

been modified or enhanced. This interpretation does not extend to products controlled under a different category on the CCL.

**PART 772—[AMENDED]**

23. Section 772.1 is amended by revising the definition of “Cryptanalytic items” to read as follows:

**§ 772.1 Definitions of Terms as Used in the Export Administration Regulations (EAR).**

\* \* \* \* \*

“*Cryptanalytic items*”. Systems, equipment, applications, specific electronic assemblies, modules and integrated circuits designed or modified to perform cryptanalytic functions, software having the characteristics of cryptanalytic hardware or performing cryptanalytic functions, or technology for the development, production or use of cryptanalytic commodities or software.

**Notes:** 1. Cryptanalytic functions may include cryptanalysis, which is the analysis of a cryptographic system or its inputs and outputs to derive confidential variables or sensitive data including clear text. (ISO 7498-2-1988(E), paragraph 3.3.18).

2. Functions specially designed and limited to protect against malicious computer damage or unauthorized system intrusion (e.g., viruses, worms and trojan horses) are not construed to be cryptanalytic functions.

\* \* \* \* \*

**PART 774—[AMENDED]**

**Supplement No. 1 to Part 774 (The Commerce Control List)—[Amended]**

24. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 5—Telecommunications and “Information Security”, immediately following the heading II—“INFORMATION SECURITY”, is amended by revising Notes 2 and 3, and by adding a new Nota Bene (“N.B.”), immediately following Note 3, to read as follows:

Category 5—Telecommunications and “Information Security”

\* \* \* \* \*

Part 2—“Information Security”

\* \* \* \* \*

**Note 2:** Category 5, part 2, encryption products, when accompanying their user for the user’s personal use or as tools of trade, are eligible for License Exceptions TMP or BAG, subject to the terms and conditions of these License Exceptions.

**Note 3:** Cryptography Note: ECCNs 5A002 and 5D002 do not control items that meet all of the following:

a. Generally available to the public by being sold, without restriction, from stock at

retail selling points by means of any of the following:

1. Over-the-counter transactions;
2. Mail order transactions;
3. Electronic transactions; or
4. Telephone call transactions;

b. The cryptographic functionality cannot be easily changed by the user;

c. Designed for installation by the user without further substantial support by the supplier; and

d. When necessary, details of the items are accessible and will be provided, upon request, to the appropriate authority in the exporter’s country in order to ascertain compliance with conditions described in paragraphs (a) through (c) of this note.

**N.B. to Cryptography Note:** Mass market encryption commodities and software eligible for the Cryptography Note are subject to the notification or review requirements described in § 742.15(b)(1) and (b)(2) of the EAR, unless specifically excluded from these requirements by § 742.15(b)(3) of the EAR. Mass market commodities and software employing a key length greater than 64 bits for the symmetric algorithm must be reviewed in accordance with the requirements of § 742.15(b)(2) of the EAR in order to be released from the “EI” and “NS” controls of ECCN 5A002 or 5D002. All other mass market commodities and software eligible for the Cryptography Note are controlled under ECCN 5A992 or 5D992 (without review) and may be exported or reexported to most destinations without a license, following notification, in accordance with the requirements of § 742.15(b)(1) of the EAR.

\* \* \* \* \*

25. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 5—Telecommunications and “Information Security”, Part 2—“Information Security”, is amended by revising ECCN 5D002 to read as follows:

**5D002 Information Security—“Software”**

**License Requirements**

*Reason for Control:* NS, AT, EI

Control(s)	Country chart
NS applies to entire entry ....	NS Column 1.
AT applies to entire entry .....	AT Column 1.

“EI” applies to encryption items transferred from the U.S. Munitions List to the Commerce Control List consistent with Executive Order 13026 of November 15, 1996 (3 CFR, 1996 Comp., p.228) and pursuant to the Presidential Memorandum of that date. Refer to § 742.15 of the EAR.

**Note:** Encryption software is controlled because of its functional capacity, and not because of any informational value of such software; such software is not accorded the same treatment under the EAR as other “software”; and for export licensing purposes, encryption software is treated under the EAR in the same manner as a commodity included in ECCN 5A002.

**Note:** Encryption software controlled for “EI” reasons under this entry remains subject to the EAR even when made publicly available in accordance with part 734 of the EAR. See § 740.13(e) of the EAR for information on releasing certain source code (and corresponding object code) which would be considered publicly available from “EI” controls.

**Note:** After notification to BIS, 56-bit encryption items (including key management products not exceeding 512 bits) and up to (and including) 64-bit mass market encryption commodities and software are released from “EI” and “NS” controls. After a review by BIS, all other mass market encryption commodities and software eligible for the Cryptography Note also may be released from “EI” and “NS” controls. See § 742.15(b)(1) and (b)(2) of the EAR.

**License Exceptions**

*CIV:* N/A

*TSR:* N/A

**List of Items Controlled**

*Unit:* \$ value.

**Related Controls:** This entry does not control “software” “required” for the “use” of equipment excluded from control under the Related Controls paragraph or the Technical Notes in ECCN 5A002 or “software” providing any of the functions of equipment excluded from control under ECCN 5A002. These items are controlled under ECCN 5D992.

**Related Definitions:** 5D002.a controls “software” designed or modified to use “cryptography” employing digital or analog techniques to ensure “information security”.

**Items:**

a. “Software” specially designed or modified for the “development”, “production”, or “use” of equipment or “software” controlled by 5A002, 5B002, or 5D002.

b. “Software” specially designed or modified to support “technology” controlled by 5E002.

c. Specific “software” as follows:  
 c.1. “Software” having the characteristics, or performing or simulating the functions of the equipment controlled by 5A002 or 5B002;  
 c.2. “Software” to certify “software” controlled by 5D002.c.1.

Dated: May 30, 2002.

**James J. Jochum,**

*Assistant Secretary for Export Administration.*

[FR Doc. 02-13990 Filed 6-5-02; 8:45 am]

**BILLING CODE 3510-33-P**

**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Part 3**

**RIN 3038-AB89**

**Registration of Intermediaries**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commodity Futures Trading Commission (the "Commission" or "CFTC") is adopting amendments to its rules, which governs registration of intermediaries in the futures industry. These amendments are necessary to facilitate the change from the current paper-based registration system to online registration. It is expected that the online registration system will provide applicants with a more streamlined process for registering, resulting in less redundancy and quicker processing of applications by the National Futures Association. The amendments will permit a floor broker that receives a temporary license to act in the capacity of a fully registered floor broker, and an applicant for registration as an associated person to be granted a temporary license upon filing the Form 8-R and a sponsor's certification, but prior to submission of fingerprints. Several other amendments are technical in nature to accommodate the transfer from a paper-based to an electronic system and to recognize derivatives transaction execution facilities.

**EFFECTIVE DATE:** June 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** Lawrence B. Patent, Associate Chief Counsel, or Michael A. Piracci, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418-5430.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Commission has previously delegated the authority to process applications for registration of intermediaries and floor traders under the Commodity Exchange Act (the "Act")<sup>1</sup> to the National Futures Association ("NFA").<sup>2</sup> NFA submitted to the Commission, for its approval, pursuant to section 17(j) of the Act, amendments to NFA registration rules that would require applicants seeking registration under the Act as futures commission merchants ("FCMs"), introducing brokers ("IBs"), commodity pool operators ("CPOs"), commodity trading advisors ("CTAs"), leverage transaction merchants ("LTMs"),

associated persons ("APs"), floor brokers ("FBs"), and floor traders ("FT") to file applications electronically through an online registration system.<sup>3</sup> On May 30, 2002, the Commission approved these proposed amendments to the NFA registration rules.

Technological advancements have resulted in fundamental changes in the futures industry, as is the case in almost every other industry. The Commission has encouraged and attempted to facilitate the use of electronic technology in the futures industry.<sup>4</sup> The Commission also believes that it must constantly look at ways that technology can better assist the Commission in fulfilling its regulatory mission.<sup>5</sup>

NFA's new online registration system should streamline the registration process and result in a system that is easier to use for applicants, registrants, and regulators. The new system should make it quicker and easier for persons to provide NFA with the required information and enable NFA to process more efficiently this information in determining whether to grant an application for registration, while maintaining most of the features of the current system. Additionally, information on registrants should be more readily accessible by the public, NFA, and the Commission.

On April 12, 2002, in order to facilitate the change to an online registration system, the Commission proposed the rule amendments being adopted herein.<sup>6</sup> The Commission did not receive any comment letters on the proposed amendments.

### II. The Rule Amendments

#### A. Additional Categories and Sponsors

As part of the new online registration system, applicants that have a current

<sup>3</sup> Agricultural trade option merchants as well as applicants for registration as FCMs and IBs pursuant to section 4f(a)(2) of the Act (notice-registration of securities broker-dealers whose only futures-related activity involves security futures products) will still file paper applications.

<sup>4</sup> For example, the Commission has created a Technology Advisory Committee, see 66 FR 57427 (Nov. 15, 2001); see also 65 FR 12466 (Mar. 9, 2000) (adopting new Rule 1.4, which permits the use of electronic signatures in lieu of handwritten signatures where the Act or Commission rules require a customer's signature). Additionally, the Commission had previously authorized NFA to implement a pilot program that allowed certain registrants to enter registration data electronically for APs and branch office managers of these registrants. 55 FR 35925 (Sep. 4, 1990).

<sup>5</sup> For example, the National Association of Securities Dealers, the registered national securities association responsible for processing the registration filings of certain persons required to register with the Securities and Exchange Commission, has required all registration filings to be submitted via the World Wide Web to its Central Registration Depository system since 1999.

<sup>6</sup> 67 FR 19358 (Apr. 19, 2002).

active status, either as a registrant or as a listed principal, and who seek to add an additional registration category will be required to file a "short path" version of the form required for a new applicant.<sup>7</sup> This "short path" form will require the applicant to supply only necessary information that is not already in the registration database. For example, if an entity registered as an IB applies to become registered also as a CTA, the entity will complete the "short path" Form 7-R, which requires the applicant to select the appropriate categories for which it would be registered and to indicate the category in which it intends to vote on NFA membership matters. Likewise, natural persons currently registered as APs, FBs, FTs, or listed as branch managers or principals that seek to add an additional category will complete a "short path" Form 8-R.

The Form 7-R will no longer require an applicant to list principals that are natural persons because when a Form 8-R is filed indicating a principal category, the system will require the appropriate information, including information regarding the sponsor firm. Currently, under Commission Rule 3.10(a)(2)(i),<sup>8</sup> each Form 7-R must be accompanied with a Form 8-R and fingerprints for each natural person who is a principal of the applicant. The rule does not apply to a principal that has a current Form 8-R on file. However, because the necessary information about the firm for whom a natural person is a principal is gathered through the Form 8-R, if a natural person with a current active status seeks to add a principal category or to become a principal of another firm, then it will be necessary for a "short path" Form 8-R to be filed.<sup>9</sup> Accordingly, the Commission is amending Rule 3.10(a)(2)(i) to reflect this change.

Currently, a person who is unconditionally registered as an AP may become associated as an AP with another sponsor if the new sponsor files a Form 3-R with NFA. The Form 3-R must contain a certification signed by each sponsor acknowledging that each sponsor, in addition to being responsible for supervising the AP, is jointly and severally liable for the conduct of the AP. As noted above, under the new online registration system, APs with a current status seeking to add another sponsor will file

<sup>7</sup> Currently, such applicants are required to file a Form 3-R (which is akin to the new "short path" form) or Form 8-R, depending upon their current status and the additional category requested.

<sup>8</sup> Commission rules referred to herein may be found at 17 CFR Chap. 1 (2001).

<sup>9</sup> Fingerprints will still not be required.

<sup>1</sup> 7 U.S.C. 1 *et seq.* (2000).

<sup>2</sup> See, e.g., 58 FR 19657 (Apr. 15, 1993) (floor traders); 51 FR 34490 (Sep. 29, 1986) (floor brokers); 49 FR 39593 (Oct. 9, 1984) (futures commission merchants, commodity pool operators, commodity trading advisors, and associated persons thereof); 48 FR 35158 (Aug. 3, 1983) (introducing brokers and associated persons thereof).

a "short path" Form 8-R, which, similar to the current paper Form 3-R, will require the submission of only that information not already in the database required for adding the applicable sponsor. Accordingly, the Commission is amending Rule 3.12 to reflect the fact that the sponsor must file a Form 8-R instead of the Form 3-R.

Maintaining the requirement that all of the sponsors of the AP sign and file the acknowledgment mandated under the current rule in an electronic environment would require sending the filing via traditional delivery or via a complicated and costly electronic signature system, both resulting in a delay in adding the sponsor. Additionally, the Commission believes it is unnecessary to require the signed acknowledgment where the rule makes clear that a sponsor is responsible for supervising its APs and is liable for their conduct.<sup>10</sup> Accordingly, the Commission is removing the requirement that a signed certification be submitted to add an additional sponsor. Instead, the NFA, upon receipt of the Form 8-R for an AP seeking to add a sponsor, shall notify the existing sponsors of the AP of the application. The amended rule will continue to hold each sponsor responsible for the supervision of the AP and make each sponsor jointly and severally liable for the conduct of the AP with respect to customers common to that sponsor and another sponsor.<sup>11</sup> Requiring a signed acknowledgement of this fact would present an added burden for registrants that the Commission does not believe is necessary.

NFA's amended Registration Rule 207(a) will permit a person whose application for registration as an AP is pending, or who is temporarily licensed as an AP, to apply to become registered as an AP of another sponsor. Pursuant to amended Registration Rule 207(b), the AP will become registered as an AP of the new sponsor only if he or she is already registered as an AP with another sponsor. The Commission believes that NFA's amended Registration Rule 207 is consistent with Commission Rule 3.12(f) as amended herein.

## B. Updates

### 1. Annual and Triennial Updates

Pursuant to Commission Rule 3.31, any applicant or registrant must promptly correct any inaccuracy in its Form 7-R or Form 8-R. Accordingly,

<sup>10</sup> Existing Commission rules also make clear the sponsor's responsibility and liability to supervise its APs. See, e.g., Rule 166.3.

<sup>11</sup> NFA Registration Rule 207, as amended, holds sponsors to the same standards.

registrants are under an ongoing duty to ensure that their registration filings are accurate. Currently, pursuant to Rule 3.10(d), a firm is required to file annually with NFA a Form 7-R. For this purpose, NFA sends to each firm a pre-printed paper copy of the firm's Form 7-R that the firm must then update and file with NFA. Similarly, pursuant to Rule 3.11(d), every three years the NFA provides each registered FB and FT with a paper printout of the information contained in NFA's registration database concerning the registrant. If the information in the printout is inaccurate, the registrant must correct the information and return the printout to NFA. Otherwise, the registrant is not required to return the printout and is deemed to have recertified the registration information contained in the printout.

As noted above, these persons are already under an ongoing obligation to update the applicable registration information when necessary. The continuation of the annual and triennial update process is redundant and results in unnecessary costs to both NFA and the registrant. Accordingly, the Commission is amending the rules to delete these requirements.

### 2. Changes in Form of Organization

Pursuant to Rule 3.31, a change in the form of organization of a registrant requires that the registrant correct its Form 7-R. Currently, when a firm files a Form 3-R to report a change in the form of the organization, it must be accompanied by a certification "signed in a manner sufficient to be binding under local law" that the registrant will be liable for all obligations of the pre-existing organization. Similar to the acknowledgment currently required when an AP adds a sponsor, the Commission believes it is an unnecessary burden on registrants to require a signed certification by the registrant acknowledging its liability for the obligations of the pre-existing organization when Commission rules, and NFA rules, can make clear the registrants' responsibilities. Accordingly, the Commission is amending Rule 3.31 to make clear that, when a registrant reports a change in the form of its organization by filing a Form 3-R under Rule 3.31, it remains liable for all obligations of the pre-existing organization.

Notwithstanding the above, under the amendments being adopted herein, where a registrant is ceasing to be or is becoming a sole proprietorship, the registrant will have to file a Form 7-W, withdrawing the registration of the pre-existing organization, and file a Form 7-

R regarding the new organization. A change to or from a sole proprietorship to another form of business entity, such as a corporation, is not a mere change in the form of organization. There is a fundamental difference between a natural person and a corporation. A corporation undertaking business that was being conducted by a sole proprietor is not a continuation of an existing organization, but is the creation of a completely new and separate legal entity, thus requiring the filing of a Form 7-W regarding the pre-existing organization and a Form 7-R on behalf of the new organization.

## C. Temporary Licenses

### 1. Initial Filing

Pursuant to Commission Rule 3.40, an applicant for registration as an AP, FB, or FT, may be granted a temporary license upon the filing of a completed Form 8-R, the applicant's fingerprints, and, (a) if the applicant is applying for registration as an AP, the required sponsor's certification, or (b) if the applicant is applying for registration as an FB or FT, the required proof of having been granted trading privileges by a contract market. Under the online registration system, there will be a delay between the filing of the Form 8-R, which will occur instantaneously via the Internet, and the filing of the applicant's fingerprints, which must still be physically provided on a fingerprint card. Accordingly, the Commission is amending Rule 3.40 to provide that NFA may grant a temporary license to an applicant for registration as an AP upon filing of the completed Form 8-R and the sponsor's certification, but before the applicant's fingerprints are filed. The fingerprints must be filed with NFA within 20 days. This will not result in any change of the policies that NFA uses in determining to grant a temporary license to an AP.

FBs and FTs will have to continue to file the current documents required under the rule, including fingerprints, to receive a temporary license. Temporary licenses for FBs and FTs will not be granted online because, to be eligible for a temporary license, FB and FT applicants must have been granted trading privileges on a contract market or DTF. It has been the experience of the Commission and NFA that FB and FT applicants, especially new applicants, almost never receive trading privileges before applying for registration. In fact, the applicant's fingerprint cards and registration fees are almost always received before an exchange grants them trading privileges. Moreover, if NFA were to grant an FB or FT applicant a

temporary license and later withdraw it, such action could have larger financial implications for the individual than would be the case for an AP applicant. For example, an FB or FT applicant must make sizeable investments to obtain trading privileges on the floor of an exchange.

## 2. Restrictions on Activities

Currently, an applicant for registration as an FB who is granted a temporary license, and has not been registered as an FB during the preceding 60 days, is only permitted to act as an FT. The Commission does not believe that this difference is required. The fitness standards for becoming registered as an FB or an FT are the same. Likewise, the fitness standards for becoming temporarily licensed as an FB or an FT should be the same. When the Commission adopted rules that limited FBs granted temporary licenses to acting as FTs, it noted that, after gaining further experience in the area, it might revisit the issue.<sup>12</sup> In the nine years since applicants for registration as FBs have been permitted to receive a temporary license, the Commission and NFA have found that it is very rare that a temporary license granted to an applicant for registration as an FB has had to be terminated as a result of the ensuing fitness check. This is attributable to the fact that, in order to be granted a temporary license as an FB, an applicant must have been granted trading privileges by a contract market and a contract market conducts its own fitness check before granting a person trading privileges. Generally, information that would prevent an applicant from becoming registered with the Commission as an FB would also prevent the person from obtaining trading privileges on a contract market. Accordingly, the Commission is amending its rules to permit an applicant for registration as an FB who has been granted a temporary license to act in the capacity of an FB for the duration of the temporary license.

## 3. Special Temporary Licenses

Currently, pursuant to Commission Rule 3.11(c)(1), an FB or FT, whose registration has terminated within the preceding sixty days, and who has been granted trading privileges at a new contract market that has filed with NFA the certification required under Rule 3.40(c), regarding the applicant, will be granted a temporary license to act as an FB or FT upon mailing a Form 8-R, a fingerprint card, and if applicable, a supplemental sponsor certification.

These are the same submissions necessary to be granted a temporary license under Commission Rule 3.40. However, pursuant to Rule 3.11(c)(1), once the applicant has mailed the Form 8-R and the fingerprint card to NFA the applicant's temporary license will be granted, as opposed to the requirement under Rule 3.40 that the documents be filed with NFA. However, the applicant must have been granted trading privileges by a new contract market and the contract market must have made the required certification before the applicant could be granted the temporary license. The Commission does not believe that it is necessary to maintain both rules for granting temporary licenses to FBs and FTs when the practical result under either rule is the same. Accordingly, the Commission is removing Rule 3.11(c)(1). All temporary licenses for FBs and FTs will be granted pursuant to Rule 3.40.

The Commission is also removing Rule 3.11(c)(2). Currently, pursuant to Commission Rule 3.11(c)(2), any FB or FT who continuously maintains trading privileges at a contract market may change their registration category from an FB to an FT or vice versa upon mailing to NFA a completed Form 3-R indicating an intention to change categories. As noted above, under NFA's online registration system, applicants for adding additional registration categories will file a "short path" Form 8-R. Additionally, under Commission Rule 3.11(a), an applicant for registration as an FB or FT is not required to file a fingerprint card if the applicant has a current Form 8-R on file with NFA.<sup>13</sup> Accordingly, removing Rule 3.11(c)(2) should not negatively affect those already registered as FBs or FTs seeking to switch registration categories.

Similar to the granting of a temporary license as a new applicant for AP registration, as discussed above, the Commission is also amending Rule 3.12(d) to permit the granting of a special temporary license to an AP whose registration terminated within the preceding 60 days upon the filing of a completed Form 8-R, but prior to the applicant's fingerprints being filed with NFA. The fingerprints must be filed with NFA within 20 days.

## D. FCM and IB Withdrawal From Registration

Currently, pursuant to Commission Rule 3.33(c)(1), when an FCM or an

independent IB is requesting withdrawal from registration because it has ceased engaging in activities that require registration, their request for withdrawal must be accompanied by Form 1-FR-FCM or 1-FR-IB<sup>14</sup> completed within a month of the date of the request for withdrawal. Pursuant to NFA Financial Requirement section 1(b), each FCM for which NFA is the designated self-regulatory organization must file a Form 1-FR-FCM for each month end. Accordingly, for such FCMs, a Form 1-FR-FCM for the previous month will have already been filed. Additionally, an IB is not permitted to hold customer funds. Therefore, requiring an IB seeking withdrawal to file Form 1-FR-IB in every instance is unnecessary. Moreover, if there was a reason for the Commission to be concerned about the financial state of a particular IB requesting withdrawal, the Commission may, pursuant to Rule 3.33(f)(4), require that the IB provide the appropriate financial statements, including a Form 1-FR-IB, before it is permitted to withdraw its registration. Accordingly, the Commission is removing Rule 3.33(c)(1).

## E. Certification Signatories

Commission Rules 3.12(c)(1), 3.12(d)(3) (sponsor certifications regarding an applicant for AP registration), 3.33(b) (Form 7-W for a firm's withdrawal of registration), 3.44(a)(4) (FCM certification regarding a temporary license for an IB) require that only certain persons may sign the pertinent documents on behalf of the registrant.<sup>15</sup> Under the online registration system, where the pertinent documents will be filed electronically, it would be difficult, if not impossible, to ensure that only one of the enumerated persons was actually submitting the document.

NFA, in its amended Registration Rule 802, provides that the electronic filing of required documents constitutes, among other things, the applicant's, registrant's, or sponsor's certification that the person who electronically files the document is authorized by the entity to make the required certifications, representations, requests, acknowledgements, authorizations, and agreements contained therein.

<sup>14</sup> The Forms 1-FR-FCM and 1-FR-IB are statements of the financial condition of an FCM or IB respectively, used, in part, to ensure compliance with applicable Commission minimum financial requirements.

<sup>15</sup> For example, Rule 3.12(c)(1) requires that the sponsor's certification be signed by an officer if the sponsor is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship.

<sup>12</sup> 58 FR 19575, 19583 (Apr. 15, 1993).

<sup>13</sup> Amended NFA Registration Rule 205(b) similarly provides that an applicant for FB or FT registration need not file a fingerprint card or pay the registration fee if the applicant has a current Form 8-R on file.

Moreover, amended NFA Registration Rule 801(b) provides that any registration filing made on behalf of a registrant or applicant by a person authorized by the applicant or registrant shall be deemed to be a filing of such registrant or applicant.<sup>16</sup>

Therefore, the entity filing the pertinent certification or form under Commission Rules 3.12(c)(1), 3.33(b), 3.44(a)(4) will be held accountable for any representations in the applicable document. Accordingly, the Commission is amending these rules to make clear that a person duly authorized by the registrant or sponsor must file the relevant certification or form.

#### F. Other Amendments

The Commission is also making certain technical amendments. For example, the Commission is amending Rules 3.11 and 3.31 so as to reference both contract markets and derivatives transaction execution facilities. Additionally, the Commission is removing references in part 3 to part 180, which has been removed and reserved.

### III. Related Matters

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")<sup>17</sup> requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.<sup>18</sup> The Commission has previously determined that FCMs, registered CPOs, and LTMs are not small entities for the purpose of the RFA.<sup>19</sup> Therefore, the requirements of the RFA do not apply to those entities. With respect to the remaining entities, the rule amendments will not place any additional burdens upon such parties since all registrants are already subject to the registration filing requirements of the Act and part 3 of the Commission's regulations. To the contrary, the amendments will help to streamline and simplify the current registration procedures. The Commission notes that no comments

<sup>16</sup> Under the amended NFA rules, FBs and FTs may not authorize any other person to file a Form 8-R on their behalf. Additionally, persons for whom a sponsor has filed a Form 8-R must verify the information themselves and may not authorize any other person to do so on their behalf.

<sup>17</sup> 5 U.S.C. 601 *et seq.*

<sup>18</sup> 47 FR 18618 (April 30, 1982).

<sup>19</sup> *Id.* at 18619-20 (discussing FCMs and CPOs); 54 FR 19556, 19557 (May 8, 1989) (discussing LTMs).

were received from the public on the RFA and its relation to the rule amendments.

#### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")<sup>20</sup> imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The rule amendments do not require a new collection of information on the part of any entities subject to the proposed rule amendments. Accordingly, for purposes of the PRA, the Commission certifies that these rule amendments will not impose any new reporting or recordkeeping requirements. The Commission did not receive any comments on any potential paperwork burden associated with these amendments. The Commission has submitted hard copies of how the screens will appear in the electronic registration system to the Office of Management and Budget.

#### C. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

These amendments are intended to facilitate a streamlined registration process that would result in less redundancy and quicker processing of applications. The Commission is considering the costs and benefits of

<sup>20</sup> 44 U.S.C. 3501 *et seq.*

these rules in light of the specific provisions of section 15(a) of the Act:

1. *Protection of market participants and the public.* While the amendments are expected to lessen the burden imposed upon applicants in the registration process, they do not reduce the fitness standards for becoming registered with the Commission. Accordingly, they should have no effect on the Commission's ability to protect market participants and the public.

2. *Efficiency and competition.* The amendments are expected to benefit efficiency and competition by more quickly facilitating entry into the industry and by enabling information to be collected and made available in a more timely manner.

3. *Financial integrity of futures markets and price discovery.* The amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets.

4. *Sound risk management practices.* The amendments being adopted herein should have no effect on the risk management practices of the futures and options industry.

5. *Other public interest considerations.* The amendments, in facilitating the change to an online registration system, are expected to result in a registration system that is easier to use and more efficient in its processing of registration applications. Additionally, the system should permit more information about registrants to be readily accessible by the public more quickly.

After considering these factors, the Commission has determined to adopt the amendments discussed above. The Commission invited public comment on its application of the cost-benefit provision. The Commission did not receive any comments regarding the application of the cost-benefit provision.

#### D. Administrative Procedure Act

The Administrative Procedure Act provides that the required publication of a substantive rule shall be made not less than 30 days before its effective date, but provides an exception "for good cause found and published with the rule."<sup>21</sup> On June 3, 2002, NFA will bring its new registration system online. As part of this changeover, NFA has shut down its old mainframe-based registration database, and is currently not capable of accepting hardcopies of registration filings and entering the information into its registration database system. Moreover, the Commission

<sup>21</sup> 5 U.S.C. 553(d)(3).

notes that NFA has spent much of the last few months making the futures industry aware of the change to an online registration system, through its Web site as well as seminars and training workshops held in New York, New Jersey, and Chicago. Accordingly, the Commission has determined to make the rule amendments being adopted herein effective immediately.

**Lists of Subjects in 17 CFR Part 3**

Brokers, Commodity Futures, Registration.

For the reasons discussed in the foregoing, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

**PART 3—REGISTRATION**

1. The authority citation for Part 3 continues to read as follows:

**Authority:** 5 U.S.C. 522, 522b; 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

2. Section 3.2 is amended by revising paragraph (c) to read as follows:

**§ 3.2 Registration processing by the National Futures Association; notification and duration of registration.**

\* \* \* \* \*

(c) The National Futures Association shall notify the registrant, or the sponsor in the case of an applicant for registration as an associated person, and each designated contract market or registered derivatives trading execution facility that has granted the applicant trading privileges in the case of an applicant for registration as a floor broker or floor trader, if registration has been granted under the Act.

(1) If an applicant for registration as an associated person receives a temporary license in accordance with § 3.40, the National Futures Association shall notify the sponsor that only a temporary license has been granted.

(2) If an applicant for registration as a floor broker or floor trader receives a temporary license in accordance with § 3.40, the National Futures Association shall notify the designated contract market or registered derivatives trading execution facility that has granted the applicant trading privileges that only a temporary license has been granted.

\* \* \* \* \*

3. Section 3.10 is amended by revising paragraph (a)(2)(i) and by removing paragraph (d) to read as follows:

**§ 3.10 Registration of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.**

(a) \* \* \*

(2)(i) Each Form 7-R filed in accordance with the requirements of paragraph (a)(1)(i) of this section must be accompanied by a Form 8-R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose: *Provided, however*, that if such principal is a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) or has a current Form 8-R on file with the Commission or the National Futures Association, the fingerprints of that principal do not need to accompany the Form 7-R.

\* \* \* \* \*

4. Section 3.11 is amended by revising paragraphs (a)(2), (a)(3), and (b), and by removing paragraphs (c) and (d) to read as follows:

**§ 3.11 Registration of floor brokers and floor traders.**

(a) \* \* \*

(2) An applicant for registration as a floor broker or floor trader will not be registered or issued a temporary license as a floor broker or floor trader unless the applicant has been granted trading privileges by a board of trade designated as a contract market or registered as a derivatives transaction execution facility by the Commission.

(3) When the Commission or the National Futures Association determines that an applicant for registration as a floor broker or floor trader is not disqualified from such registration or temporary license, the National Futures Association will notify the applicant and any contract market or derivatives transaction execution facility that has granted the applicant trading privileges that the applicant's registration or temporary license as a floor broker or floor trader is granted.

(b) *Duration of registration.* A person registered as a floor broker or floor trader in accordance with paragraph (a) of this section, and whose registration has neither been revoked nor withdrawn, will continue to be so registered unless such person's trading privileges on all contract markets or derivatives transaction execution facilities have ceased: *Provided*, That if a floor broker or floor trader whose trading privileges on all contract markets or derivatives transaction

execution facilities have ceased for reasons unrelated to any Commission action or any contract market or derivatives transaction execution facility disciplinary proceeding and whose registration is not revoked, suspended or withdrawn is granted trading privileges as a floor broker or floor trader, respectively, by any contract market or derivatives transaction execution facility where he held such privileges within the preceding sixty days, such registration as a floor broker or floor trader, respectively, shall be deemed to continue and no new Form 8-R or Form 3-R need be filed solely on the basis of the resumption of trading privileges. A floor broker or floor trader is prohibited from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such registration or of all such trading privileges. In accordance with § 3.31(d), each contract market or derivatives transaction execution facility that has granted trading privileges to a person who is registered, or has applied for registration, as a floor broker or floor trader, must notify the National Futures Association within sixty days after such person's trading privileges on such contract market or derivatives transaction execution facility have ceased.

5. Section 3.12 is amended as follows:

a. By revising paragraphs (c)(1), (c)(4), and the introductory text of paragraph (d)(1);

b. By redesignating paragraphs (d)(2) and (d)(3) as (d)(3) and (d)(4) and revising paragraphs (d)(3) and (d)(4) as redesignated;

c. By adding a new paragraph (d)(2); and

d. By revising paragraph (f).

The revisions and addition read as follows:

**§ 3.12 Registration of associated persons of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators, and leverage transaction merchants.**

\* \* \* \* \*

(c) \* \* \*

(1) No person will be registered as an associated person in accordance with this paragraph (c) unless a person duly authorized by the sponsor certifies that:

\* \* \* \* \*

(4) When the Commission or the National Futures Association determines that an applicant for registration as an associated person is not unfit for such registration, it will

notify the sponsor that has made the certifications required by paragraph (c)(1) of this section that the applicant's registration as an associated person is granted contingent upon the sponsor hiring or otherwise employing the applicant as such within thirty days.

\* \* \* \* \*

(d) *Special temporary licensing and registration procedures for certain persons.* (1) *Registration terminated within the preceding 60 days.* Except as otherwise provided in paragraphs (f) and (i) of this section, any person whose registration as an associated person in any capacity has terminated within the preceding 60 days and who becomes associated with a new sponsor will be granted a temporary license to act in the capacity of an associated person of such sponsor upon filing by that sponsor with the National Futures Association a Form 8-R, completed in accordance with the instructions thereto and, if applicable, a Supplemental Sponsor Certification Statement filed on behalf of the new sponsor (who must meet the requirements set forth in § 3.60(b)(2)(i)(A) and (B)) stating that the new sponsor will supervise the applicant in accordance with conditions identical to those agreed to by the previous sponsor, which includes certifications stating:

\* \* \* \* \*

(2) Any temporary license granted pursuant to paragraph (d)(1) of this section shall be terminated immediately upon notice to the sponsor of the person granted the temporary license that, within 20 days following the date the temporary license was issued, the National Futures Association has not received the applicant's fingerprints.

(3) A temporary license received in accordance with paragraph (d)(1) of this section shall be subject to the provisions of §§ 3.42 and 3.43.

(4) The certifications permitted by paragraphs (d)(1)(i) and (v) of this section must be filed by a person duly authorized by the sponsor. The certifications permitted by paragraphs (d)(1)(ii)–(iv) must be filed by the applicant for registration as an associated person.

\* \* \* \* \*

(f) *Reporting of dual and multiple associations.* (1)(i) Except as otherwise provided in paragraph (f)(4) of this section, a person who is already registered as an associated person in any capacity whose registration is not subject to conditions or restrictions may become associated as an associated person with another sponsor if the new sponsor (who must meet the requirements set forth in § 3.60(b)(2)(i)

(A) and (B)) files with the National Futures Association a Form 8-R in accordance with the instructions thereto.

(ii) NFA shall notify each sponsor of the associated person that the associated person has applied to become associated with another sponsor.

(iii) Each sponsor of the associated person shall supervise that associated person and each sponsor is jointly and severally responsible for the conduct of the associated person with respect to the:

(A) Solicitation or acceptance of customers' orders,

(B) Solicitation of funds, securities, or property for a participation in a commodity pool,

(C) Solicitation of a client's or prospective client's discretionary account,

(D) Solicitation or acceptance of leverage customers' orders for leverage transactions, and

(E) Associated person's supervision of any person or persons engaged in any of the foregoing solicitations or acceptances, with respect to any customers common to it and any other futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant with which the associated person is associated.

(2) Upon receipt by the National Futures Association of a Form 8-R filed in accordance with paragraph (f)(1) of this section from an associated person, the associated person named therein shall be registered as an associated person of the new sponsor.

\* \* \* \* \*

6. Section 3.31, is amended as follows:

- a. By revising paragraph (a)(1);
- b. By redesignating paragraph (a)(2) as paragraph (a)(3);
- c. By adding a new paragraph (a)(2);
- d. By revising newly redesignated paragraph (a)(3); and
- e. By amending paragraph (d) by adding "or derivatives transaction execution facility" after each instance of "contract market".

The revisions and addition read as follows:

**§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.**

(a)(1) Each applicant or registrant as a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant shall, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in Form 7-R or Form 8-R

which no longer renders accurate and current the information contained therein. Each such correction shall be made on Form 3-R and shall be prepared and filed in accordance with the instructions thereto. *Provided, however,* that where a registrant is reporting a change in the form of organization from or to a sole proprietorship, the registrant must file a Form 7-W regarding the pre-existing organization and a Form 7-R regarding the newly formed organization.

(2) If a registrant files a Form 3-R, pursuant to this section, to report a change in the form of the organization of the registrant, the registrant shall be liable for all obligations of the pre-existing organization under the Act, as it may be amended from time to time, and the rules, regulations, or orders which have been or may be promulgated thereunder.

(3) Where the deficiency or inaccuracy is created by the addition of a new principal not listed on the registrant's application for registration (or amendment of such application prior to the granting of registration), and the new principal is not a natural person, the registrant shall file a Form 3-R filed in accordance with the requirements of paragraph (a)(1) of this section. *Provided, however,* that if the new principal is a natural person, the registrant shall file a Form 8-R, completed in accordance with the instructions thereto and executed by such person who is a principal of the registrant and who was not listed on the registrant's initial application for registration or any amendment thereto. The Form 8-R for each such principal shall be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose, unless such principal is a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) or such principal has a current Form 8-R on file with the Commission or the National Futures Association.

\* \* \* \* \*

**§ 3.33 [Amended]**

7. Section 3.33 is amended as follows:

- a. By amending the introductory text of paragraph (b) by removing "the sole proprietor if the registrant is a sole proprietorship, by a general partner if a partnership, or by the president or chief executive officer if a corporation," and by adding in its place "a person duly authorized by the registrant";
- b. By removing paragraph (b)(3);
- c. By redesignating paragraphs (b)(4) through (b)(7) as (b)(3) through (b)(6);

d. By removing paragraph (c)(1);  
e. By redesignating paragraph (c)(2) as (c);

f. By removing paragraph (d); and  
g. By amending paragraph (e) by removing "sent to the National Futures Association, Registration Office, 200 West Madison Street, Chicago, Illinois 60606" and adding in its place "filed with the National Futures Association".

8. Section 3.40 is revised to read as follows:

**§ 3.40 Temporary licensing of applicants for associated person, floor broker or floor trader registration.**

(a) Notwithstanding any other provision of these regulations and pursuant to the terms and conditions of this subpart:

(1) The National Futures Association may grant a temporary license to any applicant for registration as an associated person upon the contemporaneous filing with the National Futures Association of:

(i) A Form 8-R, properly completed in accordance with the instructions thereto; and

(ii) The sponsor's certification required by § 3.12(c): *Provided, however*, that the fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose must be filed with the National Futures Association within 20 days following the date the temporary license is issued; *and, provided further*, that failure to file the fingerprints within this period will result in the termination of the temporary license immediately upon notice to the applicant's sponsor that the National Futures Association has not received the applicant's fingerprints.

(2) The National Futures Association may grant a temporary license to any applicant for registration as a floor broker or floor trader upon the contemporaneous filing with the National Futures Association of:

(i) A Form 8-R, properly completed in accordance with the instructions thereto;

(ii) The fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose;

(iii) A Supplemental Sponsor Certification Statement executed by a sponsor meeting the requirements under § 3.60(b)(2)(i), if the applicant is subject to an order imposing conditions on the applicant's registration; and

(iv) Evidence that the applicant has been granted trading privileges by a contract market or derivatives transaction execution facility that has filed with the National Futures

Association a certification signed by its chief operating officer with respect to the review of an applicant's employment, credit and other history in connection with the granting of trading privileges.

(b) The failure of an applicant or the applicant's sponsor to respond to a request by the Commission or the National Futures Association for clarification of any information set forth in the application of the applicant or for the resubmission of fingerprints in accordance with such request will be deemed to constitute a withdrawal of the applicant's registration application and shall result in the immediate termination of the applicant's temporary license.

(c) Subject to the provisions of § 3.42 and all of the obligations imposed on such registrants under the Act (in particular, section 14 thereof) and the rules, regulations, and orders thereunder, an applicant for registration as an associated person who has received notification that a temporary license has been granted may act in the capacity of an associated person, an applicant for registration as a floor trader who has received written notification that a temporary license has been granted may act in the capacity of a floor trader, and an applicant for registration as a floor broker who has received written notification that a temporary license has been granted may act in the capacity of a floor broker.

**§ 3.41 [Removed]**

9. Section 3.41 is removed.

10. Section 3.42 is amended by revising paragraphs (a)(2), (a)(3), (a)(4) and (a)(6) to read as follows:

**§ 3.42 Termination.**

(a) \* \* \*

(2) Immediately upon termination of the association of the applicant for registration as an associated person with the registrant which filed the sponsorship certification, or immediately upon loss of trading privileges by an applicant for registration as a floor broker or floor trader on all contract markets which filed the certification described in § 3.40;

(3) Immediately upon the withdrawal of the registration application pursuant to § 3.40;

(4) Immediately upon failure to comply with an order to pay a civil monetary penalty, restitution, or disgorgement within the time permitted under sections 6(e), 6b, or 6c(d) of the Act;

\* \* \* \* \*

(6) Immediately upon failure to comply with an award in an arbitration proceeding conducted pursuant to the rules of a designated contract market, registered derivatives transaction execution facility, or registered futures association within the time specified in section 10(g) of the National Futures Association's Code of Arbitration or the comparable time period specified in the rules of a contract market, registered derivatives transaction execution facility, or other appropriate arbitration forum.

\* \* \* \* \*

11. Section 3.44 is amended by revising the introductory text of paragraph (a)(4) and revising paragraph (a)(5) to read as follows:

**§ 3.44 Temporary licensing of applicants for guaranteed introducing broker registration.**

(a) \* \* \*

(4) A certification executed by a person duly authorized by the futures commission merchant that has executed the guarantee agreement required by paragraph (a)(1) of this section, stating that:

\* \* \* \* \*

(5) The fingerprints of the applicant, if a sole proprietor, and of each principal (including each branch office manager) thereof on fingerprint cards provided by the National Futures Association for that purpose: *Provided*, that a principal who has a current Form 8-R on file with the National Futures Association or the Commission is not required to submit a fingerprint card.

\* \* \* \* \*

12. Section 3.46 is amended by revising paragraphs (a)(6) and (a)(8) to read as follows:

**§ 3.46 Termination**

(a) \* \* \*

(6) Immediately upon failure to comply with an order to pay a civil monetary penalty, restitution, or disgorgement within the time permitted under sections 6(e), 6b, or 6c(d) of the Act;

\* \* \* \* \*

(8) Immediately upon failure to comply with an award in an arbitration proceeding conducted pursuant to the rules of a designated contract market, registered derivatives transaction execution facility, or registered futures association within the time specified in section 10(g) of the National Futures Association's Code of Arbitration or the comparable time period specified in the rules of a contract market, registered derivatives transaction execution

facility, or other appropriate arbitration forum.

\* \* \* \* \*

Issued in Washington, DC, on May 30, 2002, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 02-14027 Filed 6-5-02; 8:45 am]

BILLING CODE 6351-01-P

## DEPARTMENT OF THE TREASURY

### Customs Service

#### 19 CFR Part 12

[T.D. 02-30]

RIN 1515-AD12

#### Extension of Import Restrictions Imposed on Archaeological and Ethnological Materials From Peru

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** In T.D. 97-50, the Customs Regulations were amended to reflect the imposition of import restrictions on certain archaeological and ethnological materials originating in Peru. These restrictions were imposed pursuant to an agreement between the United States and Peru that was entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Recently, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, determined that conditions continue to warrant the imposition of these import restrictions for a period of five years from June 9, 2002. Thus, this document amends the Customs Regulations to reflect that the import restrictions continue. T.D. 97-50 contains the Designated List of Archaeological and Ethnological Materials that describes the articles to which the restrictions and this extension of restrictions apply.

**EFFECTIVE DATE:** This regulation becomes effective on June 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** (Regulatory Aspects) Joseph Howard, Intellectual Property Rights Branch (202) 927-2336; (Operational Aspects) Al Morawski, Trade Operations (202) 927-0402.

**SUPPLEMENTARY INFORMATION:**

### Background

Pursuant to the provisions of the 1970 UNESCO Convention, codified into U.S. law as the Convention on Cultural Property Implementation Act (Pub. L. 97-446, 19 U.S.C. 2601 *et seq.*) (the Act), the United States entered into a bilateral agreement with the Republic of Peru on June 9, 1997, concerning the imposition of import restrictions on certain pre-Columbian archaeological materials of Peru dating to the Colonial period and certain Colonial ethnological material from Peru. The U.S. Customs Service issued T.D. 97-50 (62 FR 31713, June 11, 1997) amending § 12.104g(a) of the Customs Regulations (19 CFR 12.104g(a)) to reflect the imposition of these restrictions for a period of five years.

Prior to the issuance of T.D. 97-50, Customs issued T.D. 90-37 (55 FR 19029, May 7, 1990) imposing emergency import restrictions on certain archaeological materials of Peru from the Sipan Archaeological Region forming part of the remains of the Moche culture. Under T.D. 90-37, § 12.104g(b) (19 CFR 12.104g(b)) of the regulations pertaining to emergency restrictions was amended accordingly. This emergency protection was extended in T.D. 94-54 (59 FR 32902, June 27, 1994). Subsequently, the archaeological materials covered by T.D. 90-37 were subsumed in T.D. 97-50 when it was published in 1997, at which time the emergency restrictions of T.D. 90-37 (as extended by T.D. 94-54) were removed from § 12.104g(b).

On March 5, 2002, the Assistant Secretary of Educational and Cultural Affairs, Department of State, after considering the findings and recommendations of the Cultural Property Advisory Committee and concluding that the cultural heritage of Peru continues to be in jeopardy from pillage of the archaeological and ethnological materials subject of the import restrictions of T.D. 97-50, made the necessary determinations to extend the import restrictions for an additional five years (in the Determination to Extend the Memorandum of Understanding Between the United States of America and the Government of Peru Concerning the Imposition of Import Restrictions on Archaeological Material from the Prehispanic Cultures and Certain Ethnological Material from the Colonial Period of Peru, Signed on June 9, 1997). Accordingly, Customs is amending § 12.104g(a) to reflect the extension of the import restrictions.

The Designated List of Archaeological and Ethnological Materials from Peru describing the materials covered by

these import restrictions is set forth in T.D. 97-50. The list and accompanying image database may also be found at the following internet Web site address: <http://e.usia.gov/education/culprop>.

It is noted that the materials identified in T.D. 97-50 as "certain pre-Columbian archaeological materials of Peru dating to the Colonial period and certain Colonial ethnological material from Peru" are referred to in the Determination to Extend as "Archaeological Material from the Prehispanic Cultures and Certain Ethnological Material from the Colonial Period of Peru." The materials identified in T.D. 97-50 and those identified in the Determination to Extend are one and the same materials.

The restrictions on the importation of these archaeological and ethnological materials from Peru are to continue in effect for five years from June 9, 2002. Importation of these materials continues to be restricted unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met. For example, these materials may be permitted entry if accompanied by appropriate export certification issued by the Government of Peru, or documentation showing that exportation from Peru occurred on or before June 11, 1997, or, with respect to materials from the Sipan archaeological region, on or before May 7, 1990. *See* 19 U.S.C. 2606(b)(1) and (2)(B); 19 CFR 12.104c(a) and (c).

#### Inapplicability of Notice and Delayed Effective Date

Because the amendment to the Customs Regulations contained in this document extends import restrictions already imposed on the above-listed cultural property of Peru by the terms of a bilateral agreement entered into in furtherance of a foreign affairs function of the United States, pursuant to the Administrative Procedure Act (5 U.S.C. 553(a)(1)), no notice of proposed rulemaking or public procedure is necessary and a delayed effective date is not required.

#### Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C 603 and 604.

#### Executive Order 12866

This amendment does not meet the criteria of a "significant regulatory action" as described in Executive Order 12866.