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## **DEPARTMENT OF COMMERCE**

### **Bureau of Industry and Security**

#### **15 CFR Part 748**

**[Docket No. 170306234-8444-02]**

**RIN 0694-AH37**

### **Implementation of the February 2017 Australia Group (AG) Intersessional Decisions and the June 2017 AG Plenary Understandings; Addition of India to the AG; Correction**

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

**ACTION:** Final rule; correction.

**SUMMARY:** The Bureau of Industry and Security (BIS) publishes this final rule to make certain conforming changes based on the revisions to Export Control Classification Number (ECCN) 1C350 on the Commerce Control List (CCL) contained in a final rule published on April 2, 2018. That final rule amended the Export Administration Regulations (EAR) to

implement the recommendations presented at the February 2017 Australia Group (AG) Intersessional Implementation Meeting, and later adopted pursuant to the AG silent approval procedure, and the recommendations made at the June 2017 AG Plenary Implementation Meeting and adopted by the AG Plenary. Among other changes, the April 2, 2018, final rule amended ECCN 1C350 by renumbering paragraphs .b through .d in alphabetical order. Following the publication of that rule, however, certain references to ECCN 1C350.c and 1C350.d in the description of items eligible under the validated end-user authorization (VEU) provisions of the EAR no longer identified the correct subparagraphs in ECCN 1C350 because the rule inadvertently failed to update the references to ECCN 1C350.c and 1C350.d in the description of eligible items for three of the validated end-users identified in Supplement No. 7 to part 748 (Authorization Validated End-User (VEU)) of the EAR. This final rule amends the VEU provisions to provide the correct references to eligible items in ECCN 1C350 for three validated end-users.

**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:**

On April 2, 2018, the Bureau of Industry and Security (BIS) published a final rule titled “Implementation of the February 2017 Australia Group (AG) Intersessional Decisions and the June 2017 AG Plenary Understandings; Addition of India to the AG” (83 FR 13849), which amended the Export Administration Regulations (EAR) to implement the recommendations presented at the Australia Group (AG) Intersessional Implementation Meeting held in Buenos Aires, Argentina, on February 15, 2017, and adopted pursuant to the AG silent approval procedure in April 2017, and the recommendations presented at the Implementation Meeting of the 2017 AG Plenary held in Paris, France, from June 26-30, 2017, and adopted by the AG Plenary. In addition, that final rule amended the EAR to reflect the addition of India as a participating country in the AG, as of January 19, 2018.

The amendments to the April 2, 2018, final rule included revisions to Export Control Classification Number (ECCN) 1C350, among which were the renumbering of certain items listed in paragraph .b, .c, or .d of this ECCN. However, that final rule inadvertently omitted updates to the references to ECCN 1C350.c and 1C350.d in the description of eligible items for three of the validated end-users identified in Supplement No. 7 to part 748 (Authorization Validated End-User (VEU)) of the EAR. Consequently, these descriptions no longer identified the correct subparagraphs for eligible items in ECCN 1C350. This final rule amends the references to ECCN 1C350 in Supplement No. 7 to part 748 to identify the correct subparagraphs for eligible items in ECCN 1C350, consistent with the amendments to ECCN 1C350 contained in the April 2, 2018, final rule.

Specifically, this final rule amends Supplement No. 7 to part 748 to correctly identify which items in ECCN 1C350 are eligible for each of the following validated end-users: (1) the description of eligible ECCN 1C350 items in the entry for “CSMC Technologies Corporation” is revised to reference 1C350.c.4 (Phosphorus oxychloride, C.A.S. #10025-87-3) and 1C350.c.12 (Trimethyl phosphite, C.A.S. #121-45-9); (2) the description of eligible ECCN 1C350 items in the entry for “Samsung China Semiconductor Co. Ltd.” is revised to reference 1C350.c.4 and 1C350.d.10 (Hydrogen fluoride, C.A.S. #7664-39-3); and (3) the description of eligible ECCN 1C350 items in the entry for “Shanghai Huahong Grace Semiconductor Manufacturing Corporation” is revised to reference 1C350.c.4 and 1C350.d.10. These conforming amendments do not change the scope of eligible items for any of the three validated end-users indicated above – they merely update the ECCN references in Supplement No. 7 to part 748 to correctly identify which ECCN 1C350 items are eligible for each of these validated end-users. Because this rule does not add or remove any validated end-users or revise the scope of eligible items, the citation for this rule is not indicated in the “Federal Register Citation” column of Supplement No. 7.

### **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 15, 2017 (82 FR 39005 (August 16, 2017)), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). 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, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 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 of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under control number 0694–0088, Simplified Network Application Processing System. This collection includes license applications, among other things, and carries a burden estimate of 29.6 minutes per manual or electronic submission for a total burden estimate of 31,833 hours. This rule is not

expected to result in any change in the burden hours associated with this collection. Specifically, this rule updates references to ECCN 1C350 in Supplement No. 7 to part 748 (Authorization Validated End-User (VEU)) to reflect the amendments to this ECCN made by a final rule, titled “Implementation of the February 2017 Australia Group (AG) Intersessional Decisions and the June 2017 AG Plenary Understandings; Addition of India to the AG,” that was published in the *Federal Register* on April 2, 2018 (83 FR 13849). These corrections to Supplement No. 7 to part 748 are not expected to change the number of license applications that will have to be submitted for items controlled under ECCN 1C350. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget, by email to [Jasmeet\\_K.\\_Seehra@omb.eop.gov](mailto:Jasmeet_K._Seehra@omb.eop.gov) or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, N.W., Room 2705, Washington, DC 20230 or by email to [RPD2@bis.doc.gov](mailto:RPD2@bis.doc.gov).

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and the opportunity for public participation are waived for good cause because they are unnecessary and contrary to the public interest. (See 5 U.S.C. 553(b)(B)). The provision of the Administrative Procedure Act requiring a 30-day delay in effectiveness is also waived for good cause. (5 U.S.C. 553(d)(3)). The changes contained in this rule are non-

substantive technical corrections of a previously published rule that has already been exempted from notice and comment. This rule is necessary to ensure clarity in the regulations and accuracy regarding the scope of VEU-eligible items in Supplement No. 1 to part 748 of the EAR. If this rule were delayed to allow for notice and comment and a delay in effective date, it would result in further confusion caused by the incorrect cross-references to ECCN 1C350 contained in this Supplement. These changes are also essential to ensuring the accurate and complete implementation of the April 2, 2018, final rule.

Further, 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 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. Accordingly, no 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.

For the reasons stated in the preamble, part 748 of the Export Administration Regulations (15 CFR parts 730-774) is amended as follows:

**PART 748 - [AMENDED]**

1. The authority citation for 15 CFR 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 15, 2017, 82 FR 39005 (August 16, 2017).

2. Supplement No. 7 to Part 748 (Authorization Validated End-User (VEU): List of Validated End-Users, Respective Items Eligible for Export, Reexport and Transfer, and Eligible Destinations), is amended by revising the validated end-user entries for “CSMC Technologies Corporation,” “Samsung China Semiconductor Co. Ltd.,” and “Shanghai Huahong Grace Semiconductor Manufacturing Corporation,” listed under the country “China (People’s Republic of),” to read as follows:

**SUPPLEMENT NO. 7 TO PART 748—AUTHORIZATION VALIDATED END-USER (VEU): LIST OF  
VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND  
TRANSFER, AND ELIGIBLE DESTINATIONS**

Country	Validated end-user	Eligible items (by ECCN)	Eligible destination	FEDERAL REGISTER citation
Nothing in this Supplement shall be deemed to supersede other provisions in the EAR, including but not limited to §748.15(c).				
China (People’s Republic of)				
			* * * * *	
	CSMC Technologies	1C350.c.4, 1C350.c.12,	CSMC Technologies Fab	76 FR 2802, 1/18/11.

	Corporation	2B230.a, 2B230.b, 2B350.f, 2B350.g, 2B350.h, 3B001.e, 3B001.h (except for multilayer masks with a phase shift layer designed to produce “space qualified” semiconductor devices), 3C002.a, and 3C004	1 Co., Ltd., 14 Liangxi Road, Wuxi, Jiangsu 214061, China  CSMC Technologies Fab 2 Co., Ltd., 8 Xinzhou Rd., Wuxi National New Hi-Tech Industrial Development Zone, Wuxi, Jiangsu 214028, China	76 FR 37634, 6/28/11. 77 FR 10953, 2/24/12. 78 FR 23472, 4/19/13. 78 FR 32981, 6/3/13.
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	Samsung China Semiconductor Co. Ltd.	1C350.c.4, 1C350.d.10, 2B006.a, 2B006.b.1.d, 2B230, 2B350.d.2, 2B350.g.3, 2B350.i.3, 3A233, 3B001.a.1, 3B001.b, 3B001.e, 3B001.f, 3B001.h, 3C002, 3C004, 3D002, and 3E001 (limited to “technology” for items classified under 3C002 and 3C004 and “technology” for use consistent with the International Technology Roadmap for Semiconductors process for items classified under ECCNs 3B001 and 3B002)	Samsung China Semiconductor Co., Ltd., No. 1999, North Xiaohu Road, Xi’an, China 710119	78 FR 41291, 7/10/13. 78 FR 69535, 11/20/13. 79 FR 30713, 5/29/14. 80 FR 11863, 3/5/15.
	Shanghai Huahong Grace Semiconductor Manufacturing Corporation	1C350.c.4, 1C350.d.10, 2B230, 2B350.d.2, 2B350.g.3, 2B350.i.4, 3B001.a.1, 3B001.b, 3B001.e, 3B001.f, 3B001.h, 3C002, 3C004, 5B002, and 5E002 (controlled by ECCNs 5A002, 5A004, or 5A992 that have been successfully reviewed under the encryption review process specified in Sections 740.17(b)(2) or 740.17(b)(3) of the EAR)	Shanghai Huahong Grace Semiconductor Manufacturing Corporation—HFab 2, 668 Guoshoujing Road, Zhangjiang Hi-Tech Park, Shanghai 201203 China  Shanghai Huahong Grace Semiconductor Manufacturing Corporation—HFab 1, 1188 Chuanqiao Road, Pudong, Shanghai 201206 China  Shanghai Huahong Grace Semiconductor Manufacturing Corporation—GFab1, 1399 Zuchongzhi Road,	78 FR 32981, 6/3/13.

			Zhangjiang Hi-Tech Park, Shanghai 201203 China	
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Dated: May 29, 2018.

Karen H. Nies-Vogel

Director

Office of Exporter Services

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