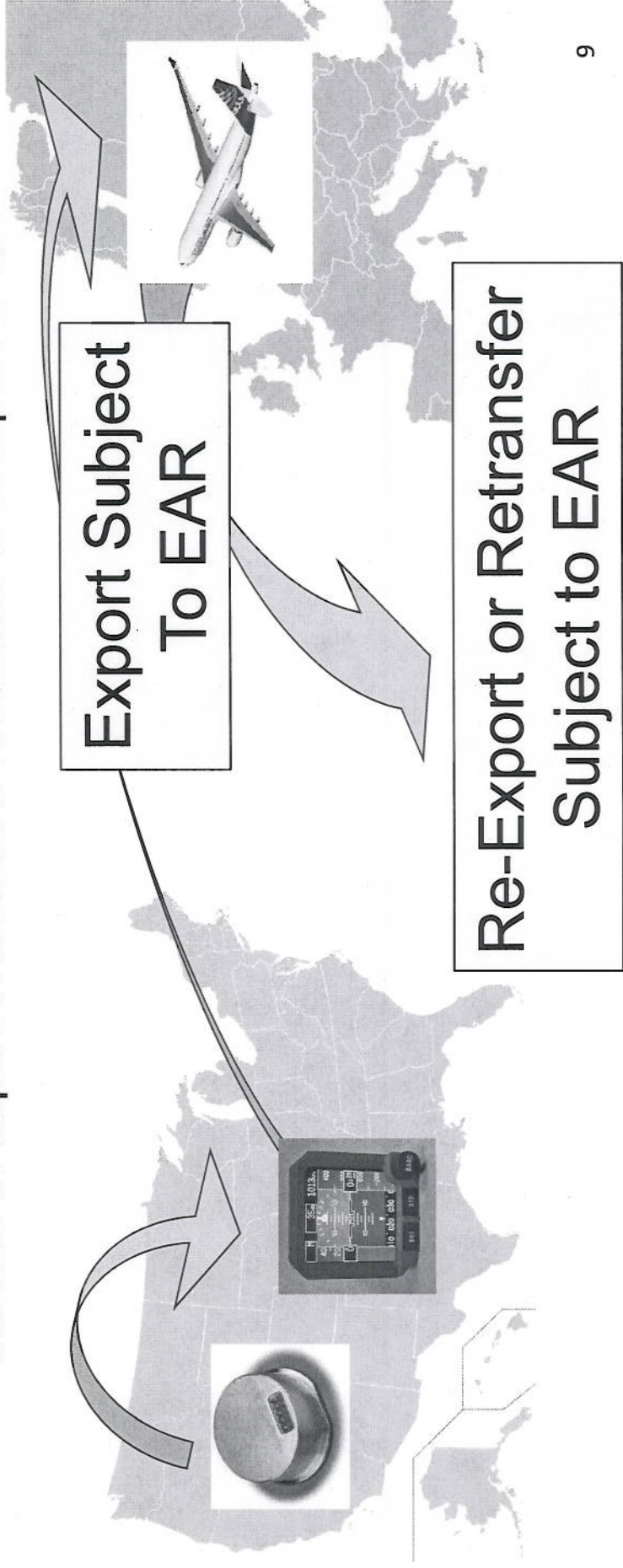
- aircraft export is first export of QRS11.



## Case Two of Four Cases

2. QRS11 incorporated into US manufactured commercial instrument or automated flight system, which is exported for foreign aircraft manufacturer for incorporation into aircraft;

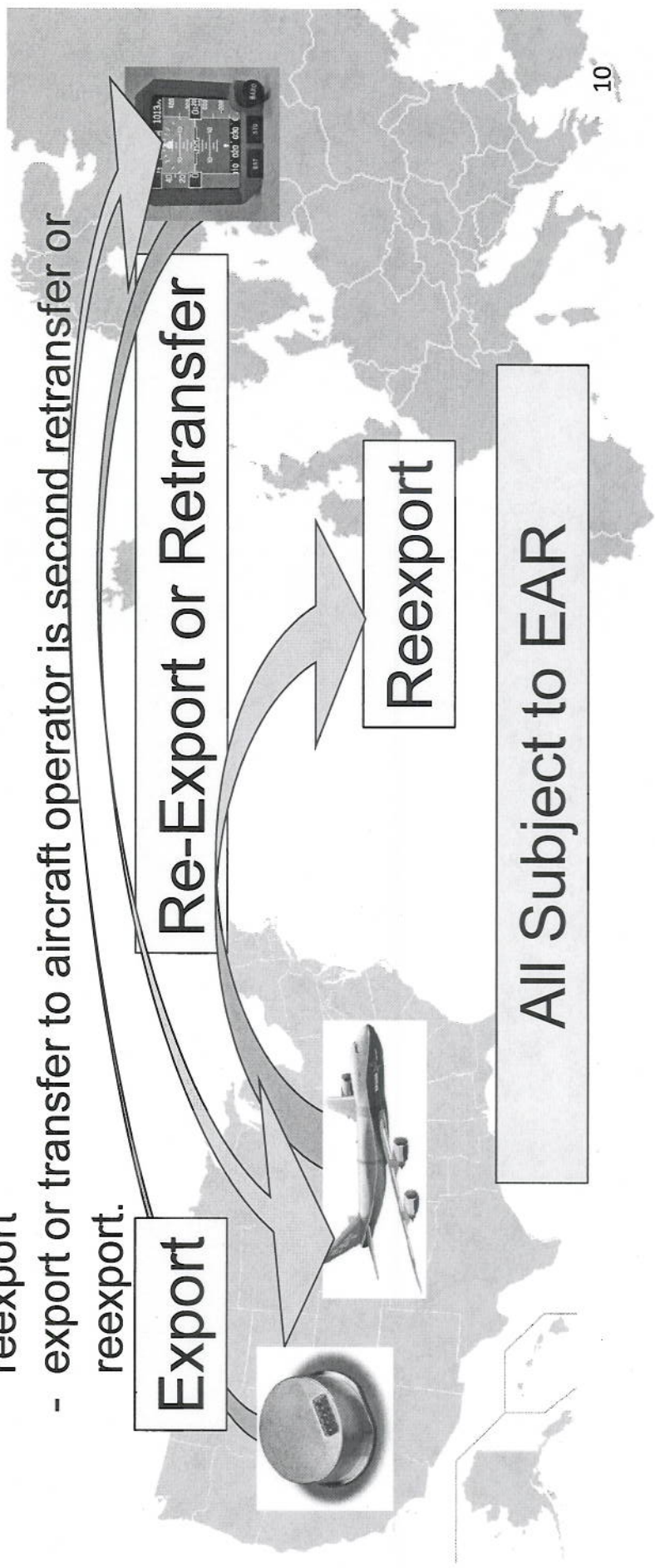
- export of instrument or flight system is first export of QRS11;
- transfer or export of aircraft is retransfer or reexport of QRS11.



# Case Three of Four Cases

3. QRS11 incorporated into foreign manufactured commercial instrument or automated flight system, which is exported to US aircraft manufacturer; which is exported in the aircraft

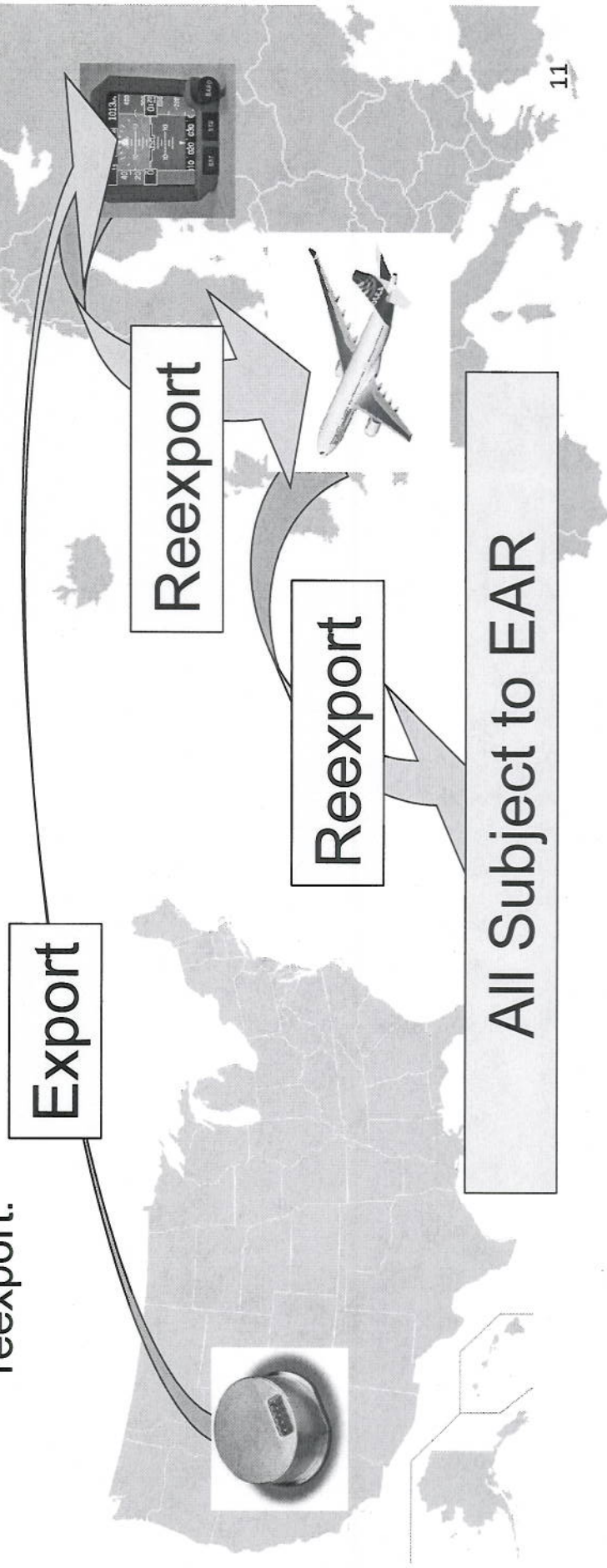
- export of QRS11 to instrument manufacturer is first export.
- export or transfer to aircraft manufacturer is first retransfer or reexport
- export or transfer to aircraft operator is second retransfer or reexport.



# Four of Four Cases

3. QRS11 incorporated into foreign manufactured commercial instrument or automated flight system, which is incorporated into foreign manufactured aircraft;

- export of QRS11 to instrument manufacturer is first export.
- export or transfer to aircraft manufacturer is first retransfer or reexport
- export or transfer to aircraft operator is second retransfer or reexport.



**Proposed \$126.20**



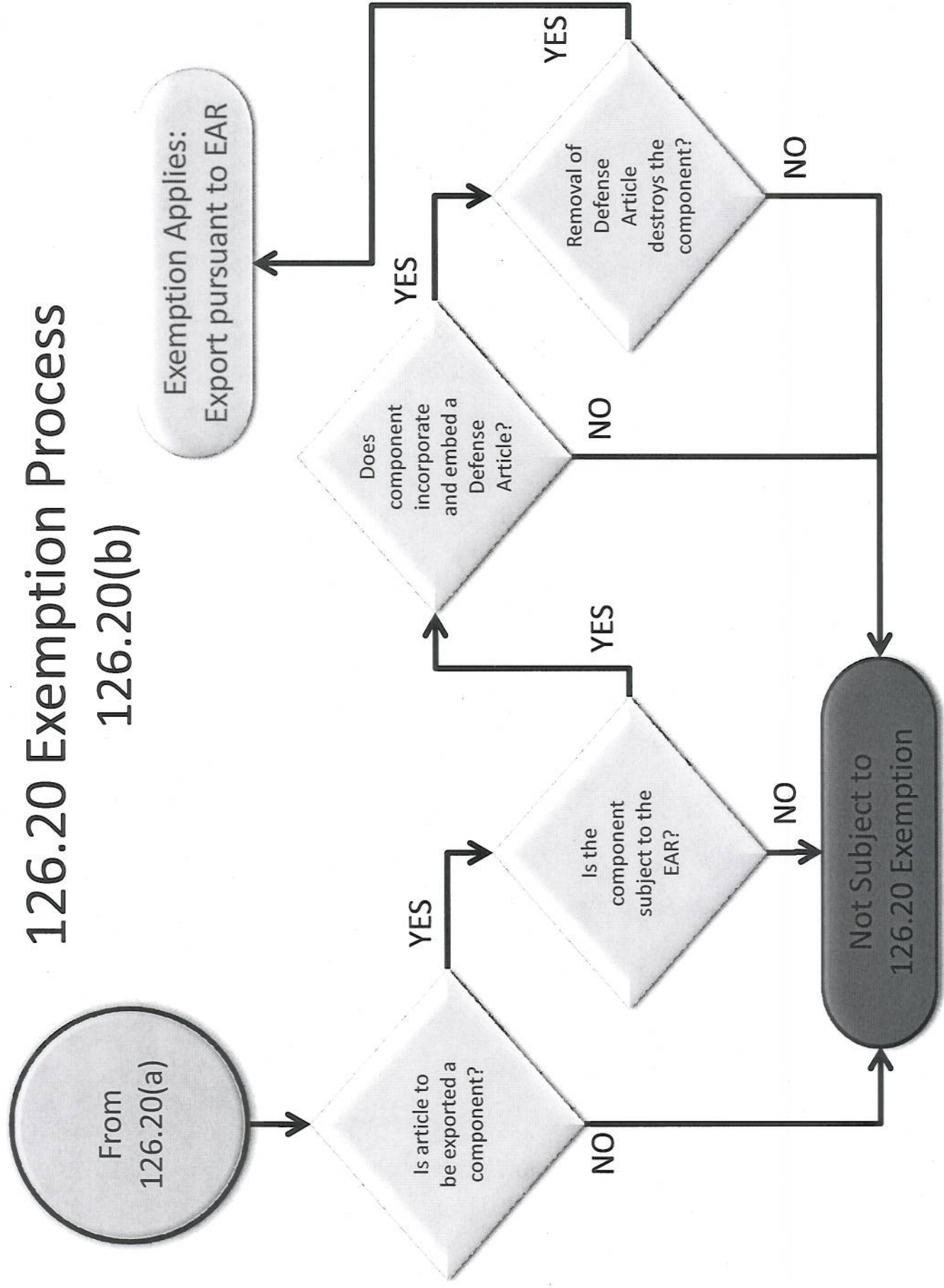
**§ 126.20 Policy on the export and re-export of defense articles incorporated into commodities  
“Subject to the EAR”**

- (a) A license or other approval from the Department of State is not required for the export, re-transfer or re-export of a defense article(s) that is incorporated into an end item under the regulatory jurisdiction of the Department of Commerce, Bureau of Industry and Security, when all of the following conditions are met:
- (1) The end item would be rendered inoperable by the removal of the defense article(s);  
and
  - (2) Technical data (as defined by § 120.10) about the defense article(s) incorporated into the end item is not provided in EAR controlled “technology” for the “production” and “use” of the end item; and
  - (3) Incorporation of the defense article(s) does not provide, nor is it related to, a military application.
- (b) A license or other approval from the Department of State is not required for the export, retransfer or re-export of a defense article(s) that is embedded and incorporated into a spare part or component under the regulatory jurisdiction of the Department of Commerce, Bureau of Industry and Security when the defense article(s) would be destroyed (useless beyond the possibility of restoration) by its removal from the spare part or component.
- (c) A license or other approval from the Department of State is required for the export, re-transfer or re-export of the defense article(s) exported as spare or replacement parts for an end item under the regulatory jurisdiction of the Department of Commerce, Bureau of Industry and Security and such defense article(s) is not embedded and incorporated into a spare part or component under the regulatory jurisdiction of the Department of Commerce, Bureau of Industry and Security.



# 126.20 Exemption Process

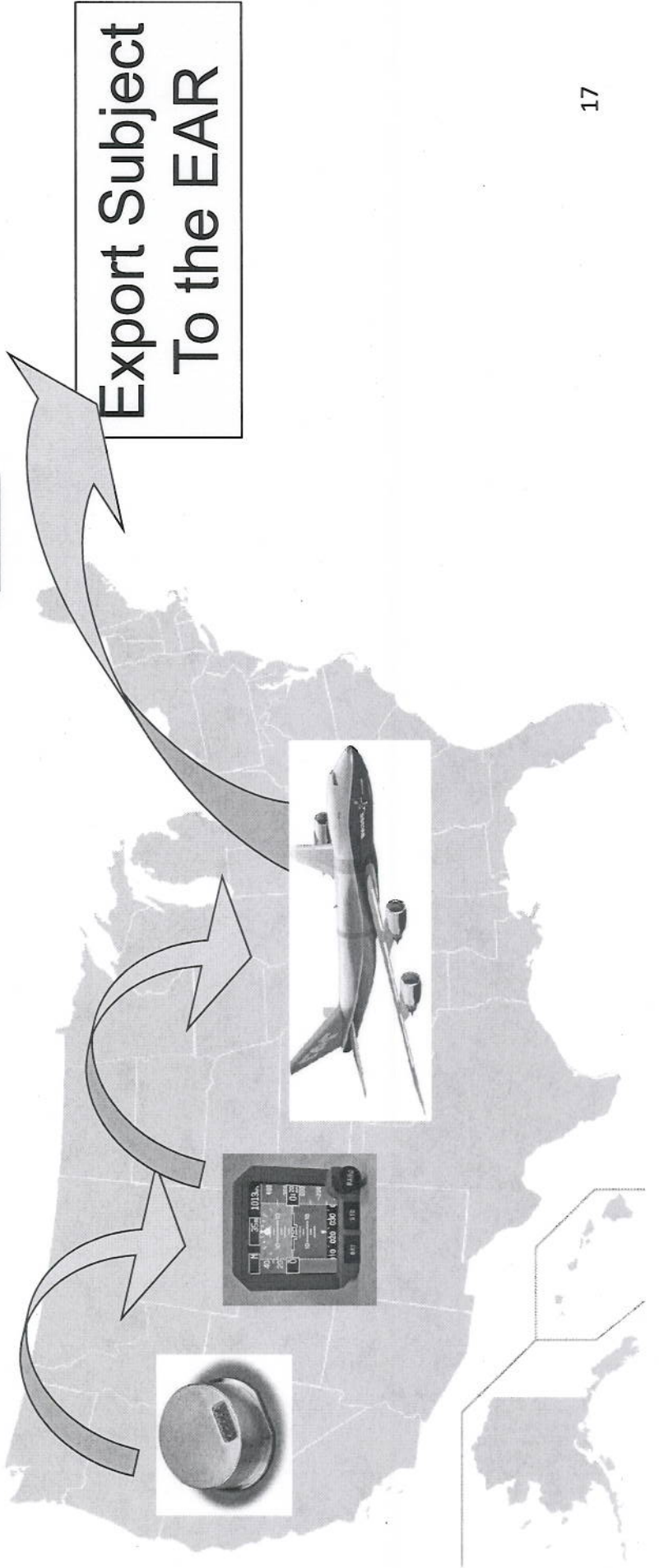
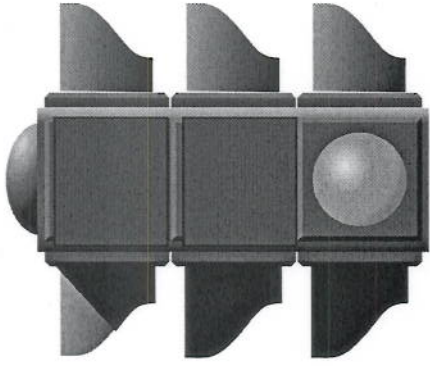
126.20(b)



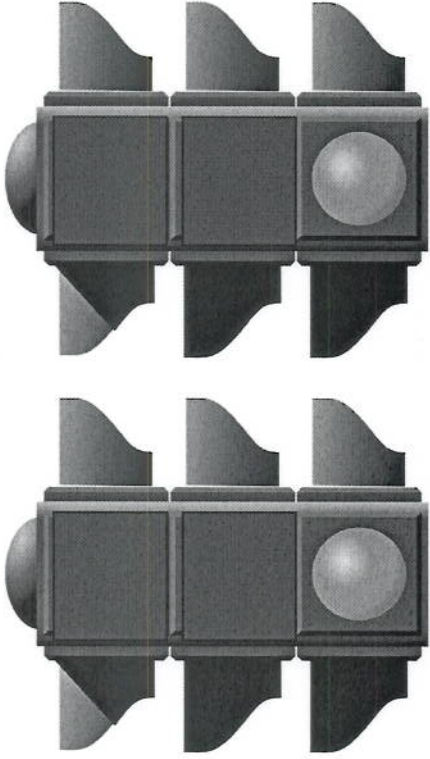


# Case One of Four QRS11 Cases

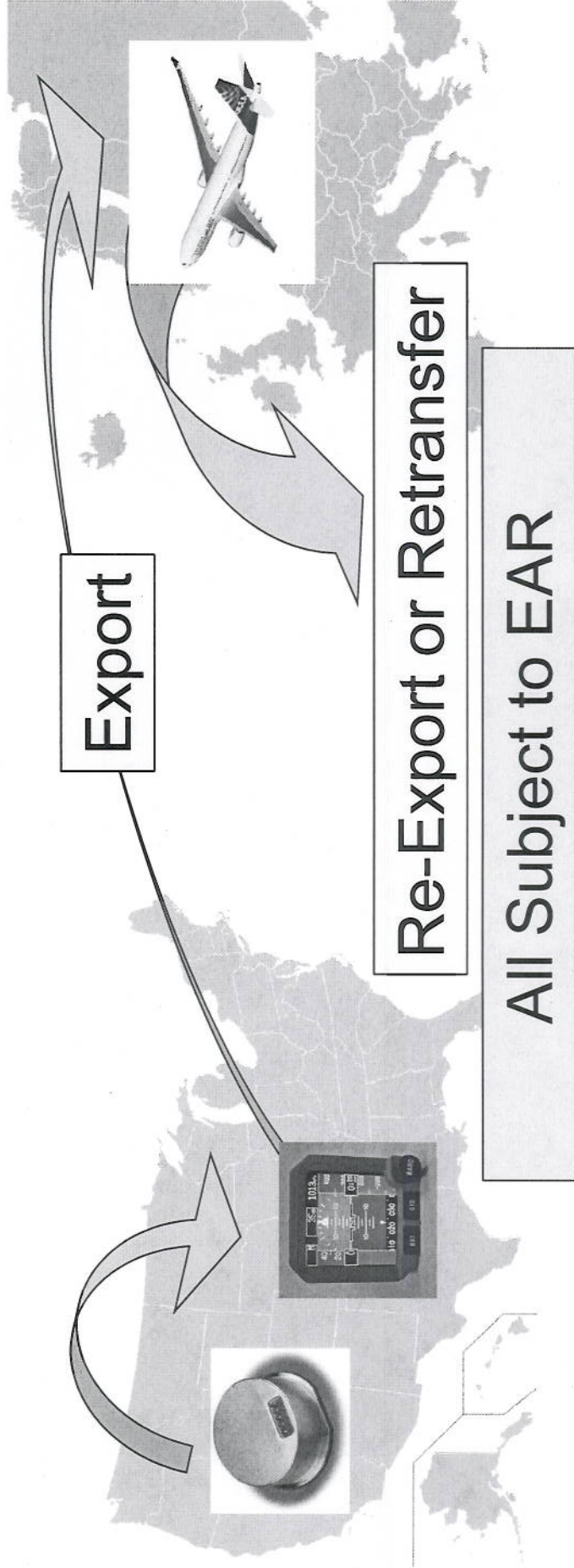
Under Proposed § 126.20



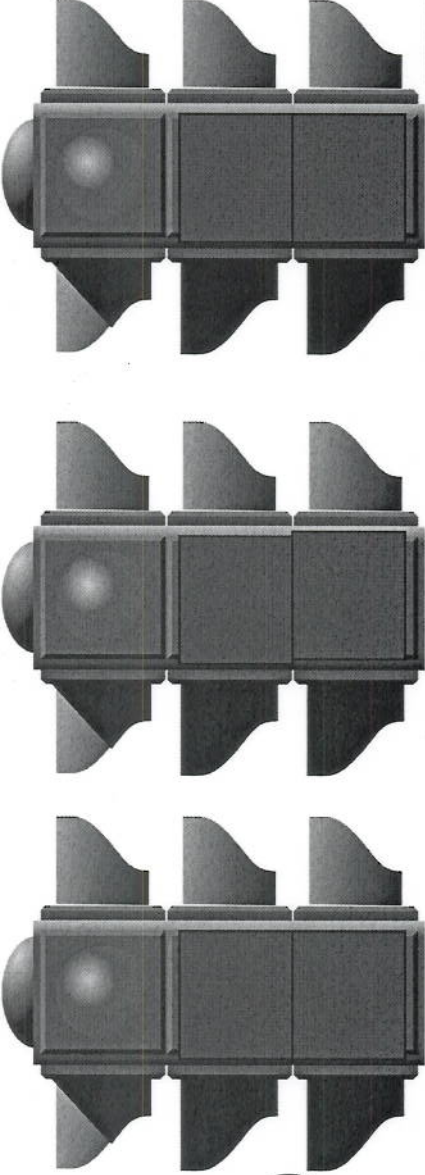
# Case Two of Four QRS11 Cases



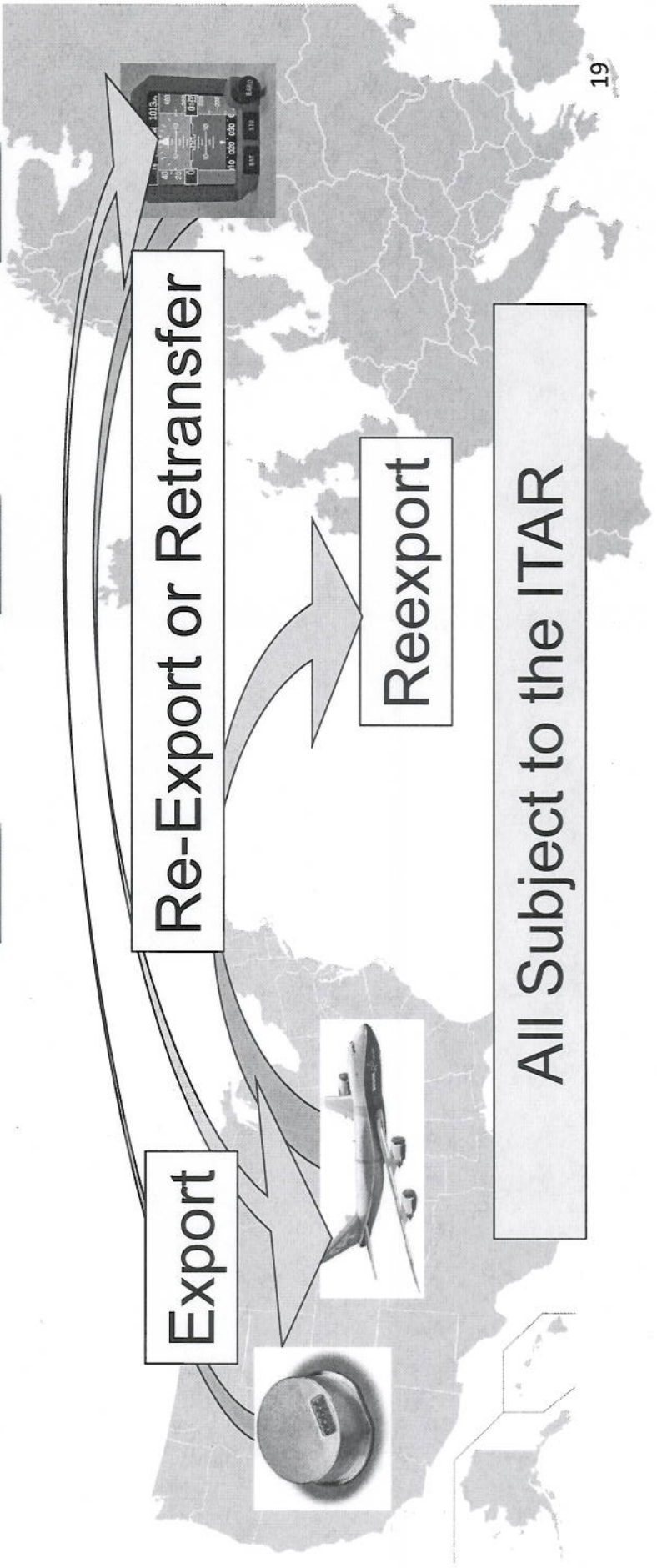
Under Proposed § 126.20



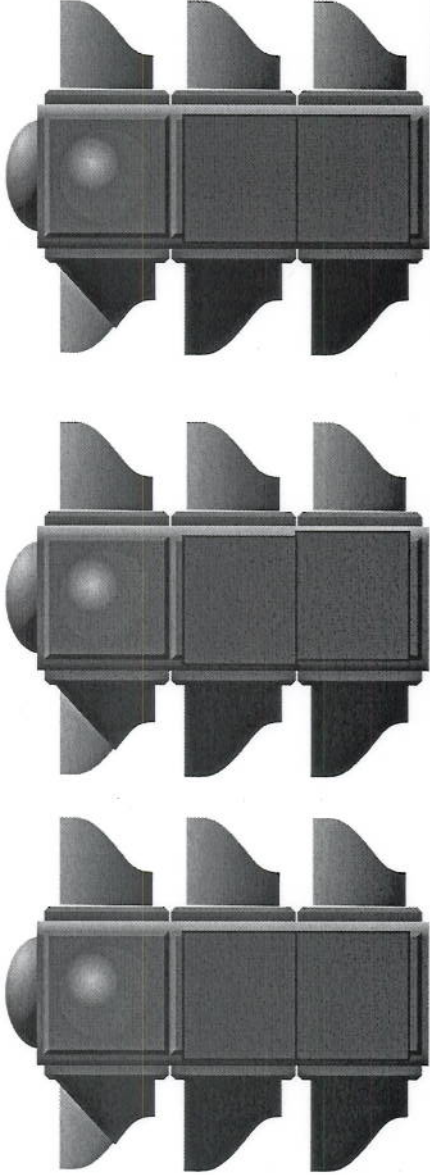
# Case Three of Four QRS11 Cases



Under  
Proposed § 126.20



# Case Four of Four QRS11 Cases

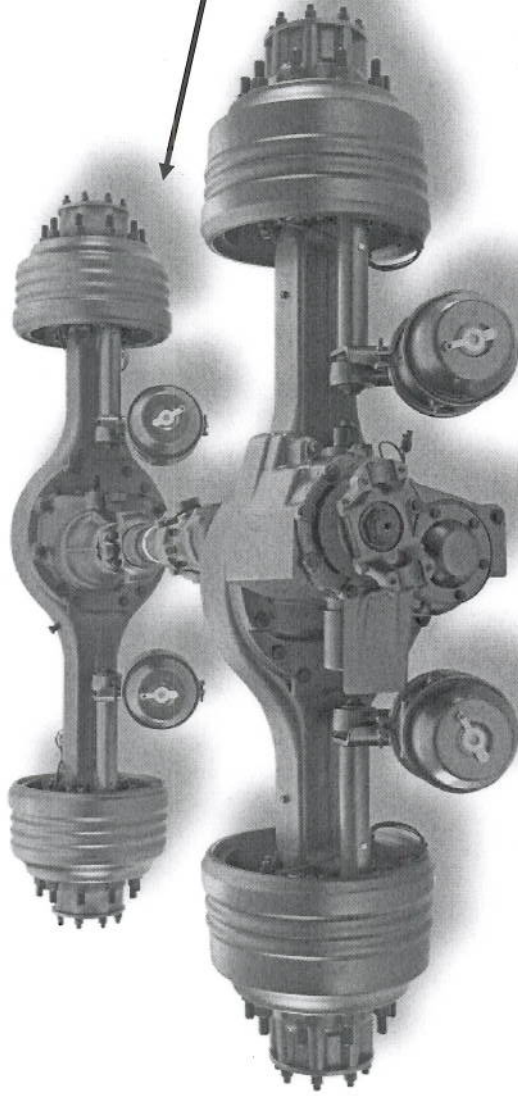


Under  
Proposed § 120.6



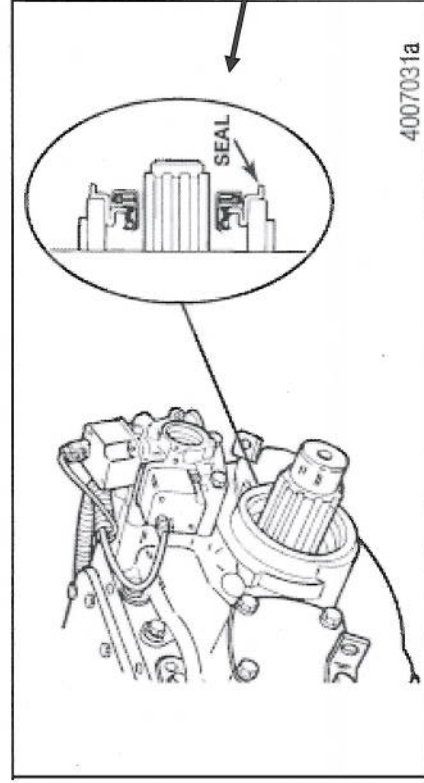


How would it apply to a truck drive axel?



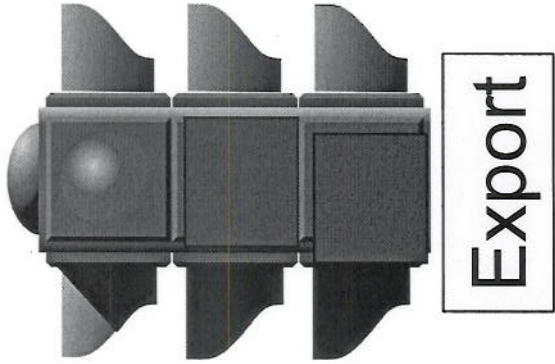
Truck Drive Axel – CCL  
(not end item)

Oil Seal– USML  
(not end item)

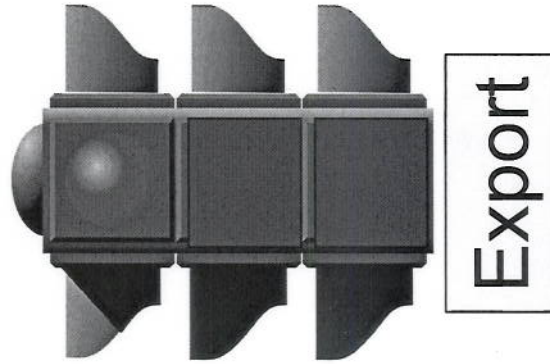
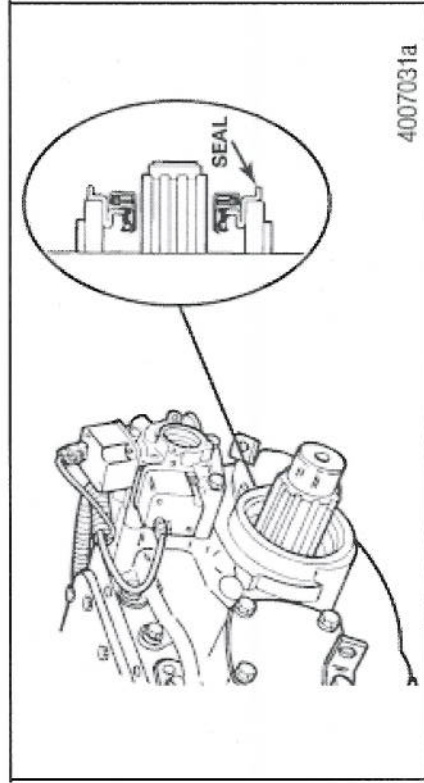
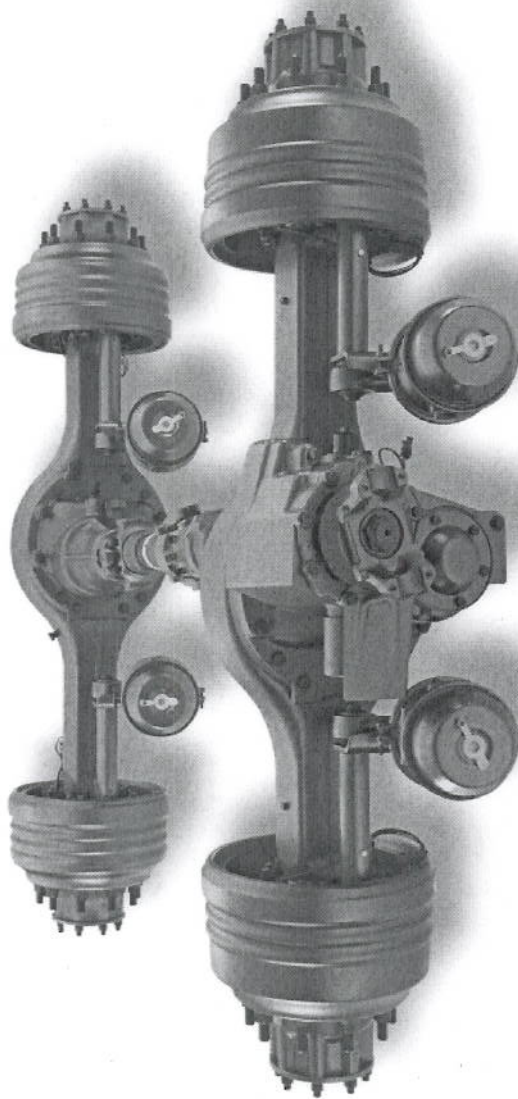


Removal of the oil seal renders the axel inoperable but does not destroy the oil seal.

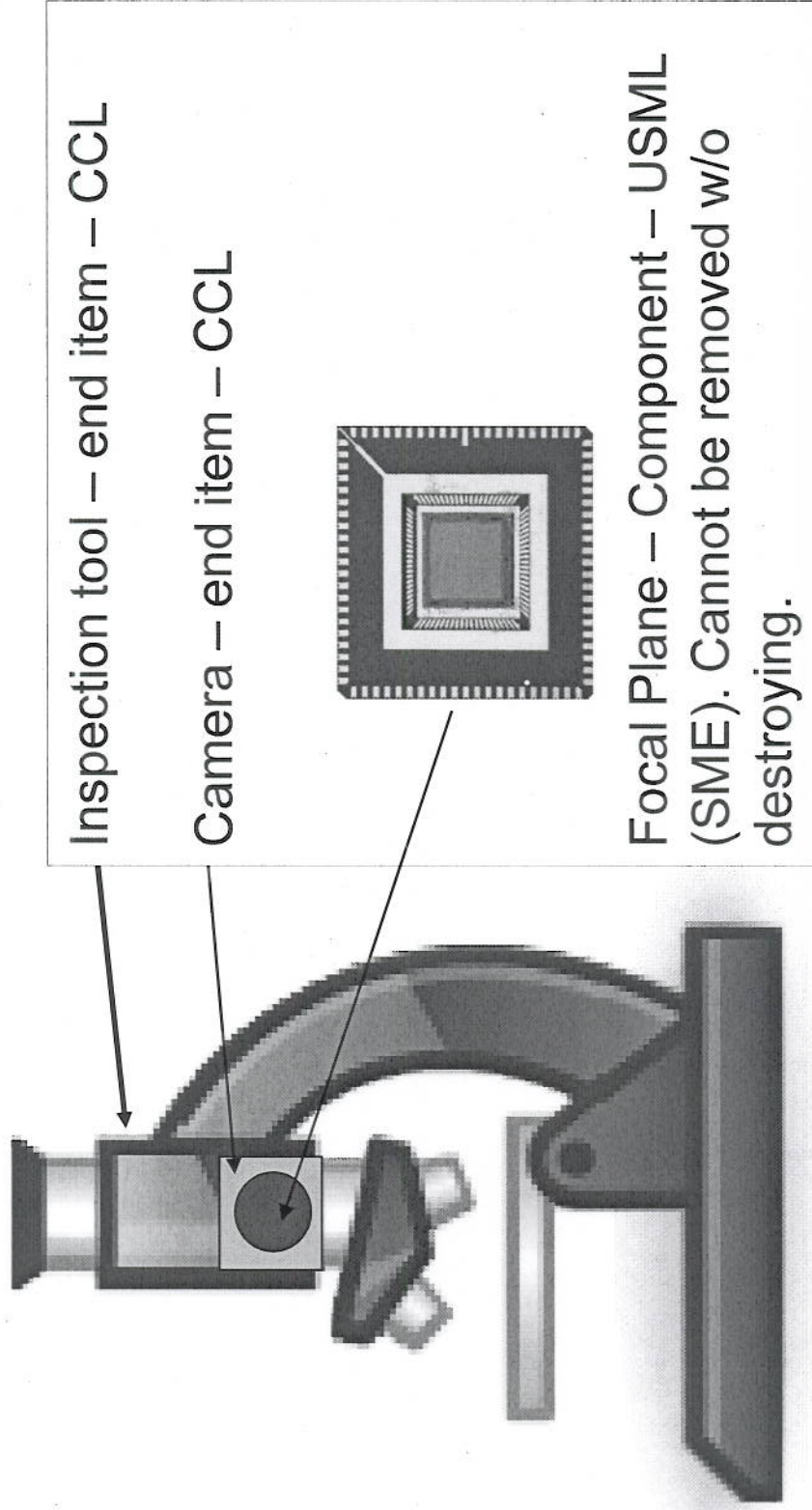
Under Proposed § 126.20



All Subject to the ITAR

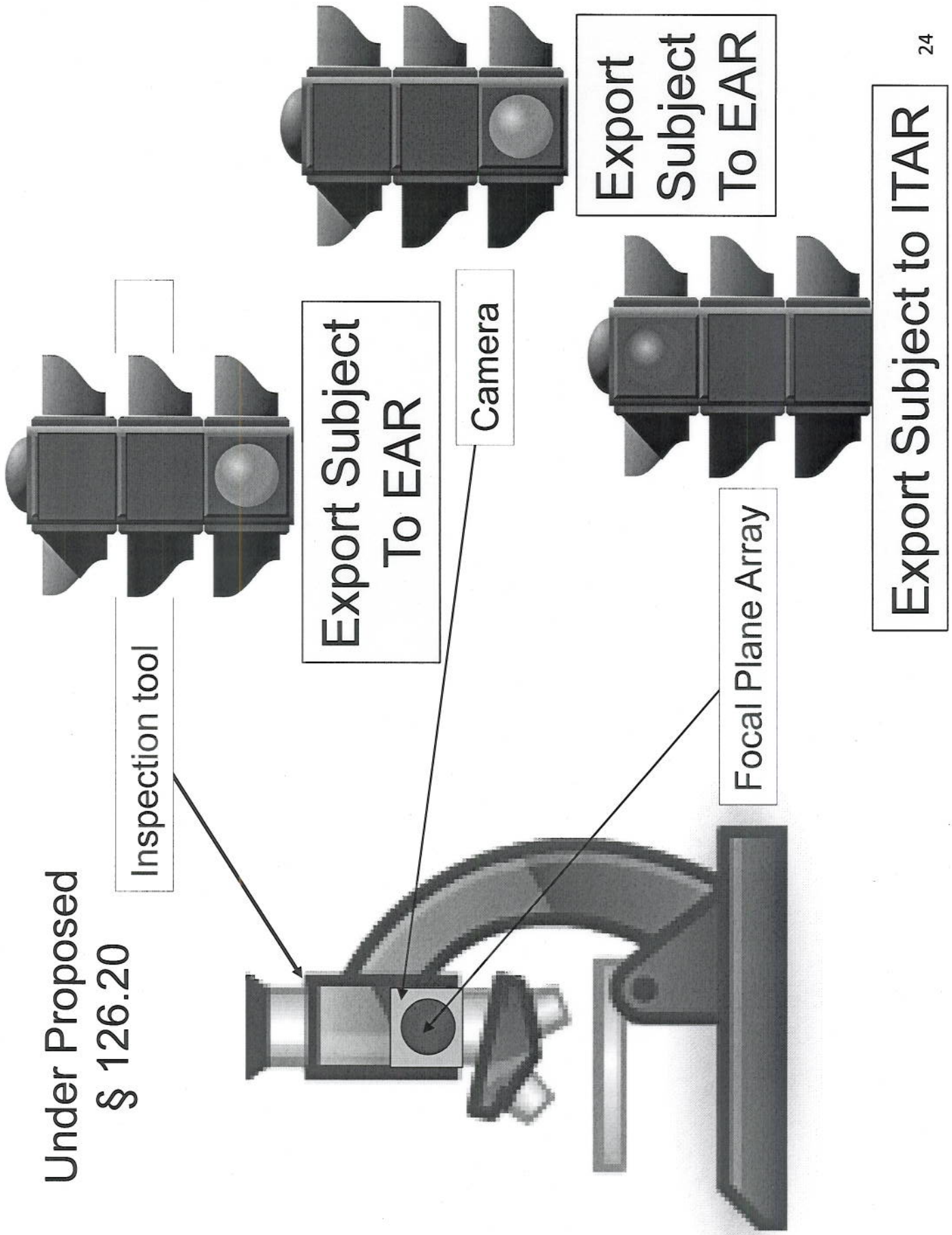


# How would it apply to an inspection tool incorporating a focal plane array?



Removal of the camera renders the inspection tool inoperable but does not destroy the camera. Removal of the focal plane array renders the camera inoperable and destroys the focal plane.

Under Proposed  
§ 126.20



# Editorial Suggestions – No Substantive Changes

## § 126.20 Policy on the export and re-export of defense articles incorporated into commodities "Subject to the EAR"

(a) A license or other approval from the Department of State is not required for the export, re-transfer or re-export of a defense article(s) that is incorporated into an end item ~~under the regulatory~~ subject to the export licensing jurisdiction of the Department of Commerce, Bureau of Industry and Security, when all of the following conditions are met:

(1) The end item would be rendered inoperable by the removal of the defense article(s); and

(2) The export, re-transfer or re-export does not involve any Technical data (as defined by § 120.10) about-related to development or production of the defense article(s) incorporated into the end item-is-not-provided-in-EAR-controlled "technology" for the "production" and "use" of the end item; and

(3) Incorporation of the defense article(s) does not provide, nor is it related to, a military application

(b) A license or other approval from the Department of State is not required for the export, re-transfer or re-export of a defense article(s) that is embedded and incorporated into a higher level assembly that is not an end-item and that is spare part or component—under the regulatory—subject to the export licensing jurisdiction of the Department of Commerce, Bureau of Industry and Security when the defense article(s) would be destroyed (useless beyond the possibility of restoration) by its removal from the spare part or component—higher level assembly.

(c) A license or other approval from the Department of State is required for the export, re-transfer or re-export of the-a defense article(s) that is not incorporated, at the time of such export, re-transfer or re-export, into a higher level assembly subject to the export licensing exported-as-spare-or-replacement-parts-for-an-end-item-under-the-regulatory-jurisdiction of the Department of Commerce, Bureau of Industry and Security, and-such-defense-article(s)-is-not embedded-and-incorporated-into-a-spare-part-or-component-under-the-regulatory-jurisdiction of the Department of Commerce, Bureau of Industry and Security.

# Alternate 1 – Additional Section for Export of Parts to be Incorporated into Civil Items Abroad

## **§ 126.21 Policy on the export and re-export of defense articles incorporated into foreign commodities of a nature described on the CCL**

(a) A license or other approval from the Department of State is not required for the export of a defense article if the defense article is exported solely for integration into an end item, which end item would be subject to the export licensing jurisdiction of the Department of Commerce, Bureau of Industry and Security if such end item were exported from the United States; provided that all of the following conditions are met:

- (1) The end item would be rendered inoperable by the removal of the defense article; and
  - (2) The export, re-transfer or re-export does not involve any technical data (as defined by § 120.10) related to development or production of the defense article incorporated into the end item; and
  - (3) Incorporation of the defense article does not provide, nor is it related to, a military application.
- (b) A license or other approval from the Department of State is not required for the export of a defense article if the defense article is exported solely to be embedded and incorporated into a higher level assembly that is not an end-item and such higher level assembly would be subject to the export licensing jurisdiction of the Department of Commerce, Bureau of Industry and Security if such higher level assembly were exported from the United States. The term “embedded” means that the defense article(s) would be destroyed (useless beyond the possibility of restoration) by its removal from the higher level assembly.
- (c) A license or other approval from the Department of State is not required for the retransfer or reexport of a defense article incorporated into an end item as described in §126.21(a) or incorporated and embedded in a higher level assembly that is not an end item as described in §126.21(b).
- (d) A license or other approval from the Department of State is required for the export, re-transfer or re-export of a defense article that is not incorporated, at the time of such export, re-transfer or re-export, into a higher level assembly, which assembly does not meet the requirements of §126.20(a) through (c) or §126.21(a) through (c).

## Alternate 2 – Modeled after QRS11 Provisions

### *§ 126.20 Policy on the export and re-export of defense articles incorporated into commodities “Subject to the EAR”*

- (a) A license or other approval from the Department of State is not required for the export, re-transfer or re-export to any country other than a country proscribed in § 126.1 of an article (other than material or software) that is subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls, if such article –
  - (1) is integrated into and included as an integral part of a higher level assembly, which assembly is subject to the export licensing jurisdiction of the Department of Commerce, Bureau of Industry and Security, or
  - (2) is exported solely for integration into and inclusion as an integral part of a higher level assembly, which assembly would be subject to the export licensing jurisdiction of the Department of Commerce, Bureau of Industry and Security if such higher level assembly were exported from the United States.
- (b) The provisions of §126.20(a) shall not apply to technical data related to the development or production of articles subject to the licensing jurisdiction of the Department of State, Directorate of Defense Trade Controls. A license or other approval from the Department of State, Directorate of Defense Trade Controls shall be required for export, retransfer or reexport of such technical data.
- (c) The provisions of §126.20(a) shall not apply to any article subject to the licensing jurisdiction of the Department of State, Directorate of Defense Trade Controls that is a replacement for an article integrated into and integral to a higher level assembly, which assembly was previously exported, retransferred or reexported pursuant to §126.20(a). A license or other approval from the Department of State, Directorate of Defense Trade Controls shall be required for export, retransfer or reexport of any such article.

# Other Considerations

- de minimis
- RS
- Commercial DIRCM
- Repairs



# Questions?