the ground to be equipped with an approved means to assist occupants in descending to the ground.

14 CFR 25.809(h) similarly requires all overwing exits having an escape route which terminates at a point more than six feet above the ground to be equipped with an assist means. The exit for the Model L610G will be more than six feet from the ground; however, the landing gear fairing surface will be within 27 inches of the lower exit sill. This distance corresponds to the allowable step-down for an overwing Typing III exit. The distance from the landing gear fairing to the ground is less than six feet.

14 CFR 25.809(f) also requires that assist means be automatically erected during exit opening. Strictly speaking, the landing gear fairing does not satisfy this requirement since opening the exit is not correlated to the availability of the assist means; however, since the fairing is a fixed piece of airplane structure it is always available for use.

The regulations also require that an assist means be self-supporting on the ground. This requirement has been interpreted to mean that the assist means rests on the ground when in use such that an evacuee does not have to jump to the ground from the bottom of the assist means. In the case of an overwing exit where the terminating edge of the escape route is less than six feet from the ground, it is likely that evacuees might have to jump a short distance from the wing to the ground. The Model L610G incorporates aspects of both of these exit arrangements, which are addressed in these special conditions.

Other features of the exit arrangement which involve both overwing and non-overwing exit considerations include marking, visibility, and width of the escape route. For the purposes of these special conditions, this exit will be treated as an overwing exit with respect to these requirements.

Other areas which are of particular concern for this unusual exit arrangement are the effectiveness of the exit in the event of landing gear collapse and the proximity of the escape route to the engines and wheel wells. Since a collapse of the landing gear could result in some form of collapse of the landing gear fairing, the exit must be demonstrated to be usable and provide for safe evacuation, considering all conditions of landing gear collapse.

Since the Type III exits are directly above the main landing gear, it is possible that a fire originating in the landing gear assembly could render such an exit unusable. Due to the design of the Model L610G, it is considered necessary to address the possibility that a fire on one side of the airplane could also render the opposite side unusable.

These special conditions are intended to provided requirements which result in an evacuation system that is as effective and safe as those envisioned by the regulations. Where appropriate, requirements have been drawn from existing regulations. In other cases, new requirements have been developed to preserve the level of safety which is inherent in the design of more conventional exit arrangements or assist means.

Discussion of Comments

Notice of Proposed Special Conditions No. SC–96–4–NM for the LET Aeronautical Works Model L610G airplane, was published in the **Federal Register** on August 16, 1996. No comments were received.

Applicability

As discussed above, these special conditions are applicable to the LET Aeronautical Works Model L610G airplane. Should LET Aeronautical Works apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of 14 CFR 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the LET Aeronautical Works L610G airplane.

1. The landing gear fairing must be established as an escape route in accordance with the dimensional, reflectance, and slip resistant surface requirements of § 25.803(e).

2. The step-down distance from the exit sill to the surface of the landing gear fairing, where an evacuee would make first contact, shall not exceed 27 inches (ref. § 25.807(a)(3)).

3. The assist means must provide for safe evacuation of occupants, considering all conditions of landing gear collapse. In addition, safe evacuation must be afforded via the Type III exit in the event of main landing gear non-deployment.

4. Exterior emergency lighting must be provided for the assist means and all areas of likely ground contact in accordance with §§ 25.812(g)(1) (i) and (ii), and § 25.812(h)(1), as amended through Amendment 25–58.

5. The assist means must be demonstrated to provide an adequate egress rate for the number of passengers requested. The passenger capacity, as permitted by § 25.807(c)(1), Table 1, may be reduced if satisfactory Type III exit performance cannot be demonstrated.

6. It must be shown that a landing gear fire occurring on one side of the airplane is unlikely to render the opposite exit unusable.

7. The assist means must be shown to be as reliable as an escape slide following exposure to the emergency landing conditions that may be encountered in service. In addition, safe evacuation from the airplane must be afforded following the crash conditions specified in § 25.561(b).

Issued in Renton, Washington, on June 3, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 97–15311 Filed 6–10–97; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 190

Distribution of Customer Property Related to Trading on the Chicago Board of Trade—London International Financial Futures and Options Exchange Trading Link

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') has adopted an additional amendment to Appendix B of its bankruptcy rules to govern the distribution of property where the debtor is a futures commission merchant (''FCM'') that maintains customer accounts that carry

or trade positions in Designated Chicago Board of Trade (''CBT'') Contracts at London International Financial Futures and Options Exchange (''LIFFE'') or Designated LIFFE Contracts at CBT (''Link Accounts'') as well as non-Link accounts. This new distributional framework is intended to assure that non-Link customers of such an FCM would not be adversely affected by a shortfall in Section 4d(2) segregated funds caused by the operation of the Link.[1]

EFFECTIVE DATE: June 11, 1997.

FOR FURTHER INFORMATION CONTACT: Lois J. Gregory, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5483.

SUPPLEMENTARY INFORMATION:

I. Introduction

On April 22, 1997, the Commission published a proposed amendment to Appendix B of its bankruptcy rules to govern the distribution of property where the debtor is an FCM that maintains customer accounts that carry or trade positions in Link accounts as well as non-Link accounts, and allowed 15 days for comment thereon.[2] The Commission received one written comment in response to the proposal, from the Chicago Mercantile Exchange (''CME''), which expressed its view that it does not want the same approach automatically applied to linkage arrangements CME may develop with other exchanges. The Commission has considered this comment and has determined to adopt the additional amendment to Appendix B of its bankruptcy rules as it was proposed. The new Framework 2 governs the distribution of customer property related to trading on the CBT–LIFFE Link, specifically.

II. Trading in Link Contracts

The CBT, LIFFE and their respective clearing houses have commenced operation of a trading link (Link) whereby Designated CBT Contracts[3] are traded on LIFFE, initially cleared by the London Clearing House Limited (''LCH''), and transferred to the Board of Trade Clearing Corporation (''BOTCC''), and Designated LIFFE Contracts[4] are traded on the CBT, initially cleared by BOTCC and transferred to LCH.

In the case of Designated CBT Contracts traded on LIFFE, the U.S. FCM maintains a customer omnibus account with a LIFFE clearing member. Each day, LCH marks futures positions to a closing price, pays to and collects from the LIFFE clearing member the difference between trade price and mark price, pays and collects option premiums and, at the request of the LIFFE clearing member, nets positions prior to their transfer to BOTCC at approximately 10:00 a.m. Chicago time. Bank settlement commitments are required in response to instructions for Link variation obligations on trade date (''T''), with payment made to LCH on the next day (''T+1''). Also, if the CBT is closed for a holiday, LCH will hold positions in Designated CBT Contracts overnight and can call for margin. Property of the customers of the U.S. FCM that accrues to such customers as the result of such trades or contracts prior to their transfer to BOTCC or which is deposited to margin, guarantee or secure trades or contracts in Designated CBT Contracts at LIFFE is deemed to be ''Link property.'' During the interval before transfer back from LCH to BOTCC, Link property at LCH may for operational purposes be held in a foreign depository consistent with CFTC Advisory 87–5.[5]

In the case of Designated LIFFE Contracts traded on CBT, property received by the U.S. FCM to margin, secure or guarantee trades is included in the foreign futures and foreign options secured amount, pursuant to Commission Regulation 30.7. The Commission granted BOTCC its request for a no action position to permit certain excess foreign currency contained in such secured amount account and separately accounted for at the clearing organization to be used by FCM clearing members to meet original margin requirements for U.S. contracts under Section 4d(2) of the Act. Such excess property held in a combined BOTCC account but applied to margin requirements for U.S. contracts as Section 4d(2) property is also treated as ''Link property'' under Appendix B.

To the extent that positions in Designated CBT Contracts executed on LIFFE and property supporting or accruing from those positions are deemed to be customer property under Section 4d(2) of the Act, or certain foreign currency margin deposited in respect of Designated LIFFE Contracts is held in a Section 4d(2) clearing account, any customer net equity claim in respect of such Link property held by an FCM in a Link account would be treated as a customer net equity claim under Part 190 of the Commission's rules[6] and subchapter IV of chapter 7 of the Bankruptcy Code (the commodity broker liquidation provisions).[7] In the case of an FCM bankruptcy, the commodity broker liquidation provisions of the Bankruptcy Code and Part 190 of the Commission's rules provide for a pro rata distribution of assets in proportion to net equity claims among the Section 4d(2) customers whose accounts are carried by such FCM. Thus, absent some provision to the contrary, if a participating FCM defaulted due to losses in its Link-related account(s), non-Link customers could be forced to share in losses generated by a shortfall in Link property. To avoid that result, the new framework provides a rule of distribution that operates to subordinate claims for Link property to Section 4d(2) claims overall.

III. New Bankruptcy Distribution in the Context of the CBT–LIFFE Link

When the Commission adopted its Part 190 bankruptcy regulations,[8] it included an Appendix intended to facilitate the execution of a trustee's duties, forms concerning customer instructions for return of non-cash property and transfer of hedge contracts, and a proof of claim form. The Commission later adopted Appendix B to provide guidance to a trustee on the appropriate distribution of property where an FCM's customers cross-margined non-proprietary futures positions with certain securities positions.[9]

The Commission has now adopted an extension of Appendix B which will subordinate claims for Link property to claims for non-Link property when a shortfall in Link property is greater than the shortfall, if any, of non-Link related property. The new amendment follows the guiding principles of Appendix B to Part 190: to assure that generally there is pro rata distribution to customers of the customer property in the bankrupt FCM's commodity interest estate and that the satisfaction of non-Link customer claims are not adversely

[1] The proposal to establish a Link arrangement between CBT and LIFFE was approved by the Commission on May 6, 1997.

[2] 62 FR 19530

[3] Designated CBT Contracts currently consist of U.S. Treasury Bond futures and futures options. At a later date, it is anticipated that 10 year U.S. Treasury Note futures and futures options and 5 year U.S. Treasury Note futures and futures options will be added.

[4] Designated LIFFE Contracts currently consist of German Government Bond futures and futures options. At a later date, it is anticipated that British Gilt futures and futures options and futures options on the Italian Government Bond will be added.

[5] Comm. Fut. L. Rep., ¶ 23,997 (December 3, 1987).

[6] 17 CFR part 190.

[7] 11 U.S.C. 761–766.

[8] 48 FR 8716 (March 1, 1983).

[9] 59 FR 17468 (April 13, 1994).

affected by a shortfall in the pool of Link property. The new amendment will assure that non-Link claims will never receive less than they would have received in the absence of the Link, but the distributional rule will not require Link-related claims to be subordinated in every instance.

Under new Framework 2, a bankruptcy trustee handling the commodity interest estate of a bankrupt FCM with Link property first will determine the respective shortfalls, if any, in the pools of Link customer and non-Link customer segregated funds. The trustee then will calculate the shortfall in each pool as a percentage of the segregation requirement for the pool. In making this determination, any shortfall in Link property held overseas could be offset in whole or in part by any excess funds held by the FCM in segregation in the United States.

If there is: (1) No shortfall in either of the two pools; (2) an equal percentage shortfall in the two pools; (3) a shortfall in the non-Link pool only; or (4) a greater percentage of shortfall in the non-Link pool than in the Link pool, then the two pools of segregated funds would be combined and Link customers and non-Link customers would share pro rata in the combined pool.[10]

However, if there were (1) a shortfall in the Link pool only, or (2) a greater percentage of shortfall in the Link pool than in the non-Link pool, then the two pools of segregated funds would not be combined.[11] Rather, Link customers would share pro rata in the pool of Link segregated funds (including any excess funds held by the FCM in segregation in the U.S.), while non-Link customers would share pro rata in the pool of non-Link segregated funds. Further, if a pool of property initially would be treated as if it had a shortfall because frozen or otherwise unavailable as the result of government action, and later the freeze were lifted or funds became available, subsequent distribution would not be permitted to result in customers for whom funds were frozen receiving any greater distribution than a pro rata distribution for Section 4d (segregated funds) customers as a whole. To facilitate this distributional framework, two subclasses of customer accounts, a Link account and a non-Link account are recognized.

Like the existing distribution system for a bankrupt FCM with customer claims related to cross-margining, the new amendment would assure that non-Link customers would never receive less than they would have received in the absence of the Link. The new Framework to the Appendix is intended to eliminate the need for each customer who seeks to trade pursuant to the Link to execute a separate subordination agreement.

IV. Effective Date

The Administrative Procedure Act requires the publication of a final substantive rule not less than 30 days before its effective date unless otherwise provided by the agency for good cause found and published with the rule. *See* 5 U.S.C. 553(d)(3) (1994). The Commission is making this amendment effective as of June 11, 1997. The Commission has determined that good cause exists to make this amendment to Appendix B of its bankruptcy rules effective upon publication because a distributional framework for property of a U.S. FCM that participates in the currently operational CBT–LIFFE trading link must be put into place immediately in the unlikely event such FCM should become bankrupt.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. § 601–611 (1988), requires that agencies consider the impact of those rules on small businesses. These rules will affect distributees of a bankrupt FCM's estate where the FCM has entered into a Link Clearing Agreement with a clearing member of LIFFE to transfer or accept the transfer of positions in Designated Link Contracts. The Chairperson, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. The new Framework will eliminate the need for customers of FCMs who wish to participate in the Link to execute a subordination agreement. Further, the distributional framework is intended to assure that non-Link customers of such FCM would not be disadvantaged by a shortfall in the pool of Link funds. Persons participating in the Link will be provided with special risk disclosure which includes disclosure covering the treatment of Link customer funds. The adoption of this bankruptcy distributional rule merely provides a framework for fairly distributing customer funds in the event of an FCM bankruptcy. As customers elect to undertake Link transactions customers need not take the risks of the Link if upon reviewing the relevant disclosures they do no elect to do so, thus the inception of Framework 2 of Appendix B. It should not in itself have a significant economic impact but rather should operate to facilitate the Link arrangement and to prevent unintended economic consequences to customers not electing to participate in the Link.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 13, 1996)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. While this rule has no burden, the group of rules (3038–0021) of which this is a part has the following burden:

Average burden hours per response—0.35
Number of Respondents—802
Frequency of response—on occasion

Copies of the OMB approved information collection package associated with this rule may be obtained from Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB Washington, D.C. 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 190

Bankruptcy.

Accordingly, the Commission pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 1a, 2(a), 4c, 4d, 4g, 5, 5a, 8a, 15, 19 and 20 thereof, 7 U.S.C. 1a, 2 and 4a, 6c, 6d, 6g, 7, 7a, 12a, 19, 23 and 24 (1994), and in the Bankruptcy Code and, in particular Sections 362, 546, 548, 556 and 761–766 thereof, 11 U.S.C. 362, 546, 548, 556 and 761–766 (1994), hereby amends Part 190 of Chapter I of title 17 of the Code of Federal Regulation as follows:

PART 190—BANKRUPTCY

1. The authority citation for Part 190 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7, 7a, 12, 19, 23 and 24 and 11 U.S.C. 362, 546, 548, 566 and 761–766.

2. Part 190 is amended by adding at the end of Appendix B the following Framework 2:

Appendix B to Part 190—Special Bankruptcy Distributions

* * * * *

Framework 2—Special Distribution of Customer Funds When FCM Participated in the Trading of Designated Link Contracts Pursuant to the CBT–LIFFE Link

The Commission has established the following distributional convention with

[10] See examples 1, 2, 5 and 6 of Appendix B to part 190, Framework 2.

[11] See examples 3 and 4 of Appendix B to part 190, Framework 2.

respect to Section 4d customer funds held by a futures commission merchant (FCM) that participates in the trading of Chicago Board of Trade (''CBT'')-designated contracts executed on the London International Financial Futures and Options Exchange (''LIFFE'') or LIFFE-designated contracts executed on CBT (''Designated Link Contracts'') pursuant to the CBT–LIFFE Link (''Link'') which shall apply if customers of the FCM have been provided with a notice which makes reference to this distributional rule and the form of such notice has been approved by the Commission by rule, regulation or order. The maintenance of property in a Link account would result in subordination of the claim for such property to certain non-Link customer claims in certain circumstances. This results in subclasses of customer accounts required to be segregated for purposes of Section 4d(2) of the Commodity Exchange Act: a Link account and a non-Link account (a person could hold each type of account), and results in two pools of customer segregated funds: a Link pool and a non-Link pool.

In the event that there is a shortfall in the non-Link pool of customer segregated funds, and there is no shortfall in the Link pool of customer segregated funds, customer net equity claims, whether or not they arise out of the Link subclass of accounts, will be combined and will be paid pro rata out of the total pool of available Link and non-Link customer funds. In the event that there is a shortfall in the Link pool of customer segregated funds, and there is no shortfall in the non-Link pool of customer segregated funds, customer net equity claims arising from the non-Link subclass of accounts shall be satisfied from the non-Link customer segregated funds, and customer net equity claims arising from the Link subclass of accounts shall be paid from the Link customer segregated funds (and, if applicable, any excess funds held by the FCM in segregation in the U.S.). Furthermore, in the event that there is a shortfall in both the non-Link and Link pools of customer segregated funds: (1) If the non-Link shortfall as a percentage of the segregation requirement in the non-Link pool is greater than or equal to the Link shortfall as a percentage of the segregation requirement in the Link pool, customer net equity claims will be paid pro rata; and (2) if the Link shortfall as a percentage of the segregation requirement in the Link pool is greater than the non-Link shortfall as a percentage of the segregation requirement of the non-Link pool, non-Link customer net equity claims will be paid pro rata out of the available non-Link segregated funds, and Link customer net equity claims will be paid pro rata out of the available Link segregated funds. In this way, non-Link customers would never be adversely affected by a Link shortfall.[1]

The following examples illustrate the operation of this distributional convention. The examples assume that the FCM has two customers, one with exclusively Link accounts and one with exclusively non-Link accounts. In practice, the FCM would have a customer omnibus account with a LIFFE clearing member or would itself be a LIFFE clearing member with its own customer omnibus account. Positions in Designated CBT Contracts traded at LIFFE and initially cleared by LCH would be allocated to this customer omnibus account; following the transfer of the positions via the Link, the FCM would allocate the positions and any gains or losses to its customers' accounts. Accordingly, a customer who trades Designated CBT Contracts at LIFFE may have the portion of his account which reflects his activity in the customer omnibus account at LIFFE deemed a Link account and the remainder of the account a non-Link account. Effectively this will result in the customer having two claims—one against Link property and one against non-Link property.[2]

	Non-link	Link	Total
1. Sufficient Funds to Meet Non-Link and Link Customer Claims:			
Funds in segregation	150	150	300
Segregation Requirement	150	150	300
Shortfall (dollars)	0	0	
Shortfall (percent)	0	0	
Distribution	150	150	300
There are adequate funds available, and both the non-Link and Link customer claims would be paid in full.			
2. Shortfall in Non-Link Only:			
Funds in segregation	100	150	250
Segregation Requirement	150	150	300
Shortfall (dollars)	50	0	
Shortfall (percent)	50/150=33.3	0	
Pro Rata (percent)	150/300=50	150/300=50	
Pro Rata (dollars)	125	125	
Distribution	125	125	250
Due to the non-Link account, there are insufficient funds available to meet both the non-Link and the Link customer claims in full. Each customer will receive his or her pro rata share of the funds available, or 50% of the $250 available, or $125.			
3. Shortfall in Link Only:			
Funds in segregation	150	100	250
Segregation Requirement	150	150	300
Shortfall (dollars)	0	50	
Shortfall (percent)	0	50/150=33.3	
Pro Rata (percent)	150/300=50	150/300=50	
Pro Rata (dollars)	125	125	
Distribution	150	100	250

[1] Because Link property will be located offshore, it is possible that such property could be frozen by governmental action or become unavailable as the result of sovereign events. In that situation, should such property subsequently become available, the Link property account may acquire no greater distributional share than Section 4d(2) (segregated funds) customers generally.

[2] Certain other property of the customers of the U.S. FCM also will be treated as ''Link property'' and part of the Link account for purposes of this Framework 2. In the case of Designated LIFFE Contracts traded on CBT, property received by the U.S. FCM to margin, guarantee or secure trades is included in the foreign futures and foreign options secured amount, pursuant to Commission Regulation 30.7. The Order approving the CBT/LIFFE Link permits BOTCC to commingle certain foreign currency with a Section 4d(2) account to permit certain property in excess of the required secured amount to be used to meet original margin requirements for U.S. contracts under Section 4d(2) of the Act. Such excess property held in a ''combined'' account but applied to margin requirements for U.S. contracts as Section 4d(2) property would also be ''Link property'' under this Framework.

	Non-link	Link	Total

Due to the Link account, there are insufficient funds available to meet both the non-Link and Link Customer claims in full. Accordingly, the Link funds and non-Link funds are treated as separate pools, and the non-Link customer will be paid in full, receiving $150, while the Link customer would receive the remaining $100.

4. Shortfall in Both, Link Shortfall Exceeding Non-Link Shortfall:

Funds in segregation	125	100	225
Segregation Requirement	150	150	300
Shortfall (dollars)	25	50	
Shortfall (percent)	25/150=16.7	50/150=33.3	
Pro Rata (percent)	150/300=50	150/300=50	
Pro Rata (dollars)	112.50	112.50	
Distribution	125	100	225

There are insufficient funds available to meet both the non-Link and Link customer claims in full, and the Link shortfall exceeds the non-Link shortfall. The non-Link customer will receive $125 available with respect to non-Link claims while the Link customer will receive the $100 available with respect to the Link claims.

5. Shortfall in Both, With Non-Link Shortfall Exceeding Link Shortfall:

Funds in segregation	100	125	225
Segregation Requirement	150	150	300
Shortfall (dollars)	50	25	
Shortfall (percent)	50/150=33.3	25/150=16.7	
Pro Rata (percent)	150/300=50	150/300=50	
Pro Rata (dollars)	112.50	112.50	
Distribution	112.50	112.50	225

There are insufficient funds available to meet both the non-Link and Link customer claims in full, and the non-Link shortfall exceeds the Link shortfall. Each customer would receive 50% of the $225 available, or $112.50.

6. Shortfall in Both, Non-Link Shortfall=Link Shortfall:

Funds in segregation	100	100	200
Segregation Requirement	150	150	300
Shortfall (dollars)	50	50	
Shortfall (percent)	50/150=33.3	50/150=33.3	
Pro Rata (percent)	150/300=50	150/300=50	
Pro Rata (dollars)	100	100	
Distribution	100	100	200

There are insufficient funds available to meet both the non-Link and the Link customer claims in full, and the non-Link shortfall equals the Link shortfall. Each customer will receive 50% of the $200 available, or $100.

7. Shortfall in Link Account Caused by Freeze That is Subsequently Lifted, Where Non-Link Account Had Actual Shortfall But Link Account Did Not Subsequent to Lifting of Freeze Order:

Funds in segregation	100	Frozen	100
Segregation Requirement	150	150	300
Shortfall (dollars)	50	150	
Shortfall (percent)	50/150=33.3	150/150=100	
Pro Rata (percent)	150/300=50	150/300=50	
Pro Rata (dollars)	50	50	
Initial Distribution	100	0	100
Freeze Lifted: Funds Previously Frozen	0	150	150
Subsequent Distribution	25	125	
Total Distribution	125	125	250

Through the time of the initial distribution, this situation would follow the pattern of Example 4 because the shortfall in the Link account was larger. After the freeze was lifted, it would follow the pattern of Example 2 because the shortfall in the non-Link account was larger.

These examples illustrate the principle that Pro rata distribution across both accounts is the preferable approach except when a shortfall in the Link account could harm non-Link customers. Thus, pro rata distribution occurs in Examples 1, 2, 5 and 6. Separate treatment of the Link and non-Link accounts occurs in Examples 3 and 4. In Example 7, separate treatment occurs where the funds are frozen. It is adjusted to become pro rata treatment after the freeze is lifted.

Issued in Washington, D.C. on June 5, 1997 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–15246 Filed 6–10–97; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 97–50]

RIN 1515–AC17

Archaeological and Ethnological Material From Peru

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the imposition of import restrictions on certain archaeological material of Peru's pre-Columbian past dating to the Colonial period and certain Colonial ethnological materials of Peru. These restrictions are being imposed pursuant to an agreement between the United States and Peru which has been entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the 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. The document also contains the Designated List of Archaeological and Ethnological Material which describes the articles to which the restrictions apply. This document also amends the Customs Regulations by removing the listing of Peru and identification of the cultural property to which emergency import restrictions have been imposed. Articles which had been protected under that provision are also covered under the new listing.

EFFECTIVE DATE: June 11, 1997.

FOR FURTHER INFORMATION CONTACT: *Legal Aspects:* Donnette Rimmer, Intellectual Property Rights Branch (202) 482–6960.

Operational Aspects: Louis Alfano, Commercial Enforcement, Office of Field Operations (202) 927–0005.

SUPPLEMENTARY INFORMATION:

Background

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, encourages clandestine looting of archaeological sites, and results in their illegal export and import.

The U.S. shares in the international concern for the need to protect endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce.

The U.S. joined international efforts and actively participated in deliberations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was 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''). This was done to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance not only to the nations whence they originate, but also to greater international understanding of mankind's common heritage. The U.S. is, to date, the only major art importing country to implement the 1970 Convention.

During the past several years, import restrictions have been imposed on a emergency basis on archaeological and ethnological artifacts of a number of signatory nations as a result of requests for protection received from those nations.

Peru has been one of the countries whose archaeological material has been afforded emergency protections. In T.D. 90–37, § 12.104g(b), Customs Regulations, was amended to reflect that archaeological material from the Sipan Archaeological Region forming part of the remains of the Moche culture received import protection under the emergency protection provisions of the Act. This protection was extended in T.D. 94–54. Import restrictions are now being imposed on certain pre-Columbian archaeological materials of Peru dating to the Colonial period and certain Colonial ethnological material from Peru as the result of a bilateral agreement entered into between the United States and Peru. This agreement was entered into on June 9, 1997, pursuant to the provisions of 19 U.S.C. 2602. Protection of the archaeological material from the Sipan region previously reflected in § 12.104g(b) will be continued through the bilateral agreement without interruption. Accordingly, § 12.104g(a) of the Customs Regulations is being amended to indicate that restrictions have been imposed pursuant to the agreement between the United States and Peru and the emergency import restrictions on certain archaeological material from Peru is being removed from § 12.104g(b) as those restrictions are now encompassed in § 12.104g(a).

This document contains the Designated List of Archaeological and Ethnological Material representing the cultures of the native peoples of Peru which are covered by the agreement. Importation of articles on this list is restricted unless the articles are accompanied by an appropriate export certificate issued by the Government of Peru.

In reaching the decision to recommend extension of protection, the Deputy Director, United States Information Agency, determined that, pursuant to the requirements of the Act, with respect to categories of pre-Columbian archaeological material proposed by the Government of Peru for U.S. import restrictions, ranging in date from approximately 12,000 B.C. to A.D. 1532, and including, but not limited to, objects comprised of textiles, metals, ceramics, lithics, perishable remains, and human remains that represent cultures that include, but are not limited to, the Chavin, Paracas, Vincus, Moche (including objects derived from the archaeological zone of Sipan), Viru, Lima, Nazca, Recuay, Tiahuanaco, Huari, Chimu, Chancay, Cuzco, and Inca; that the cultural patrimony of Peru is in jeopardy from the pillage of these irreplaceable materials representing pre-Columbian heritage; and that with respect to certain categories of ethnological material of the Colonial period, ranging in date from A.D. 1532 to 1821, proposed by the Government of Peru for U.S. import restrictions but limited to (1) objects directly related to the pre-Columbian past, whose pre-Columbian design and function are maintained with some Colonial characteristics and may include textiles, metal objects, and ceremonial wood, ceramic and stone vessels; and (2)