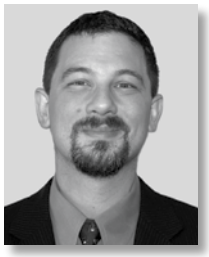

# LEGAL EASE
## AVIATION LAW MADE SIMPLE

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# U.S. Proposes to Regulate Foreign Trade in Non-U.S. Avionics

The United States government has proposed changes to the rules applying to "re-export" of avionics. This proposal would directly affect the AEA's non-U.S. members and could impact U.S. avionics shops that export avionics articles.

The Bureau of Industry and Security has proposed removing the de minimis exception for Category 7 articles that are controlled for missile technology reasons on the Commerce Country List. Category 7 generally represents most avionics.

**The U.S. Commerce Department is proposing to eliminate the de minimis rule as it applies to nearly all Category 7 articles.**

Category 7 articles controlled for missile technology reasons include certain accelerometers, gyros, inertial systems, gyro-astro compasses, GPS receiving equipment, UAV autopilots, three-axis magnetic heading sensors, and other instrumentation and navigation equipment. Component parts for each of these categories also would be affected.

Generally, a U.S. article that is controlled for export purposes also is controlled for "re-export" purposes. Therefore, if a U.S. company needs an export license to export the product to a non-U.S. distributor, the non-U.S. distributor needs a license to re-export the article to some other place.

For avionics manufacturers, this can mean the products they send overseas might need to be licensed a second time if they are sent to a distributor or repair station that ultimately will provide them to someone else.

And what about U.S.-sourced components going into non-U.S. avionics? For example, imagine a U.K.-based manufacturer of electronic standby instruments relies on gyros from the United States. If those gyros were required to be licensed when first exported, it is possible the U.K.-based manufacturer of the ESI with the U.S. gyros might need to secure a U.S. export license to "re-export" the gyros (which are installed in the ESI).

This extension of U.S. jurisdiction has caused some concern among the world community. In response to the concerns raised by the international community, the U.S. created the de minimis rule.

### THE DE MINIMIS RULE

Under the de minimis rule as it stands today, the U.S. Commerce Department defines when the U.S.-origin content of a commodity is sufficiently small enough that the commodity will not be deemed subject to the export control restrictions set forth in the Export Administration Regulations. This rule applies to the re-export of foreign-made articles; therefore, it would apply to avionics fabricated outside the U.S. that incorporate some U.S.-origin content.

The normal de minimis standard is: Products incorporating 25 percent or less U.S. content are considered not to be subject to U.S. export control laws. Those incorporating more than 25 percent U.S. content are considered to be subject to control and might require a U.S. export license when re-exported from one foreign (non-U.S.) country to another foreign (non-U.S.) country. This threshold drops to 10 percent if the article is re-exported to a Group E:1 country: Cuba, Iran, North Korea, Sudan or Syria.

Applying this threshold to our hypothetical ESI, the gyros (and other U.S. content) must represent more than 25 percent of the value of the ESI for the U.S. to assert export jurisdiction over the U.K.-manufactured ESI. Therefore, if the U.S. content accounted for only 15 percent of the value of the ESI, most of these exports would be outside the jurisdiction of the U.S. Commerce Department.

However, if the same ESI was being exported from the U.K. to Iran, the 10 percent threshold would apply and the unit would need a U.S. export license to get exported to Iran (and, of course, U.K. export laws would apply as well).

When U.S. content doesn't satisfy the requirements of the de minimis rule, the incorporation of this content into a commodity — even if the content itself is not subject to U.S. export controls — may subject the commodity to U.S. export controls.

So, if the U.S. content of an ESI was not export-controlled (such as non-controlled hardware and components), but the ESI is export-controlled (and the U.S. content exceeds the 25 percent or 10 percent threshold, depending on destination), the ESI might be subject to U.S. export controls.

This rule has been in place for many years, and a wise non-U.S. manufacturer carefully controls its designs to ensure it will not be subject to U.S. export controls.

## PROPOSED CHANGE

This brings us to the proposed change. The U.S. Commerce Department is proposing to eliminate the de minimis rule as it applies to nearly all Category 7 articles.

Eliminating this rule would mean most non-U.S. manufactured avionics would be subject to U.S. export jurisdiction if they incorporate any U.S. content — which would inhibit the re-export of such avionics and would create a disincentive to using U.S. component suppliers.

At first glance, there appears to be an exception in the proposed rule for the aviation community. However, the apparent exception is illusory. The exception would apply only where "the commodities are incorporated as standard equipment in FAA-certified (or national equivalent) civilian transport aircraft."

This exception is practically useless because:

• It would apply only to avionics installed in transport category aircraft. Avionics shipped in a container (not installed in an aircraft) would not benefit.

• It would not apply to avionics for Part 23 or Part 27 aircraft, even if they were installed in the aircraft.

• It would apply only to "standard equipment." This term was redefined by the State Department in August (See the October 2008 issue of *Avionics New*, page 60). The term now is equivalent to what the civil aviation community thinks of as "standard parts." No avionics would meet the new definition of "standard equipment."

This proposal could represent a serious problem for the avionics community because it would impose re-export limitations on non-U.S. avionics with some small amount of U.S. content, shifting exempt avionics into a licensable classification.

This could create compliance problems for U.S. and non-U.S. exporters alike. It also could cause non-U.S. manufacturers to eschew U.S. component suppliers.

Most importantly, it appears there is no good policy reason for the change.

The proposed change is in the Federal Register, Nov. 20, 2008, page 70,322, which can be found online at http://edocket.access.gpo.gov/2008/E8-27588.htm.

It is important for everyone in the avionics community to read this proposal, determine whether they support it or oppose it, then file their comments with the Commerce Department to help it make the right decision regarding this proposal.

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*If you have comments or questions about this article, send e-mails to avionicsnews@aea.net.*