

of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

#### Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM-116.

#### Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 3:** The subject of this AD is addressed in French airworthiness directive 2001-186(B), dated May 16, 2001.

#### Effective Date

(d) This amendment becomes effective on March 15, 2004.

Issued in Renton, Washington, on January 29, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Parts 734, 740, and 774

[Docket No. 040202032-4032-01]

RIN 0694-AD03

#### Licensing Jurisdiction for QRS11 Micromachined Angular Rate Sensors

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Export Administration Regulations (EAR) to transfer, coincident with the State Department's written commodity jurisdiction determination of February 9, 2004, licensing jurisdiction for QRS11-00100-100/101 Micromachined Angular Rate Sensors from the Department of State to the Department of Commerce when those sensors are integrated into an instrument system

(CSIS) of the type described in ECCN 7A994 or aircraft of the type described in ECCN 9A991 that incorporates a CSIS that has such a sensor integrated, or are exported solely for integration into such a system. This rule also excludes systems or aircraft integrating QRS11-00100-100/101 sensors from eligibility for the *de minimis* provisions of the EAR, and excludes the sensors from license exception eligibility.

**DATES:** This rule is effective: February 9, 2004.

**FOR FURTHER INFORMATION CONTACT:** Gene Christiansen, Office of Strategic Trade, Bureau of Industry and Security, U.S. Department of Commerce at (202) 482-2984.

#### SUPPLEMENTARY INFORMATION:

##### Background

On January 7, 2004, the Department of State published a rule amending the International Traffic in Arms Regulations (ITAR) to remove from United States Munitions List (USML) jurisdiction certain quartz rate sensors when the sensors are integrated into and included as an integral part of a commercial standby instrument system for use on civil aircraft or exported solely for integration into such commercial standby instrument systems. The State Department will review on a case-by-case basis requests to determine whether a sensor is eligible for removal from the USML under the ITAR regulatory change, and must provide a written determination of commodity jurisdiction in order for the removal to take effect (69 FR 873).

As of February 9, 2004, the State Department has determined that QRS11-00100-100/101 Micromachined Angular Rate Sensors integrated into and included as an integral part of a Commercial Standby Instrument System (CSIS) of the type described in the Export Administration Regulations (EAR) under ECCN 7A994 or an aircraft of the type described in ECCN 9A991 that incorporates a CSIS that has such a sensor integrated, or exported solely for integration into such a system are subject to the licensing jurisdiction of the Department of Commerce. In all other cases, the QRS-11 Micromachined Angular Rate Sensors, including the QRS11-00100-100/101 sensors, are subject to the licensing jurisdiction of the Department of State, Directorate of Defense Trade Controls.

When exported solely for integration into a foreign-made CSIS, the QRS11-00100-100/101 is subject to Regional Stability controls under RS Column 1 in Part 738 of the EAR, requiring a license for export to all destinations except

Canada. A CSIS integrating the sensor or an aircraft incorporating such a CSIS are subject to Anti-Terrorism controls under AT Column 1. No license exceptions are available for the QRS11-00100-100/101 sensor or the CSIS integrating the sensor. License Exception AVS is available only for certain aircraft on temporary sojourn, specifically those eligible under § 740.15(a) of the EAR.

There is no *de minimis* level for foreign-made CSISs that contain QRS11-00100-100/101 Micromachined Angular Rate Sensors, or for foreign-made aircraft that incorporate CSISs that have QRS11-00100-100/101s integrated (see § 734.4(a) of the EAR). Both the instruments and the aircraft remain subject to the EAR regardless of their percentage, by value, of U.S. content.

This final rule involves no new curtailment of exports, because any transfer or removal of items from the licensing jurisdiction of the Department of State to the licensing jurisdiction of the Department of Commerce maintains a continuity of controls. Therefore, the provisions regarding the impact of new controls do not apply and contract sanctity also does not apply to this imposition of controls (50 app. U.S.C. Sec. 2405(p)).

Any violation of the International Traffic in Arms Regulations, including any violation of the terms and conditions of any Department of State issued export license, prior to the transfer of jurisdiction pursuant to this final rule, shall constitute a violation of the Arms Export Control Act. Items already exported under State jurisdiction, including pursuant to USML licenses, will remain subject to State jurisdiction until such time as the exporter requests and Commerce issues authorization to replace the State license. Upon notification by Commerce of such authorization, State will revoke any previously issued licenses. Such items exported under the ITAR, including pursuant to USML licenses, but made subject to the EAR by this rule and written determination of the Department of State may, thereafter, be integrated into CSISs or aircraft that incorporate CSISs that have such sensors integrated, or reexported in accordance with the provisions of this rule. Actions pending at the Department of State on February 9, 2004, including pending license applications, must be refiled with the Department of Commerce. In addition, items exported or reexported without a USML license prior to a change in jurisdiction in accordance with this rule must be disclosed to the Department of State pursuant to 22 CFR 127.12 prior to requesting Commerce authorization.

Consistent with the provisions of section 6 of the Export Administration Act, a foreign policy report was submitted to Congress on February 3, 2004, notifying the Congress of the change in licensing jurisdiction reflected in this rule.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001 (66 FR 44025, 3 CFR, 2001 Comp., p. 783), as extended by the Notice of August 7, 2003 (68 FR 47833, August 11, 2003), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

### Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694-0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring prior notice, the opportunity for public comment, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that prior notice and an opportunity for public comment be given for this final rule. Because prior notice and an opportunity for public comment are not required to be given for this rule under the

Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Hillary Hess, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

### List of Subjects

#### 15 CFR Part 734

Administrative practice and procedure, Exports, Foreign trade.

#### 15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

#### 15 CFR Part 774

Exports, Foreign trade.

■ Accordingly, parts 734, 740, and 774 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

### PART 734—[AMENDED]

■ 1. The authority citation for 15 CFR part 734 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of October 29, 2003, 68 FR 62209, October 31, 2003; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 2. Section 734.3, paragraph (a)(3) is revised to read as follows:

#### § 734.3 Items subject to the EAR.

(a) \* \* \*

(3) U.S. origin parts, components, materials or other commodities integrated abroad into foreign-made products, U.S. origin software commingled with foreign software, and U.S. origin technology commingled with foreign technology:

(i) In any quantity, as described in section 734.4(a) of this part; or

(ii) In quantities exceeding de minimis levels as described in section 734.4(c) and Supplement No. 2 of this part;

\* \* \* \* \*

■ 3. Section 734.4 is amended by:

■ (a) Revising paragraph (a), as set forth below;

■ (b) Removing and reserving paragraph (b); and

■ (c) Revising the introductory text for paragraph (c), to read as follows:

#### § 734.4 De minimis U.S. content.

(a) *Items for which there is no de minimis level.* (1) There is no de minimis level for the export from a foreign country of a foreign-made computer exceeding 190,000 MTOPS containing U.S.-origin controlled semiconductors (other than memory circuits) classified under ECCN 3A001 to Computer Tier 3; or exceeding 28,000 MTOPS containing U.S.-origin controlled semiconductors (other than memory circuits) classified under ECCN 3A001 or high speed interconnect devices (ECCN 4A994.j) to Computer Tier 4 countries described in § 742.12 of the EAR.

(2) There is no de minimis level for foreign-made items that incorporate U.S.-origin items controlled for "EI" reasons under ECCN 5A002, 5D002 or 5E002 on the Commerce Control List (Supplement No. 1 to part 774 the EAR). However, exporters may, as part of an encryption review request, ask that software controlled for EI reasons under ECCN 5D002 and eligible for export under the "retail" or "source code" provisions of license exception ENC, and parts and components controlled under ECCN 5A002, be made eligible for de minimis treatment. The review of de minimis eligibility will take U.S. national security interests into account. Other encryption items controlled for NS or AT reasons under ECCNs 5D002, 5A992, 5D992, and 5E992 are not eligible for de minimis treatment, unless exporters have complied with the applicable notification or review requirements described in § 740.13(e), § 742.15(b)(1), and § 742.15(b)(2) of the EAR. Encryption items controlled by ECCN 5A992, 5D992, or 5E992 and described in § 742.15(b)(3) of the EAR are not subject to these notification or review requirements.

(3) There is no de minimis level for foreign-made:

(i) Commercial Standby Instrument Systems (CSIS) of the type described in ECCN 7A994 on the Commerce Control List (Supplement No. 1 to part 774 the EAR) when the CSISs integrate QRS11-00100-100/101 Micromachined Angular Rate Sensors; and

(ii) Aircraft of the type described in ECCN 9A991 when such aircraft incorporate a CSIS integrating a QRS11-00100-100/101 sensor.

**Note to paragraph (a)(3):** QRS11 Micromachined Angular Rate Sensors are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of

Defense Trade Controls, except when the QRS11-00100-100/101 version of the sensor is integrated into and included as an integral part of a CSIS of the type described in ECCN 7A994 or aircraft of the type described in ECCN 9A991 that incorporates a CSIS that has such a sensor integrated, or is exported solely for integration into such a system.

(b) [Reserved]

(c) Except as provided in paragraph (a) of this section for certain computers, items controlled for EI reasons, and certain aircraft and instrument systems, the following reexports are not subject to the EAR when made to a terrorist-supporting country listed in Country Group E:1 (see Supplement No. 1 to part 740 of the EAR):

\* \* \* \* \*

**PART 740—[AMENDED]**

■ 4. The authority citation for 15 CFR part 740 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901-911, Pub. L. 106-387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 5. Section 740.2 is amended by adding paragraph (a)(9) to read as follows:

**§ 740.2 Restrictions on all License Exceptions.**

\* \* \* \* \*

(9) The item is a QRS11-00100-100/101 Micromachined Angular Rate Sensor controlled for RS reasons under ECCN 7A994.

\* \* \* \* \*

**SUPPLEMENT NO. 1 TO PART 774—[AMENDED]**

■ 6. The authority citation for 15 CFR part 774 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901-911, Pub. L. 106-387; Sec. 221, Pub. L. 107-56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, ECCN 7A994 is amended by revising the License Requirements section, and the “Related Controls” paragraph in the List of Items Controlled section, to read as follows:

**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 Requirements**

*Reason for Control:* RS, AT

| Control(s)   | Country chart |
|--|---------------|
| RS applies to QRS11-00100-100/101 Micro-machined Angular Rate Sensors when exported solely for integration into a CSIS controlled in this entry. | RS Column 1   |
| AT applies to entire entry.  | AT Column 1   |

*License Requirement Notes:* There is no *de minimis* level for foreign-made Commercial Standby Instrument Systems (CSIS) that integrate QRS11-00100-100/101 Micromachined Angular Rate Sensors (see § 734.4(a) of the EAR).

\* \* \* \* \*

**List of Items Controlled**

*Unit:* \* \* \*

*Related Controls:* QRS11 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 CSIS of the type described in ECCN 7A994 or aircraft of the type described in ECCN 9A991 that incorporates a CSIS that has such a sensor integrated, or is exported solely for integration into such a system (See 22 CFR Part 121). In the latter case, such items are subject to the licensing jurisdiction of the Department of Commerce. Technology specific to the development and production of QRS11 sensors remains subject to the licensing jurisdiction of the Department of State.

*Related Definitions:* \* \* \*

*Items:* \* \* \*

■ 8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, ECCN 7E994 is amended by revising the License Requirements section, and the “Related Controls” paragraph in the List of Items Controlled section, to read as follows:

**7E994 “Technology”, n.e.s., for the “development”, “production”, or “use” of navigation, airborne communication, and other avionics equipment.**

\* \* \* \* \*

**List of Items Controlled**

*Unit:* \* \* \*

*Related Controls:* Technology specific to the development and production of QRS11 sensors remains subject to the licensing jurisdiction of the Department of State (see ECCN 7A994, Related Controls).

*Related Definitions:* \* \* \*

*Items:* \* \* \*

■ 9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, ECCN 9A991 is amended by adding a “License Requirements Note” to the License Requirements section, and revising the “Related Controls” paragraph in the List of Items Controlled section, to read as follows:

**9A991 “Aircraft”, n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and parts and components, n.e.s.**

**License Requirements**

*Reason for Control:* AT, UN

| Control(s)                  | Country chart |
|-----------------------------|---------------|
| AT applies to entire entry. | AT Column 1.  |
| UN applies to 9A991.a.      | Rwanda.       |

*License Requirement Notes:* There is no *de minimis* level for foreign-made aircraft described by this entry that incorporate Commercial Standby Instrument Systems (CSIS) that integrate QRS11-00100-100/101 Micromachined Angular Rate Sensors (see § 734.4(a) of the EAR).

\* \* \* \* \*

**List of Items Controlled**

*Unit:* \* \* \*

*Related Controls:* QRS11 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 CSIS of the type described in ECCN 7A994 or aircraft of the type described in ECCN 9A991 that incorporates a CSIS that has such a sensor integrated, or is exported solely for integration into such a system (See 22 CFR part 121). In the latter case, such items are subject to the licensing jurisdiction of the Department of Commerce. Technology specific to the development and production of QRS11 sensors remains subject to the licensing jurisdiction of the Department of State.

*Related Definitions:* \* \* \*

*Items:* \* \* \*

Dated: February 3, 2004.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

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**BILLING CODE 3510-33-P**