

inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be

submitted to Sharron Cook, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

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

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

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

Authority: 50 U.S.C. app. 2401 *et seq.*, 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3

CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); Notice of August 14, 1996 (61 FR 42527); Notice of August 13, 1997 (62 FR 43629, August 15, 1997); Notice of August 13, 1998 (63 FR 44121, August 17, 1998).

PART 744—[AMENDED]

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

(a) Revising the Indian entity name "Misrha Dhatu Nigam, Ltd. (MIDHANI), Hyderabad" to read "Mishra Dhatu Nigam, Ltd. (MIDHANI), Hyderabad; and

(b) Adding, in alphabetical order, the following entities:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	Federal Register citation
CHINA, PEOPLE'S REPUBLIC OF.	Beijing Aerospace Automatic Control Institute, 51 Yong Ding Road Beijing.	For all items subject to the EAR having a classification other than EAR99.	See § 744.3 of this part.	64 FR May 28, 1999.
	Beijing Institute of Structure and Environmental Engineering, a.k.a., Beijing Institute of Strength and Environmental Engineering, No. 36 Wanyuan Road Beijing.	For all items subject to the EAR having a classification other than EAR99.	See § 744.3 of this part.	64 FR May 28, 1999.
	China Aerodynamics Research and Development Center (CARDC) Sichuan Province.	For all items subject to the EAR having a classification other than EAR99.	See § 744.3 of this part.	64 FR May 28, 1999.
	*	*	*	*
	Northwest Institute of Nuclear Technology, in the Science Research, Xi'an, Shaanxi.	For all items subject to the EAR.	See § 744.2 of this part.	64 FR May 28, 1999.
	Shanghai Academy of Spaceflight Technology, Shanghai, Spaceflight Tower 222 Cao Xi Road Shanghai, 20023.	For all items subject to the EAR having a classification other than EAR99.	See § 744.3 of this part.	64 FR May 28, 1999.
*	*	*	*	
	Shanghai Institute of Space Power-Sources, Shanghai, 388 Cang Wu Rd Shanghai.	For all items subject to the EAR having a classification other than EAR99.	See § 744.3 of this part.	64 FR May 28, 1999.
*	*	*	*	

Dated: May 20, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99-13351 Filed 5-27-99; 8:45 am]

BILLING CODE 3510-33-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Representations and Disclosures Required by Certain IBs, CPOs and CTAs

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is adopting amendments to Commission Rules 30.5 and 30.6. The amendments will revise the procedure by which

foreign persons may obtain an exemption from registration under Rule 30.5 and will require foreign and domestic commodity pool operators and commodity trading advisors to provide U.S. retail customers with certain disclosures, regardless of whether they are trading on U.S. or foreign markets.

EFFECTIVE DATE: June 28, 1999.

FOR FURTHER INFORMATION CONTACT:

Laurie Plessala Duperier, Special Counsel, or Andrew Chapin, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418-5430.

SUPPLEMENTARY INFORMATION:

I. Proposed Rules

On January 11, 1999, the Commission published amendments to Part 30 of its regulations. Part 30 governs the solicitation and sale of foreign futures¹ and foreign option² contracts to foreign futures or foreign options customers.³ The activities which are subject to regulation and require registration under Part 30 include the solicitation or acceptance of funds, or the sale of stock or other forms of securities, for the purpose of trading any foreign futures or foreign option contract, as well as soliciting or entering into an agreement to direct a U.S. customer account or to guide a U.S. customer account by means of a systematic program that recommends specific transactions in foreign futures or options.⁴

Commission Rule 30.5 provides an exemption from the registration requirement for any person located outside of the United States, its territories or possessions who is required to be registered with the Commission under Part 30 of the regulations, other than a person required to be registered as a futures commission merchant ("FCM")—*i.e.*, an introducing broker ("IB"), commodity pool operator ("CPO") or commodity trading advisor ("CTA"). All persons who are registered or required to be registered under Rule 30.4, including persons who are exempt pursuant to Rule 30.5, must comply with the disclosure requirements of Rule 30.6.⁵

A. Rule 30.5

An exemption from registration pursuant to Rule 30.5 currently is effective when a foreign IB, CPO or CTA enters into a written agency agreement

¹ "Foreign futures" as defined in Part 30 means "any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade." Commission Rule 30.1(a) Commission rules referred to herein are found at 17 CFR Ch. I (1998).

² "Foreign option" as defined in Part 30 means "any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade, an 'option', 'privilege', 'indemnity', 'bid', 'put', 'call', 'advance guaranty', or 'decline guaranty', made or to be made on or subject to the rules of any foreign board of trade." Commission Rules 30.1(b).

³ Pursuant to Commission Rule 30.1(c), "Foreign futures or foreign options customers" means "any person located in the United States, its territories or possessions who trades in foreign futures or foreign options: Provided, That an owner or holder of a proprietary account as defined in paragraph (y) of § 1.3 of this chapter shall not be deemed to be a foreign futures or foreign options customer within the meaning of §§ 30.6 and 30.7 of this part.

⁴ See Commission Rule 30.4.

⁵ Persons claiming exemption pursuant to Rule 30.5 must also comply with Commission Rules 1.37 and 1.57. Rule 30.5(c).

with any of the persons or entities provided for by the rule and files the agreement with the National Futures Association ("NFA"). CPOs and CTAs who have obtained a Rule 30.5 exemption were requested by Commission staff to make certain representations, including the representation that they would solicit only qualified eligible participants ("QEPs") and qualified eligible clients ("QECs"), as those terms are defined in Rule 4.7. Pursuant to the Commission's September 11, 1997 delegation order to the NFA,⁶ NFA has continued to request these representations from Rule 30.5 exempt persons. Thus, most Rule 30.5 exempt persons have solicited only QEPs and QECs, not U.S. "retail customers," defined for the purpose of this **Federal Register** Release as U.S. customers who do not meet the definition of a QEP or QEC.

As described below, amended Rule 30.5 will change the procedure by which foreign IBs, CPOs and CTAs can obtain a Rule 30.5 exemption to ensure that exempt persons meet basic fitness requirements and consent to the jurisdiction of the Commission and United States federal and state courts with respect to activities governed by Part 30 of the regulations.

B. Rule 30.6

Rule 30.6 sets forth the disclosure requirements that apply to domestic and foreign IBs, CPOs and CTAs who are registered or required to be registered under Part 30 or who have a Rule 30.5 exemption. As currently written, Rule 30.6 does not distinguish between QEPs and QECs, who are sophisticated customers, and U.S. retail customers. To ensure that adequate risk disclosures are provided in U.S. retail customers and pool participants trading in foreign futures and option contracts, the Commission proposed to amend Rule 30.6(b)(2) to provide that CPOs and CTAs registered or required to be registered under Rule 30.4 or exempt from registration under Rule 30.5 must provide each prospective participant or prospective client with the Disclosure Document required by Rule 4.21 for CPOs and Rule 4.31 for CTAs, including the disclosure statement required by Rules 4.24 and 4.34, respectively, prior to engaging in the activities described in Rule 30.4. The proposed rule therefore provides that U.S. retail customers shall receive similar disclosures whether they trade on domestic or foreign markets.

As discussed below, the Commission also proposed that the required disclosures by CPOs and CTAs to QEPs

and QECs be decreased to recognize the sophistication of these persons. The Commission proposed to retain the disclosure language contained in Rule 4.24(b) and Rule 4.34(b)(2), however, to ensure that QEPs and QECs were apprised that there are different risks of trading foreign futures or foreign options as compared with U.S. futures and options.

II. Final Rules

The Commission received three comment letters on the proposed rulemaking: one from a U.S. commodity exchange; one from NFA; and one from a bar association. The commenters all supported the Commission's proposing the rule amendments. They commended the Commission for expanding Rule 30.5 to allow foreign exempt persons to solicit U.S. retail customers, not just QEPs and QECs. In addition, commenters were supportive of the requirement that all CPOs and CTAs, both foreign and domestic, provide certain disclosures to U.S. retail customers, regardless of whether those customers are trading on domestic or foreign markets. As one commenter stated, "[t]his requirement will level the playing field for foreign and domestic markets with respect to the amount of disclosure that must be provided to U.S. retail customers."

A. Rule 30.5 Petitions

Proposed Rule 30.5 is being adopted by the Commission with only minor revisions. It permits a foreign IB, CPO or CTA to solicit any U.S. customer—not just QEPs and QECs—after filing a petition that establishes that it is qualified for the exemption. A petitioner is required to show affirmatively that it qualifies for an exemption by representing that (i) the petitioner is located outside of the United States, its territories or possessions; (ii) the petitioner does not act as a CTA, CPO or IB, respectively, in connection with trading on or subject to the rules of a designated contract market in the United States by, for, on behalf of, or for the benefit of any U.S. customer, client or pool;⁷ and (iii) petitioner irrevocably consents to jurisdiction in the United States with respect to transactions subject to Part 30 of the regulations promulgated under the Commodity

⁷ This language differs slightly from the language of the proposed rule. The proposed rule required petitioners to represent that they would not "trade" on U.S. markets on behalf of U.S. foreign futures and option customers. The revised language makes clear that Rule 30.5 exempt persons may not engage in any of the activities of an IB, CPO or CTA on U.S. contract markets with U.S. customers, clients or pools.

Exchange Act ("CEA").⁸ To ensure the fitness of persons who conduct business with U.S. customers, the petitioner also must represent that it would not be statutorily disqualified from registration under Section 8a(2) or 8a(3) of the Act and has not been and would not be disqualified from registration or licensing by the home country regulator. If the petitioner or its activities are regulated by any government entity or self-regulatory organization, it must provide the name and address of such government entity or self-regulatory organization. In addition, the petitioner must specify whether it is applying for an exemption based on activities as an IB, CPO or CTA and provide the name, address and telephone number of its main business location.⁹

The amended rule also states that persons exempt under Rule 30.5 must use either a U.S. registered FCM or a foreign broker that has received confirmation of Rule 30.10 relief to carry accounts for, on behalf of or for the benefit of foreign futures or foreign options customers, a position previously set forth by Commission staff in 1989.¹⁰ For example, a Rule 30.5 exempt commodity pool operator may not operate a pool with U.S. foreign futures and options customers as participants unless the foreign futures and option trades entered into on behalf of the pool are intermediated on a fully disclosed basis by a U.S. registered FCM or a Rule 30.10 exempt foreign broker.

Two commenters questioned why a Rule 30.5 petition would not continue to be self-effectuating, but rather must be approved by NFA. One of these commenters also requested clarification regarding what type of review NFA would make, the time frame in which the review would be conducted, and whether NFA would notify the petitioner of the disposition of its application.

⁸These representations are consistent with the representations required of foreign firms claiming exemption from registration pursuant to Commission Rule 30.10. (See Commission Rule 30.10, Appendix A—Part 30, Interpretative Statement with Respect to the Commission's Exemptive Authority under § 30.10 of Its Rules).

⁹The new rule also clarifies that a Rule 30.5 exempt person must designate either a U.S. futures commission merchant through which business is done, a registered futures association or any other person located in the United States in the business of providing services as an agent for service of process to act as the agent for service of process in accordance with Rule 30.5(a).

¹⁰This rule codifies the position stated in CFTC Interpretative Letter No. 89-3 [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,416 (April 4, 1989). The text of the introductory language in final Rule 30.5 was modified from the language in the proposed rule to more closely parallel the language of the interpretative letter.

NFA currently reviews all petitions for confirmation of Rule 30.10 relief for completeness and conformity with the requisite representations and then notifies the foreign firm whether its petition is approved, denied, or is deficient in any way. The NFA review performs a vital function by ensuring that the petitioner firm has consented to U.S. jurisdiction and made other required representations prior to the firm's soliciting U.S. customers for trading on foreign markets. Since September 1997 when the Commission delegated this responsibility to NFA, NFA has carried out its functions in this regard thoroughly and expeditiously. In those cases where a Rule 30.10 firm has made all of the appropriate representations, NFA usually confirms relief to the firm within 30 days.

Proposed Rule 30.5 sets forth a parallel procedure for Rule 30.5 exemptions. NFA will review the Rule 30.5 petition to ensure that all of the representations required by the rule have been made and to verify that a proper agreement with a U.S. agent for service of process is on file with NFA. NFA's role will be solely to verify that the petitioner has complied with all aspects of the rule. If the petition is deficient, NFA will notify the petitioner of the deficiency. If the petition is complete, NFA will confirm to the petitioner that it has a Rule 30.5 exemption. As is the case with Rule 30.10 exemptions, the Commission believes that it is important for NFA to verify that a Rule 30.5 petitioner has made all of the necessary representations and consents prior to engaging in any of the activities described in Rule 30.4. Accordingly, the Commission does not believe that the Rule 30.5 petition should be self-effectuating and has retained in the final rule the requirement that NFA review Rule 30.5 petitions.

The Commission requested comment regarding who should sign a Rule 30.5 petition on behalf of foreign entities that may not fit within traditional U.S. legal structures. One commenter proposed that the rule allow "a natural person involved in the management of the petitioner who is legally authorized under local law to make binding agreements and representations for the applicant" to sign the petition. The Commission has incorporated similar language into Rule 30.5(e)(7).

B. Rule 30.6 Disclosures

As an initial matter, the Commission wishes to reiterate that the disclosure requirements in Rule 30.6(b), both

currently and as amended,¹¹ apply to both domestic and foreign CPOs and CTAs, whether registered with the Commission or exempt pursuant to Rule 30.5, that operate pools or advise clients that trade in foreign futures and options. Thus, CPOs and CTAs located in the United States with foreign futures and options customers must comply with the requirements of Part 4 and the requirements of Part 30.

Amended Rule 30.6(b)(2) requires domestic and foreign CPOs and CTAs to provide U.S. foreign futures and options customers that are not QEPs or QECs with a disclosure document in accordance with Rule 4.21 for CPOs and 4.24 for CTAs.¹² These Disclosure Documents should be filed with NFA in accordance with Rules 4.26 and 4.36 and in compliance with the order issued by the Commission in conjunction with this **Federal Register** release, which delegates to NFA the authority to review disclosures documents filed pursuant to Rule 30.6.

With regard to QEPs and QECs, CPOs and CTAs registered or required to be registered or exempt pursuant to Rule 30.5 must provide to QEPs and QECs that trade on domestic markets the statements set forth in Rule 4.7(a)(2)(i)(A) and 4.7(b)(2)(i)(A), respectively, which disclose generally that the materials being provided to the participant or client are not required to be and have not been reviewed by the Commission ("the general statement"). In addition, Rule 30.6 currently requires domestic and foreign CPOs and CTAs to provide a lengthy disclosure statement to all U.S. foreign futures and options customers, including QEPs and QECs, in accordance with Rule 4.24(b) and 4.34(b). To better harmonize the requirements of Part 4 and Part 30, Rule 30.6(b)(1) will require both registered and Rule 30.5 exempt CPOs and CTAs to provide the general statement to QEPs and QECs trading foreign futures and options. It also will pare down the current disclosure statement requirement by specifying that CPOs and CTAs must provide QEPs and QECs with the specific disclosure regarding the risks of trading in foreign futures and options in Rules 4.24(b)(2) and 4.34(b)(2), rather than the entire

¹¹The text of Rule 30.6(b)(1) and (b)(2) was modified in the final rule to refer back to Rule 30.4 in describing to whom the disclosure requirements apply, rather than reiterating the registration requirements again in the text of Rule 30.6. The change is technical and non-substantive.

¹²The disclosure requirements for IBs that solicit or accept orders from U.S. foreign futures and option customers are set forth in Rule 30.6(a), which is not being amended in this rulemaking.

disclosure statement contained in Rules 4.24(b) and 4.34(b).

Even though Rule 30.6(b)(1) as proposed would lessen the current disclosure requirement with regard to QEPs and QECs, two commenters expressed the view that, since QEPs and QECs are sophisticated investors, the Commission should not require any disclosure other than the general statement required by Rules 4.7(a)(2)(i)(A) and 4.7(b)(2)(i)(A). While QEPs and QECs may be sophisticated investors for purposes of Rule 4.7, they are not necessarily sophisticated and/or knowledgeable regarding the different types of risks present when trading on foreign boards of trade. As the Commission recently learned in the wake of the collapse of Griffin Trading Company, many Griffin customers, including CTAs and other sophisticated investors, claimed not to be fully aware of the risks that they undertook when trading on foreign markets. In particular, certain "sophisticated" clients did not appear to understand that the Commission had no legal ability to compel actions on foreign exchanges or to compel actions by foreign persons who held U.S. foreign futures and options customers' funds.

Recent Commission experience confirms that it is necessary to require disclosure regarding the risks of trading on foreign boards of trade to QEPs and QECs, as well as to U.S. retail customers. Moreover, the Commission notes that, since the required disclosure is only three sentences long and is less disclosure than that which is currently required, it does not impose a significant burden on CPOs and CTAs. Therefore, after consideration of the comments, the Commission has decided to retain the requirement in Rule 30.6(b)(1) that CPOs and CTAs provide a risk disclosure statement to QEPs and QECs regarding the risk of trading in foreign futures and options.

C. Effect of the Amendments

The amendments to Rules 30.5 and 30.6 will apply to all regulated activities with all new foreign futures and foreign options customers as of the effective date of the new rules. An IB, CPO or CTA currently exempt under Rule 30.5 will not be required to file a new Rule 30.5 petition for exemption. However, all CPOs and CTAs will be required to provide all new prospective poll participants or new prospective customers with the disclosures required by Rule 30.6.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-611, requires that agencies, in adopting 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.¹³ The Commission previously has determined that registered CPOs are not small entities for the purpose of the RFA.¹⁴ And although IBs might be small entities for purposes of the rule, the disclosure required to IBs is not changed with this rulemaking, and thus the new rules will not have any impact on domestic IBs.

With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule.¹⁵ In this regard, the Commission notes that the regulations with respect to CTAs' activities relating to foreign futures and foreign option contracts are essentially the same as those contained in Part 4 governing CTAs in connection with their activities relating to futures contracts and options traded or executed on or subject to the rules of a contract market designated by the Commission. The Commission has previously determined that the disclosure requirements in Part 4 governing CTAs will have a significant economic impact on a substantial number of small entities.¹⁶ In fact, Rule 4.31, which governs the disclosure requirements for CTAs and to which Rule 30.6(b) refers, was revised in 1995 for the purpose of reducing the number of disclosures required and focusing on succinct disclosure of material information. The Commission determined that the revised rule reduced rather than increased the requirements of former Rule 4.31. Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these regulations will not have a significant economic impact on a substantial number of small entities.

¹³ 47 FR 18618-18621 (April 30, 1982).

¹⁴ 47 FR 18619-18620.

¹⁵ 47 FR 18618-18620.

¹⁶ See 60 FR 38146, 38181 (July 25, 1995) and 48 FR 35248 (August 3, 1983).

B. Paperwork Reduction Act

When publishing final rules, the Paperwork Reduction Act of 1995¹⁷ ("Act") imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Act. In compliance with the Act, these final rules and/or their associated information collection requirement inform the public of:

(1) The reasons the information is planned to be and/or has been collected; (2) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency; (3) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden); (4) whether responses to the collection of information are voluntary, required to obtain or retain a benefit or mandatory; (5) the nature and extent of confidentiality to be provided, if any; and (6) that fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

The Commission previously submitted these rules in proposed form and their associated information collection requirement to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with these rules and assigned OMB control number 3038-0023 to these rules. The burden associated with this entire collection of which these proposed rules are a part, is as follows:

Average burden hours per response: 16.13.

Number of respondents: 73,435.

Frequency of response: On occasion.

The burden associated with these specific proposed rules is as follows:

Rule 30.5—

Average burden hours per response: 100.

Number of Respondents: 65.

Frequency of response: On occasion.

Rule 30.6(b)(1)—

Average burden hours per response: .5.

Number of Respondents: 40.

Frequency of response: On occasion.

Rule 30.6(b)(2)—

Average burden hours per response: 3.0.

Number of Respondents: 5.

Frequency of response: On occasion.

Persons wishing to comment on the information which is required by these final rules should contact the Desk

¹⁷ Pub. L. 104-13 (May 13, 1995).

Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418-5160.

List of Subjects in 17 CFR Part 30

Definitions, Foreign futures, Foreign options, Reporting and recordkeeping requirements, Registration requirements, Risk disclosure statements, Treatment of foreign futures and options secured amount, Customer protection.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 4(b), 4c and 8a thereof, 7 U.S.C. 2, 6(b), 6c and 12a (1998), and pursuant to the authority contained in 5 U.S.C. 552 (1998), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 30—FOREIGN FUTURES AND OPTIONS TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

2. Section 30.5 is amended by adding introductory text, revising paragraph (a) and adding paragraph (e) to read as follows:

§ 30.5 Alternative procedures for non-domestic persons.

Any person not located in the United States, its territories or possessions, who is required in accordance with the provisions of this part to be registered with the Commission, other than a person required to be registered as a futures commission merchant, may apply for an exemption from registration under this part by filing a petition for exemption with the National Futures Association and designating an agent for service of process, as specified below. A person who receives confirmation of an exemption pursuant to this section must engage in all transactions subject to regulation under Part 30 through a registered futures commission merchant or a foreign broker who has received confirmation of an exemption pursuant to § 30.10 in accordance with the provisions of § 30.3(b).

(a) *Agent for service of process.* Any person who seeks exemption from registration under this part shall enter into a written agency agreement with the futures commission merchant located in the United States through

which business is done, with any registered futures association or any other person located in the United States in the business of providing services as an agent for service of process, pursuant to which agreement such futures commission merchant or other person is authorized to serve as the agent of such person for purposes of accepting delivery and service of communications issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer. If the written agency agreement is entered into with any person other than the futures commission merchant through which business is done, the futures commission merchant or foreign broker who has received confirmation of an exemption pursuant to § 30.10 with whom business is conducted must be expressly identified in such agency agreement. Service or delivery of any communication issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer, pursuant to such agreement, shall constitute valid and effective service or delivery upon such person. Unless otherwise specified by the Commission, the agreement required by this section shall be filed with the Vice President-Registration, National Futures Association, 200 West Madison Street, Chicago, Illinois 60606, with a copy to the Vice President-Compliance, National Futures Association. For the purposes of this section, the term "communication" includes any summons, complaint, order, subpoena, request for information, or notice, as well as any other written document or correspondence relating to any activities of such person subject to regulation under this part.

(e) *Petition for exemption.* Any person seeking an exemption from registration as an introducing broker, commodity pool operator or commodity trading advisor under this section must file a petition for exemption, which will be granted or denied based on compliance with § 30.5(a) and the provision of this paragraph. The petition must:

- (1) Be in writing;
- (2) Provide the name, main business address and main business telephone number of the petitioner;
- (3) Represent that:
 - (i) The petitioner is located outside of the United States, its territories or possessions;
 - (ii) The petitioner does not act as an introducing broker, commodity pool

operator or commodity trading advisor, respectively, in connection with trading on or subject to the rules of a designated contract market in the United States by, for, on behalf of, or for the benefit of any U.S. customer, client or pool; and

(iii) The petitioner irrevocably agrees to the jurisdiction of the Commission and state and federal courts in the United States with respect to activities and transactions subject to this part;

(4) Represent that the petitioner would not be statutorily disqualified from registration under Section 8a(2) or 8a(3) of the Commodity Exchange Act and that the petitioner is not disqualified from registration pursuant to the laws or regulations of its home country;

(5) If the petitioner or its activities are regulated by any government entity or self-regulatory organization, state the name and address of such government entity or self-regulatory organization;

(6) State whether the petitioner is applying for a § 30.5 exemption from registration as an introducing broker, commodity pool operator or commodity trading advisor;

(7) Be signed as follows: If the petitioner is a sole proprietorship, by the sole proprietor; if a partnership, by a general partner; if a corporation, by the chief executive officer or other person(s) legally authorized to bind the corporation; if any other business structure, by such person or persons involved in the management of the petitioner and legally authorized to bind the petitioner; and

(8) Be filed with the Vice President-Registration, National Futures Association, 200 West Madison Street, Chicago, Illinois 60606.

3. Section 30.6 is amended by revising paragraph to read as follows:

§ 30.6 Disclosure.

* * * * *

(b) *Commodity pool operators and commodity trading advisors.* (1) With respect to qualified eligible participants, as defined in § 4.7(a)(1)(ii) of this chapter, a commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to § 30.5, may not, directly or indirectly, engage in any of the activities described in § 30.4(c) unless the commodity pool operator, at or before the time it engages in such activities, first provides each prospective qualified eligible participant with the Risk Disclosure Statement set forth in § 4.24.(b)(2) of this chapter and the statement in § 4.7(a)(2)(i)(A) of this chapter. With respect to qualified eligible clients, as defined in § 4.7(b)(1)(ii) of this chapter,

a commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to § 30.5, may not, directly or indirectly, engage in any of the activities described in § 30.4(d) unless the commodity trading advisor, at or before the time it engages in such activities, first provides each qualified eligible client with the Risk Disclosure Statement set forth in § 4.34(b)(2) of this chapter and the statement in § 4.7(b)(2)(i)(A) of this chapter.

(2) With respect to participants who do not satisfy the requirements of qualified eligible participants, as defined in § 4.7(a)(1)(ii) of this chapter, a commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to § 30.5, may not, directly or indirectly, engage in any of the activities described in § 30.4(c) unless the commodity pool operator, at or before the time it engages in such activities, first provides each prospective participant with the Disclosure Document required to be furnished to customers or potential customers pursuant to § 4.21 of this chapter and files the Disclosure Document in accordance with § 4.26 of this chapter. With respect to clients who do not satisfy the requirements of qualified eligible clients, as defined in § 4.7(b)(1)(ii) of this chapter, a commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to § 30.5, may not, directly or indirectly, engage in any of the activities described in § 30.4(d) unless the commodity trading advisor, at or before the time it engages in such activities, first provides each prospective client with the Disclosure Document required to be furnished to customers or potential customers pursuant to § 4.31 of this chapter and files the Disclosure Document in accordance with § 4.36 of this chapter.

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Dated: May 21, 1999.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99-13573 Filed 5-27-99; 8:45 am]

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DEPARTMENT OF STATE

22 CFR Parts 41 and 42

[Public Notice 3048]

Visas: Documentation of Nonimmigrants—Passport and Visa Waivers; Deletion of Obsolete Visa Procedures and Other Minor Corrections

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Final Rule.

SUMMARY: This rule revises the Department's regulations regarding the waiver of the passport and nonimmigrant visa requirement for aliens applying for entry to the United States in an unforeseen emergency. This revision is necessary to make clear that the passport and/or visa are required but, in cases of unforeseen emergency, the alien may apply for a waiver.

This rule also removes the Department's regulation regarding the transfer of nonimmigrant visas in light of the Department's decision to treat a request for the transfer of a visa to a new travel document as an application for a new visa.

Finally, this rule corrects an existing regulation relating to aliens traveling with extended-validity immigrant visas to make clear that a consular officer need reinterview only aliens who intend to enter the United States more than six months after the date of visa issuance.

EFFECTIVE DATE: May 28, 1999.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, (202) 663-1204.

SUPPLEMENTARY INFORMATION:

Waiver of Passport and Visa

The Department's regulation at 22 CFR 41.2(j), as currently worded, incorrectly implies that a passport and visa are not required where an alien is applying for admission in cases of unforeseen emergency. In fact, INA 212(a)(7)(B)(i) does require a passport and visa, however, INA 212(d)(4) provides for a waiver of this requirement in certain specified circumstances. Under the provisions of INA 212(d)(4), the Attorney General and the Secretary of State, acting jointly, may waive the passport and/or visa requirements of INA 212(a)(7)(B)(i) on the basis of an unforeseen emergency. On January 11, 1994 [59 FR 1473], the Department of State published a rule that authorized the district director of the Immigration and Naturalization Service to exercise the Department of

State's function with respect to the passport and visa waiver under the provisions of INA 212(d)(4)(A). The Department makes clear in this rule that only if the alien applies for and is granted such a waiver by the INS district director may an alien be admitted to the United States without a passport and/or visa.

Transfer of Nonimmigrant Visas

The Department's regulation at 22 CFR 41.114 addresses the transfer of a valid nonimmigrant visa from one travel document to another. In accordance with this regulation, the consular officer could transfer a visa without fee to a different travel document if the visa remained valid and the consular officer determined that the applicant remained eligible. In fact, such cases are technically reapplications since consular officers readjudicate the case to determine the alien's eligibility to receive a visa and, if the alien is eligible, issue an entirely new visa. It is appropriate for the Department to charge a processing fee for such readjudication, as well as any applicable reciprocity fee. The Department, therefore, is removing the regulation concerning transfer of visas. Applicants who do not wish to apply for new visas, may travel with their old, but still valid visas, and a valid passport.

Extended Visa Validity

On May 21, 1997 [62 FR 27693], the Department amended 42.72(e)(4) to reflect the new immigrant visa validity of 6 months. In updating this regulation, the addition of the word "no" unintentionally changed the meaning of this regulation which, as amended, implied that an alien must appear for a second interview before traveling to the United States even if the alien is traveling within the six-month visa validity. This was not the Department's intent. This rule corrects this error.

Regulatory Analysis and Notices

Final Rule

The Department is publishing this rule as a final rule under the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3) and 553(d)(3). The clarification of the waiver requirement is necessary to conform to the INS regulation and practice. The abolition of transferred visas reflects the costs of processing a machine-readable visa for the new document, and the law now requires a fee for such service. The clarification of the period before a second visa interview is required benefits the applicant.