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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 161005927-6927-01]

RIN 0694-AH16

Amendment to the Export Administration Regulations: Removal of Semiconductor Manufacturing International Corporation from the List of Validated End-Users in the People's Republic of China

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to remove one end-user from the list of validated end-users in the People's Republic of China (PRC). Specifically, BIS amends Supplement Number 7 to part 748 of the EAR to remove the Semiconductor Manufacturing International Corporation (SMIC) as a validated end-user in the PRC. BIS makes this change at the company's request, and not in response to activities of concern.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Phone: 202-482-5991; Email: ERC@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

Authorization Validated End-User

Validated end-users (VEUs) are designated entities located in eligible destinations to which eligible items may be exported, reexported, or transferred (in-country) under a general authorization instead of a license. The names of the VEUs, as well as the dates they were so designated, and their respective eligible destinations (facilities) and items are identified in Supplement No. 7 to part 748 of the EAR (15 CFR part 748). Under the terms described in that supplement, and in conformity with section 748.15 of the EAR, VEUs may obtain eligible items without an export license from BIS. Eligible items vary between VEUs, and may include commodities, software, and technology, except items controlled for missile technology or crime control reasons on the Commerce Control List (CCL) (part 774 of the EAR).

VEUs are reviewed and approved by the U.S. Government in accordance with the provisions of section 748.15 and Supplement Nos. 8 and 9 to part 748 of the EAR. The End-User Review Committee (ERC), composed of representatives from the Departments of State, Defense, Energy, Commerce, and other agencies, as appropriate, is responsible for administering

the VEU program. BIS amended the EAR in a final rule published on June 19, 2007 (72 FR 33646), to create Authorization VEU.

Amendment to the List of Validated End Users (VEU) in the People's Republic of China (PRC)

Removal of the Semiconductor Manufacturing International Corporation (SMIC) from the List of VEUs in the PRC

In this final rule, BIS amends Supplement No. 7 to part 748 of the EAR (Supplement No. 7) to remove the VEU SMIC from the list of VEUs in the PRC. Specifically, BIS removes information for SMIC from Supplement No. 7. BIS takes this action at SMIC's request. BIS makes this change to Supplement No. 7 at the company's request and not in response to activities of concern.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule involves collections previously approved by the Office of Management and Budget (OMB) under Control Number 0694–0088, “Multi-Purpose Application,” which carries a burden hour estimate of 43.8 minutes to prepare and submit form BIS–748; and for recordkeeping, reporting and review requirements in connection with Authorization VEU, which carries an estimated burden of 30 minutes per submission. Total burden hours associated with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) and OMB Control Number 0694–0088 are not expected to increase significantly as a result of this rule. Notwithstanding any other provisions of law, no person is required to respond to, nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

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

4. Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), BIS finds good cause to waive requirements that this rule be subject to notice and the opportunity for public comment because they are unnecessary. In determining whether to grant or remove VEU

designations, a committee of U.S. Government agencies evaluates information about and commitments made by candidate companies, the nature and terms of which are set forth in 15 CFR part 748, Supplement Nos. 8 and 9. The criteria for evaluation by the committee are set forth in 15 CFR 748.15(a)(2) and the authority to remove VEU designations is contained in 15 CFR 748.15(a)(3). The information, commitments, and criteria for this extensive review were all established through the notice of proposed rulemaking and public comment process (71 FR 38313 (July 6, 2006) (proposed rule), and 72 FR 33646 (June 19, 2007) (final rule)). In publishing this final rule, BIS removes a VEU from the list of VEUs in the PRC, at the request of the VEU, similar to past requests by other VEUs, approved by the End-User Review Committee. This change has been made within the established regulatory framework of the VEU program. Further, this rule does not abridge the rights of the public or eliminate the public's option to export under any of the forms of authorization set forth in the EAR.

Publication of this rule in other than final form is unnecessary because the procedure for revocation of a VEU or facility from the Authorized VEU list is similar to the license revocation procedure, which does not undergo public review. During the VEU revocation procedure, the U.S. Government analyzes confidential business information according to set criteria to determine whether a given authorized VEU entity remains eligible for VEU status. Revocation may be the result of a material change in circumstance at the VEU or the VEU's authorized facility. Such changes may be the result of a VEU or VEU facility no longer meeting the eligibility criteria for Authorization VEU, and may thus lead the U.S. Government to modify or revoke VEU authorization. VEUs or VEU facilities that undergo material changes that result in their no longer meeting the criteria to be eligible VEUs must, according to the VEU program, have their VEU status revoked. Here, however, SMIC requested removal from the VEU

program. Consequently, BIS is removing SMIC from the list of VEUs. Public comment on whether to make the removal is unnecessary.

Section 553(d) of the APA generally provides that rules may not take effect earlier than thirty (30) days after they are published in the Federal Register. However, BIS finds good cause to waive the 30-day delay in effectiveness for this rule pursuant to 5 U.S.C. 553(d)(3) because the delay would be contrary to the public interest. BIS is simply removing SMIC as a VEU. In this rule, BIS amends the EAR consistent with established objectives and parameters administered and enforced by the responsible designated departmental representatives to the End-User Review Committee. Delaying this action's effectiveness would likely cause confusion regarding which items are authorized by the U.S. government, and in turn stifle the purpose of the VEU program. Accordingly, it would be contrary to the public interest to delay this rule's effectiveness.

No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the APA or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601*et seq.*) are not applicable. As a result, no final regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 748

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

Accordingly, part 748 of the EAR (15 CFR parts 730 – 774) is amended as follows:

PART 748 – [AMENDED]

1. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 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 4, 2016, 81 FR 52587 (August 8, 2016).

Supplement No. 7 to Part 748 – [AMENDED]

2. Amend Supplement No. 7 to Part 748 by removing the entire entry for “Semiconductor Manufacturing International Corporation,” in “China (People’s Republic of)”.

DATED: November 23, 2016.

Kevin J. Wolf

Assistant Secretary for Export Administration

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