

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 2. Amend § 61.58 by adding paragraphs (j) and (k) to read as follows:

§ 61.58 Pilot-in-command proficiency check: Operation of aircraft requiring more than one pilot flight crewmember.

* * * * *

(j) A pilot-in-command of a turbojet powered aircraft that is type certificated for one pilot does not have to comply with the pilot-in-command proficiency check requirements in paragraphs (a)(1) and (a)(2) of this section until October 31, 2012.

(k) Unless required by the aircraft’s operating limitations, a pilot-in-command of an experimental turbojet-powered aircraft does not have to comply with the pilot-in-command proficiency check requirements in paragraphs (a)(1) and (a)(2) of this section until October 31, 2012.

Issued in Washington, DC, on October 4, 2011.

Dennis R. Pratte,

Acting Director, Office of Rulemaking.

[FR Doc. 2011–26229 Filed 10–11–11; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 110620344–1586–01]

RIN 0694–AF28

Addition of Certain Persons on the Entity List; Implementation of Entity List Annual Review Change; and Removal of Persons From the Entity List Based on Removal Requests

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by adding two persons to the Entity List. The persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These persons will be listed under the destination of Hong Kong on the Entity

List. In addition, this rule amends the Entity List on the basis of the annual review of the Entity List conducted by the End-User Review Committee (ERC) for entities located in Hong Kong. The ERC conducts the annual review to determine if any entities on the Entity List should be removed or modified. This rule removes one person located in Hong Kong on the basis of the annual review.

Lastly, this rule removes three persons from the Entity List consisting of one person located in Hong Kong and two persons located in New Zealand. These three persons are being removed from the Entity List as a result of requests for removal submitted by each of these three persons, a review of information provided in the removal requests in accordance with BIS regulations, and further review conducted by the ERC.

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from the Bureau of Industry and Security and that availability of license exceptions in such transactions is limited.

DATES: This rule is effective October 12, 2011.

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, *Phone:* (202) 482–5991, *Fax:* (202) 482–3911, *E-mail:* ERC@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that the availability of license exceptions in such transactions is limited. Entities are placed on the Entity List on the basis of certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The ERC, composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, when appropriate, the Treasury, makes all decisions regarding additions to, removals from or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

This rule implements decisions of the ERC to add two additional persons located in Hong Kong to the Entity List and to remove two persons located in Hong Kong from the Entity List (one removal on the basis of a determination made under the annual review of the Entity List and the other removal on the basis of a removal request submitted by the listed person). The additions are described under Additions to the Entity List and the removals are described under Removals from the Entity List. This rule also removes two listed persons from the Entity List located in New Zealand on the basis of a removal request submitted by the listed persons.

Additions to the Entity List

This rule implements the decision of the ERC to add two persons to the Entity List on the basis of section 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The two entries added to the Entity List are Hang Tat Electronics Enterprises Co., an electronic components trading company, and Cho-Man Wong, an employee of Hang Tat, both located in Hong Kong.

The ERC reviewed section 744.11(b) (Criteria for revising the Entity List) in making the determination to add these persons to the Entity List. Under that paragraph, persons for which there is reasonable cause to believe, based on specific and articulable facts, that the persons have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons may be added to the Entity List pursuant to section 744.11. Paragraphs (b)(1)–(b)(5) include an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States. These two persons are believed to have been involved in activities described under paragraphs (b)(4) and (b)(5) of section 744.11. Specifically, Hang Tat Electronics Enterprises Co., an electronic components trading company located in Hong Kong, and Cho-Man Wong, an employee of Hang Tat, have been complicit in violations of the EAR involving the shipment of items from the United States to China through Hong Kong. BIS has determined that Hang Tat and Cho-Man Wong (hereafter collectively, “Hang Tat”) purchased certain items subject to the EAR from

the United States on multiple occasions with the intention of reselling the items to persons in China, but did not inform the U.S. suppliers that the items would be resold to China, and made the sale of the items to persons in China contingent upon the Chinese customers' receipt of the items in Hong Kong and the Chinese customers' acceptance of the responsibility to obtain any shipment authorizations required for the movement of the items from Hong Kong to China. BIS has reason to believe that Hang Tat knew that the availability of License Exception "Additional Permissive Reexports" (APR) (i.e., Section 740.16 of the EAR) is limited to those transactions that are made in accordance with the export authorizations issued by the reexporting country but did not explicitly inform their customers of either the EAR or the Hong Kong government's requirements. BIS also has reason to believe that some portion of the items sold by Hang Tat to persons in China were reexported from Hong Kong to China without the required authorization from the Hong Kong government, and thus were not eligible for License Exception APR, and required a license from BIS for reexport to China. BIS did not issue reexport licenses for these transactions, which therefore were made in violation of the EAR. In addition, the Chinese persons purchasing the items from Hang Tat may be involved in proliferation-related activities. BIS also notes that under the EAR, a license is required to export the subject items from the United States to China. BIS believes that Hang Tat's business practices are contrary to U.S. national security and foreign policy interests.

For the two persons added to the Entity List, the ERC specifies a license requirement for all items subject to the EAR and establishes a license application review policy of a presumption of denial. The license requirement applies to any transaction in which items are to be exported, reexported, or transferred (in-country) to such persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to those persons being added to the Entity List.

This final rule adds the following two persons to the Entity List:

Hong Kong

1. *Cho-Man Wong*, Room 2608, Technology Plaza, 29–35 Sha Tsui Road, Tsuen Wan, Hong Kong; and
2. *Hang Tat Electronics Enterprises Co.*, Room 2608, Technology Plaza, 29–

35 Sha Tsui Road, Tsuen Wan, Hong Kong.

Removals From the Entity List

This rule removes four entities from the Entity List consisting of two entities from Hong Kong (one from Hong Kong on the basis of the annual review of the Entity List and one from Hong Kong on the basis of a removal request) and two entities from New Zealand on the basis of removal requests submitted by each of those listed persons, as follows:

a. Removal on the Basis of the Annual Review

This rule implements a decision of the ERC to remove one entity, Pelorus Enterprises Limited, located in Hong Kong, from the Entity List on the basis of the annual review of the Entity List conducted by the ERC, in accordance with the procedures outlined in Supplement No. 5 to part 744 (Procedures for End-User Review Committee Entity List Decisions). The changes from the annual review of the Entity List that are approved by the ERC are implemented in stages as the ERC completes its review of entities listed under different destinations on the Entity List.

This final rule removes the following person located in Hong Kong from the Entity List on the basis of a decision made by the ERC during the annual review:

Hong Kong

1. *Pelorus Enterprises Limited*, 12F Commercial VIP Building, 112–116 Canton Rd., Tsim Sha Tsui, Hong Kong.

b. Removal on the Basis of a Removal Request

This rule implements a decision of the ERC to remove three entities consisting of one person, Polar Star International Co. Ltd., located in Hong Kong, and two persons, Leigh Michau and Q-SPD (Q-Marine International Ltd.), located in New Zealand from the Entity List on the basis of a removal request. The ERC made a determination to remove these three persons as a result of these three entities' requests for removal from the Entity List. Based upon the review of the information provided in each of the three removal requests in accordance with section 744.16 (Procedure for requesting removal or modification of an Entity List entity), and after review by the ERC's member agencies, the ERC determined that these three persons should be removed from the Entity List.

The ERC decision to remove each of these three persons took into account each of these persons' cooperation with

the U.S. Government, as well each of these three person's assurances of future compliance with the EAR. In accordance with section 744.16(c), the Deputy Assistant Secretary for Export Administration has sent written notification to each of these three persons, informing these entities of the ERC's decision to remove them from the Entity List. This final rule implements the decision to remove this one Hong Kong person and two New Zealand persons from the Entity List.

This final rule removes the following persons located in Hong Kong and New Zealand from the Entity List:

Hong Kong

1. *Polar Star International Co. Ltd.*, 1905 Yen Sheng Center, 64 Hoi Yuen Rd., Kwun Tong, Kin, Hong Kong.

New Zealand

1. *Leigh Michau*, P.O. Box 34–881, Birkenhead, Auckland, New Zealand; and
2. *Q-SPD (Q-Marine International Ltd.)*, P.O. Box 34–881, Birkenhead, Auckland, New Zealand.

The removal of the above referenced four entities from the Entity List eliminates the existing license requirements in Supplement No. 4 to part 744 for exports, reexports and transfers (in-country) to these four entities. However, the removal of these four entities from the Entity List does not relieve persons of other obligations under part 744 of the EAR or under other parts of the EAR. Neither the removal of an entity from the Entity List nor the removal of Entity List-based license requirements relieves persons of their obligations under General Prohibition 5 in section 736.2(b)(5) of the EAR which provides that, "you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR." Additionally these removals do not relieve persons of their obligation to apply for export, reexport or in-country transfer licenses required by other provisions of the EAR. BIS strongly urges the use of Supplement No. 3 to part 732 of the EAR, "BIS's 'Know Your Customer' Guidance and Red Flags," when persons are involved in transactions that are subject to the EAR.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a

carrier to a port of export or reexport, on October 12, 2011, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before October 27, 2011. Any such items not actually exported or reexported before midnight, on October 27, 2011, require a license in accordance with the EAR.

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 extended by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

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.

2. Notwithstanding any other provision 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 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 regulation involves collections previously approved by the OMB under control numbers 0694–0088, “Multi-Purpose Application,” which carries a burden

hour estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet.K.Seehra@omb.eop.gov*, or by fax to (202) 395–7285.

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, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (See 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, then entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, because these parties may receive notice of the U.S. Government’s intention to place these entities on the Entity List once a final rule was published it would create an incentive for these persons to either accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States and/or to take steps to set up additional aliases, change addresses and take other steps to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an

opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are not applicable.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 3201 et seq.; 42 U.S.C. 2139a; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010); Notice of January 13, 2011, 76 FR 3009, January 18, 2011.

■ 2. Supplement No. 4 to part 744 is amended:

- a. By adding two entries in alphabetical order under Hong Kong;
- b. By removing under Hong Kong, the two Hong Kong entities: “Pelorus Enterprises Limited, 12F Commercial VIP Building, 112–116 Canton Rd., Tsim Sha Tsui, Hong Kong” and “Polar Star International Co. Ltd., 1905 Yen Sheng Center, 64 Hoi Yuen Rd., Kwun Tong, Kin, Hong Kong;” and
- c. By removing the entry for New Zealand.

The additions read as follows:

Supplement No. 4 to Part 744—Entity List

Country	Entity	License requirement	License review policy	Federal Register citation
* Hong Kong	* Cho-Man Wong Room 2608, Technology Plaza 29–35 Sha Tsui Road Tsuen Wan, Hong Kong.	* For all items subject to the EAR. (See §744.11 of the EAR).	* Presumption of denial	* 76 FR [INSERT FR PAGE NUMBER] October 12, 2011.

Country	Entity	License requirement	License review policy	Federal Register citation
*	Hang Tat Electronics Enterprises Co. Room 2608, Technology Plaza 29-35 Sha Tsui Road Tsuen Wan, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER] October 12, 2001.
*	*	*	*	*

Dated: October 3, 2011.
Matthew S. Borman,
Deputy Assistant Secretary for Export Administration.
 [FR Doc. 2011-26072 Filed 10-11-11; 8:45 am]
BILLING CODE 3510-33-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Authority of Judgment Officers to Hear Cases

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (“Commission”) is amending its regulations to authorize any Commission Judgment Officer to conduct formal decisional proceedings. This action will promote the efficient use of the Commission’s budget and personnel resources.

DATES: *Effective Date:* October 12, 2011.

FOR FURTHER INFORMATION CONTACT: Laura Richards, Office of the General Counsel, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. *Telephone:* 202-418-5126. *E-mail:* lrichards@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 14(b) of the Commodity Exchange Act, 7 U.S.C. 18(b), authorizes the Commodity Futures Trading Commission to promulgate rules, regulations, and orders as it deems necessary or appropriate for the efficient and expeditious administration of its reparations program. Pursuant to Section 14(b), the Commission is amending Rule 12.26(c) to authorize any Commission Judgment Officer to conduct formal decisional proceedings under Subpart E of the Part 12 Rules. Rule 12.26(c) currently provides that formal decisional proceedings are to be conducted by an Administrative Law Judge (“ALJ”). A formal decisional

proceeding is held when the amount claimed in damages exceeds \$30,000 and the parties have not elected a voluntary decisional proceeding under Subpart C. Voluntary decisional proceedings are heard by a Judgment Officer without regard to the amount in controversy. See Rule 12.26(a). Cases where the amount is controversy is less than \$30,000 are conducted as summary decisional proceedings by a Judgment Officer under Subpart D. See Rule 12.26(b).

From time to time, the Commission has raised the ceiling for claims eligible to be heard as summary proceedings, most recently from \$10,000 to \$30,000.¹ Currently, most reparations cases filed involve amounts less than \$30,000 and are assigned to the Judgment Officer. Based on its experience with the reparations program, the Commission has determined that the current limit of \$30,000 on the claims that may be assigned to a Judgment Officer is no longer necessary or appropriate. The Commission also has concluded that its Judgment Officer will not be overburdened if reparations cases eligible to be heard as formal decisional proceedings are added to his docket. If necessary, the Commission may designate additional staff as decisional employees assigned to hear reparations cases. See Rule 12.2 (defining “Commission decisional employee” to mean, *inter alia*, “[a] Judgment Officer * * * and other Commission employees who may be assigned to hear or to participate in the decision of a particular matter”).

There will be no change to the procedures applicable to formal decisional proceedings and, therefore, no impact on any complainant or respondent. Parties filing or defending claims exceeding \$30,000 will have the same procedural safeguards and face the same obligations as before, and the Judgment Officer will exercise all the authority previously held by Commission ALJs and be subject to the same obligations.

¹ Rules Relating to Reparation Proceedings, 59 FR 9631, 9633 (Mar. 1, 1994) (Final Rule) (increasing the ceiling to \$30,000 and otherwise amending Part 12).

II. Related Matters

A. No Notice Required Under 5 U.S.C. 553

The Commission has determined that this rule is exempt from the provisions of the Administrative Procedure Act, 5 U.S.C. 553, which generally requires notice of proposed rulemaking and provides other opportunities for public participation. In accordance with the exemptive language of 5 U.S.C. 553, this rule pertains to “rules of agency organization, procedure or practice,” as to which there exists agency discretion not to provide notice. If made effective immediately, this rule will promote efficiency and facilitate the Commission’s core mission without imposing a new burden. Thus, the Commission has determined to make the rule effective immediately. For the above reasons, the notice requirements under 5 U.S.C. 553 are inapplicable.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”), 5 U.S.C. 601 *et seq.*, requires agencies with rulemaking authority to consider the impact those rules will have on small businesses. The RFA defines the term “rule” to mean “any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title * * * for which the agency provides an opportunity for notice and public comment.” 5 U.S.C. 601(2). Since this rule is not being issued pursuant to section 553(b), it does not qualify as a “rule” as defined in the RFA, and the analysis and the certification process in that section do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (“PRA”), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies, including the Commission, in connection with conducting or sponsoring any collection of information as defined by the PRA. Amended Rule 12.26(c) is not associated with an information collection as defined by the PRA. Accordingly, the Commission certifies that, for the purposes of the PRA, this new