

Rules and Regulations

Federal Register

Vol. 62, No. 111

Tuesday, June 10, 1997

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96-ACE-25]

Amendment to Class E Airspace, Sioux City, IA

AGENCY: Federal Aviation Administration [FAA] DOT.

ACTION: Direct final rule; removal.

SUMMARY: This action removes the direct final rule published on January 27, 1997 (62 FR 3786) regarding the Class E airspace area at Sioux City, IA. The direct final rule is being removed because the airspace was previously published in the **Federal Register** on August 6, 1996 (61 FR 40719), as Docket Number 96-ACE-11, effective January 30, 1997.

EFFECTIVE DATE: The removal is effective June 10, 1997.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division Operations Branch, ACE-530C, Federal Aviation Administration, 601 E. 12th Street, Kansas City, MO 64106; telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

The Rule

On January 27, 1997, a direct final rule; request for comments was published in the **Federal Register** to change the Class E4 and E5 airspace area at Sioux City, IA. The Class E4 and E5 airspace was published in the **Federal Register**, August 6, 1996 (61 FR 40719), as Docket Number 96-ACE-11 and was effective January 30, 1997.

Conclusion

In consideration of the aforementioned publication in the **Federal Register**, action is being taken to remove this amendment as described in Docket Number 96-ACE-25.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Removal of the Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket Number 96-ACE-25, as published in the **Federal Register** on January 27, 1997 (62 FR 3786), is hereby removed.

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

Issued in Kansas City, MO, on May 9, 1997.

Jack L. Skelton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97-14983 Filed 6-9-97; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Alternative Method of Compliance With Requirements for Delivery and Retention of Monthly, Confirmation and Purchase-and-Sale Statements

AGENCY: Commodity Futures Trading Commission.

ACTION: Advisory; alternative method of compliance.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is issuing guidance concerning compliance with the requirements of Commission Rules 1.33 and 1.46 for the delivery of confirmation, purchase-and-sale and monthly statements, and Commission rule 1.31 for related recordkeeping requirements. A futures commission merchant ("FCM") may deliver such statements to any customer solely by means of electronic media, once the FCM obtains the revocable consent of the customer to receipt of electronic delivery. An FCM also may maintain related records either pursuant to Rule 1.31 or as allowed by Securities and Exchange Commission ("SEC") regulations.

EFFECTIVE DATE: June 10, 1997.

FOR FURTHER INFORMATION CONTACT:

Susan C. Ervin, Deputy Director/Chief Counsel; Lawrence B. Patent, Associate Chief Counsel; or Natalie A. Markman, Attorney-Advisor, Division of Trading

and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21 St. Street, NW., Washington, DC 20581. Telephone: (202) 418-5450.

SUPPLEMENTARY INFORMATION:

I. Introduction

By this release, the Commission is issuing guidance to FCMs concerning alternative methods of compliance by FCMs with requirements pertaining to the delivery of specified customer account documents and related recordkeeping requirements. Commission Rules 1.33 and 1.46 require an FCM to provide certain statements to customers in connection with their accounts.¹ Specifically, rule 1.33(a) requires an FCM to furnish promptly to each customer a written monthly account statement, or a quarterly statement where an account has no open positions at the end of the statement period and there have been no changes to the account balance since the prior statement period.² rule 1.33(b) requires an FCM to provide to each customer a

¹ Commission rules referred to herein are found at 17 CFR Ch. I (1996).

² Commission Rule 1.33(a) states, among other things, that each FCM must promptly furnish in writing to each commodity, option, foreign futures and foreign options customer, as of the close of the last business day of each month or as of any regular monthly date selected, except for accounts in which there are neither open positions at the end of the statement period nor any changes to the account balance since the prior statement period, but in any event not less frequently than once every three months, a statement that clearly shows:

(1) For each commodity customer and foreign futures customer—(i) The open contracts with prices at which acquired; (ii) The net unrealized profits or losses in all open contracts marked to the market; . . . (iii) Any customer funds carried with the [FCM]; and (iv) A detailed accounting of all financial charges and credits to such customer accounts during the monthly reporting period * * * and

(2) For each option customer and foreign options customer—(i) All commodity options and foreign options purchased, sold, exercised, or expired during the monthly reporting period, identified by underlying futures contract or underlying physical, strike price, transaction date, and expiration date; (ii) The open commodity option and foreign option positions carried for such customer as of the end of the monthly reporting period identified by underlying futures contract or underlying physical, strike price, transactions date, and expiration date; (iii) All open commodity option and foreign option positions marked to the market and the amount each position is in the money, if any; (iv) Any customer funds carried in such customer's account(s); and (v) A detailed accounting of all financial charges and credits to such customer's account(s) during the monthly reporting period * * *.

written conformation of each commodity interest transaction executed on the customer's behalf not later than the business day following the transaction.³ Rule 1.46(a) requires an FCM to furnish promptly to each customer a purchase-and-sale statement when commodity interest contracts are closed out by an offsetting transaction.⁴ Rule 1.31, the Commission's general recordkeeping rule, requires an FCM to retain copies of these statements for a period of five years.

On May 2, 1996, the Division of Trading and Markets ("Division") issued Advisory 22-96 to provide

³ Commission Rule 1.33(b) states, among other things, that each FCM must, not later than the next business day after any commodity futures or commodity option transaction, including any foreign futures or foreign options transactions, furnish:

(1) To each commodity customer, a written confirmation of each commodity futures transaction caused to be executed by it for the customer [;]

(2) To each option customer, a written conformation of each commodity option transaction, containing [certain] information [; and]

(3) To each option customer, upon the expiration or exercise of any commodity option, a written confirmation statement thereof, which statement shall include the date of such occurrence, a description of the option involved, and, in the case of exercise, the details of the futures or physical position which resulted therefrom including, if applicable, the final trading date of the contract for future delivery underlying the option. Notwithstanding the above provisions of Rule 1.33(b) (1)-(3), a commodity futures or commodity option transaction that is caused to be executed for a commodity pool need be confirmed only to the operator of the commodity pool.

⁴ Commission Rule 1.46(a) states that, except with respect to purchases or sales that are for omnibus accounts, any FCM who, on or subject to the rules of a contract market:

(1) Purchases any commodity for future delivery for the account of any customer when the account of such customer at the time of such purchase has a short position in the same future of the same commodity on the same market;

(2) Sells any commodity for future delivery for the account of any customer when the account of such customer at the time of such sale has a long position in the same future of the same commodity on the same market;

(3) Purchases a put or call option for the account of any option customer when the account of such option customer at the time of such purchase has a short put or call option position with the same underlying futures contract or same underlying physical, strike price, expiration date and contract market as that purchased; or

(4) Sells a put or call option for the account of any option customer when the account of such option customer at the time of such sale has a long put or call option position with the same underlying futures contract or same underlying physical, strike price, expiration date and contract market as that sold—shall on the same day apply such purchase or sale against such previously held short or long futures or option position, as the case may be, and shall, for futures transactions, promptly furnish such customer a statement showing the financial result of the transactions involved and, if applicable, that the account was introduced to the [FCM] by an introducing broker ["IB"] and the names of the [FCM] and [IB]. Commission rules 1.46 (c), (d) and (e) provided for certain exceptions to this requirement.

guidance to registered FCMs concerning the delivery of daily confirmation statements by facsimile transmission.⁵ The Division stated that FCMs were permitted to fulfill their obligations under Rule 1.33(b) by sending daily confirmation statements solely by means of facsimile transmission to customers who were either: (1) "eligible swap participants," as defined by Commission Rule 35.1(b)(2);⁶ or (2) "institutional customers," as defined by Federal Reserve Board ("FRB") Rule

⁵ CFTC Advisory No. 22-96, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,679 (May 2, 1996). Previously, on February 28, 1996, the Division has issued a no-action letter permitting an FCM to deliver confirmation statements by facsimile transmission to institutional customers without mailing such statements in hard copy form, subject to certain conditions. CFTC Interpretative Letter No. 96-18, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,630 (February 28, 1996).

⁶ The following are eligible swap participants under Commission Rule 35.1(b)(2):

(1) a bank or trust company (acting on its own behalf or on behalf of another eligible swap participant);

(2) a savings association or credit union;

(3) an insurance company;

(4) an investment company subject to regulation under the Investment Company Act of 1940 ("ICA") or a foreign person performing a similar role or function subject as such to foreign regulation;

(5) a commodity pool, formed and operated by a person subject to regulation under the Commodity Exchange Act ("Act") or a foreign person performing a similar role or function subject as such to foreign regulation, that has assets exceeding \$5,000,000;

(6) a corporation, partnership, proprietorship, organization, trust or other entity (a) with assets exceeding \$10,000,000, (b) with a net worth of \$1,000,000 that enters into the swap agreement in connection with its business, or (c) whose obligations under the swap agreements are guaranteed by another eligible swap participant listed above or under item (8) below;

(7) an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to foreign regulation, with assets exceeding \$5,000,000, or whose investment decisions are made by a bank, trust company or insurance company, or investment adviser or commodity trading advisor ("CTA") subject to regulation;

(8) any governmental entity or political subdivision thereof, or any multinational or supranational entity, or any instrumentality, agency or department of any of the foregoing;

(9) a broker-dealer subject to regulation under the Securities Exchange Act of 1934 ("SEA") or a foreign person performing a similar role or function subject as such to foreign regulation;

(10) an FCM, floor broker or floor trader subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation; or

(11) a natural person with assets exceeding \$10,000,000.

An investment company, commodity pool or other entity is not an eligible swap participant if it is formed solely for the purpose of constituting an eligible swap participant. A broker-dealer, FCM, floor broker or floor trader that is a natural person or proprietorship also must meet the requirements of either item (6) or (11).

225.2(g).⁷ The relief was subject to the following conditions: (1) FCMs were required to obtain the written, hard copy, revocable consent of eligible customers to receipt of confirmation statements solely by facsimile transmission; and (2) FCMs were required to continue to furnish monthly account statements to such customers in hard copy form and to maintain the confirmation statements in accordance with the standards set forth in Commission Rule 1.31.⁸

In response to recent requests from the Futures Industry Association ("FIA"),⁹ the Commission is issuing this Advisory to facilitate further the use by FCMs of electronic media to deliver confirmation, purchase-and-sale and monthly statements (collectively, "Statements") to customers, and to provide guidance concerning FCMs' recordkeeping obligations with respect to such Statements. For purposes of this release, the term "electronic" media encompasses facsimiles, electronic mail, Internet World Wide Web sites and computer networks (e.g., local area networks and commercial on-line

⁷ 12 CFR 225.2(g) (1996). The following are institutional customers under this FRB rule:

(1) a bank (acting in an individual or fiduciary capacity), savings and loan association, insurance company, investment company registered under the ICA, or corporation, partnership, proprietorship, organization or institutional entity with a net worth exceeding \$1,000,000;

(2) an employee benefit plan with assets exceeding \$1,000,000, or whose investment decisions are made by a bank, insurance company or investment adviser registered under the Investment Advisers Act of 1940;

(3) a natural person whose net worth (or joint net worth with a spouse) exceeds \$1,000,000;

(4) a broker-dealer or option trader registered under the SEA, or other securities, investment or banking professional; or

(5) an entity whose equity owners are institutional customers.

⁸ In Advisory 22-96, the Division also confirmed that FCMs would be permitted to fulfill their obligations under Rule 1.33(d) with respect to furnishing confirmation and purchase-and-sale statements to account controllers by transmitting such statements solely by facsimile, irrespective of whether the customer met the criteria for eligible swap participants or institutional customers or had elected to receive confirmation statements by facsimile. This aspect of the relief was subject to the following conditions. (1) FCMs were required to continue to furnish monthly account statements to the account controllers in hard copy form and obtain the account controllers' written, hard copy, revocable consent to receive confirmation and purchase-and-sale statements solely by facsimile transmission; and (2) account controllers were required to maintain the confirmation and purchase-and-sale statements in accordance with the standards set forth in Commission Rule 1.31. The Division noted, however, that the relief granted under Rule 1.33(d) with regard to account controllers did not affect FCMs' obligations to provide confirmation and purchase-and-sale statements to their customers under Rule 1.33(b).

⁹ The FIA is a trade association whose membership consists primarily of FCMs.

services). FCMs who choose to provide Statements electronically should consider several factors in determining whether a particular electronic medium is appropriate: (1) The medium should convey the same information and achieve the same objectives as a paper-based medium;¹⁰ (2) the customer should have adequate notice that Statements are available electronically;¹¹ (3) delivery should not be unduly burdensome to customers; and (4) the accessibility of Statements should be comparable to that of documents in hard copy form, which can be read and re-read.

The Commission believes that the alternative method of compliance discussed herein will benefit both customers and FCMs by providing for more expeditious receipt of the Statements by customers and more cost-effective methods of transmission and storage for FCMs.¹² This action constitutes the latest in a series of measures the Commission has taken to recognize advances in computers and related electronic media technology and to facilitate the use of such technology where adequate measures exist to safeguard customer interests.¹³

¹⁰ Statements delivered electronically must satisfy the requirements of Commission Rules 1.33 and 1.46.

¹¹ Unlike postal mail to a business or residential address, which accomplishes delivery and notice of delivery simultaneously, electronic delivery of a document may result in availability of a document to a particular recipient in a medium that the recipient must take affirmative steps to access in order to receive notice that the document is available and to view or download the document. Consequently, in establishing procedures for electronic delivery and obtaining the customer's consent to electronic delivery, firms must assure that customers understand and consent to the particular electronic delivery procedure to be used, e.g., electronic mail delivered on a specified schedule.

¹² According to the FIA, FCMs already are supplying Statements electronically in response to customer demand for rapid dissemination of information. In order to comply with Commission regulations, however, the FCMs also are mailing duplicate Statements in hard copy form. The Commission notes that some customers may wish to receive Statements (or some categories of Statements) by means of electronic delivery and in hard copy form. In such instances, FCMs must deliver Statements in hard copy form and may choose to enter into an agreement to provide Statements by means of electronic media as well.

¹³ See, e.g., 62 FR 18265 (April 15, 1997) (adopting a program for commodity pool operators ("CPOs") and CTAs to file Disclosure Documents with the Commission electronically on a voluntary basis); 62 FR 10441 (March 7, 1997) (providing for the use of personal identification numbers by FCMs and IBs in making attestations in financial reports that are permitted to be filed with the Commission electronically); 62 FR 7675 (February 20, 1997) (permitting the use of electronic records of customer orders generated through electronic order-routing systems); 61 FR 42146 (August 14, 1996) (publishing Commission views with respect to the use of electronic media for the transmission and

II. Delivery of Statements

Under this Advisory, a registered FCM is permitted to fulfill its obligations under Rules 1.33 and 1.46 by sending Statements solely by means of electronic media to any customer who consents to delivery by that method, subject to certain conditions. In order for a customer to receive Statements (or some types of Statements) electronically, the customer must consent to transmission of Statements through such electronic media and the consent must reflect sufficient information about the manner and costs of delivery to constitute informed consent. Disclosures relevant to determining whether the consent obtained was sufficiently informed would include: (1) The electronic medium or source through which the Statements will be delivered; (2) the period during which the consent will be effective (which can be until further notice); (3) the information that will be delivered using such means (a customer might, for example, request that only daily confirmations and purchase-and-sale statements be delivered electronically and still wish to receive a monthly statement by mail); (4) the costs, if any, that will be charged to the customer specific to electronic delivery of the Statements; and (5) the customer's right to revoke at any time the consent to receive statements solely by means of electronic medium.¹⁴

For customers who constitute "eligible customers," as defined herein, the FCM may obtain the customer's informed consent orally, by means of electronic media or through hard copy documentation including the customer's signature. Such documentation also could be incorporated in the customer account agreement. If the customer consents orally or by electronic media to electronic delivery of Statements, the FCM should document the customer's consent by written confirmation in paper or electronic form of the customer's informed consent and retain this confirmation as part of its records.¹⁵ Absent subsequent action by the customer to revoke or to dispute the confirmation, the confirmation evidences that the customer received an

delivery of Disclosure Documents, reports and other information by CPOs, CTAs and associated persons thereof).

¹⁴ See 61 FR 24643, 24647 and n.23 (May 15, 1996) (SEC release discussing use of electronic media by securities broker-dealers, transfer agents and investment advisers for delivery of information).

¹⁵ Consistent with the Act and Commission regulations, FCMs maintain procedures to assure that consents obtained from customers are duly authorized.

explanation of the right to elect electronic delivery of the Statements and of the information pertinent to that election and has elected to receive the Statements (or some categories of Statements) electronically. Eligible customers, for purposes of this Advisory, include any person who:

(1) is an "eligible swap participant," as defined by Commission Rule 35.1(b)(2);

(2) is an "institutional customer," as currently defined by FRB Rule 225.2(g); or

(3) is a Commission registrant.¹⁶

For a person who is not an eligible customer, the FCM must obtain the customer's *signed*, hard copy, revocable consent prior to the transmission of any Statement by means of electronic media.¹⁷ This consent could be obtained as part of the customer account agreement or in a subsequently executed document. Once the FCM assures itself that the customer has agreed to electronic delivery on an informed basis, the FCM may begin to send Statements (or some categories of Statements) to the customer by means of the agreed-upon electronic medium. Documentation of the customer's consent should clearly indicate whether the customer has agreed to electronic delivery of a Statement in lieu of hard copy or in addition to hard copy.

Under this Advisory, any customer or potential customer may consent to electronic delivery of Statements. The Commission envisions that this consent generally would be communicated in person when an account is opened or by subsequent telephone, facsimile or electronic communication. With respect

¹⁶ This category likely includes a majority of account controllers. Although the account controller is not the customer for purposes of Rule 1.33, the Commission believes that an FCM may fulfill its obligations under Rule 1.33(d) with respect to furnishing Statements to registered account controllers via electronic media without first obtaining written and signed consent in hard copy form. With respect to unregistered account controllers who do not otherwise satisfy the above "eligible customer" definition, the FCM must obtain written, signed, hard copy, revocable consent from the unregistered account controller prior to the electronic transmission of any Statement. Such unregistered account controllers could include CTAs who are not required to register as such under Section 4m(1) of the Act because they provide advice to 15 or fewer persons and do not hold themselves out generally to the public as CTAs. See 7 U.S.C. § 6m(1) (1994). Unregistered account controllers also could include, for example, CPOs who are exempt from registration under Rule 4.13(a). The Division notes that the relief granted under Rule 1.33(d) with regard to account controllers does not affect FCMs' obligations to provide Statements to their customers under Rules 1.33(a), 1.33(b) and 1.46(a).

¹⁷ In order to effectuate electronic delivery of Statements more quickly, the customer may transmit the signed consent by facsimile transmission.

to "eligible customers," as defined above, the FCM may rely upon its own contemporaneous confirming letter to the customer (which could itself be transmitted electronically) as evidence of the customer's consent, describing the method of electronic transmission of the Statements, the information to be transmitted, the effective period of the consent, any costs to the customer for such transmissions and a statement that such consent is revocable at any time. In order to employ electronic media to deliver Statements to persons who do not constitute eligible customers, the FCM must receive a signed authorization from the account owner before beginning electronic transmission of Statements.

Since an FCM may only deliver Statements electronically upon receipt of customer consent,¹⁸ it need not obtain and retain evidence that the customer actually received the Statements, such as by an electronic mail return-receipt or by confirmation that the information was accessed, downloaded or printed. However, to ensure that Statements are delivered as intended, and FCM providing Statements using either electronic or paper media should take reasonable precautions to ensure the integrity and security of the Statements.¹⁹ In this regard, the FCM has a duty to supervise firm personnel²⁰ to assure compliance with applicable requirements and prevent wrongdoing and should implement supervisory systems and procedures necessary to assure timely and appropriate delivery of Statements and to deter or detect misconduct in connection with the delivery of Statements. The FCM also has an obligation to maintain the confidentiality of customer orders²¹ and should take reasonable precautions tailored to the particular electronic medium being used to ensure the confidentiality of personal financial information. Self-regulatory organizations ("SROs")²² whose member FCMs intend to deliver Statements solely by electronic means to customers so requesting should enhance their audit programs to review the procedures and precautions employed by FCMs in making such deliveries.

¹⁸ The FCM must retain evidence of the customer's consent as a record, in accordance with the recordkeeping requirements discussed *infra*.

¹⁹ See 61 FR at 24647.

²⁰ See 17 CFR 166.3 (1996).

²¹ See 17 CFR 155.3(b)(1) (1996).

²² See 17 CFR 1.63(a)(1) (1996).

III. Maintenance of Records

Copies of Statements generally must be maintained in accordance with the standards set forth in Rule 1.31 which, among other things, requires that records be retained for a period of five years and be readily accessible during the first two years of the five-year period. Rule 1.31(b) provides that copies may be retained on microfilm, microfiche, or optical disk but must be maintained in accordance with the standards set forth in Rule 1.31 (c) and (d).²³

Concerning the storage and maintenance of records of Statements, the Commission understands that it may be difficult or impossible as a technical matter to store certain data in exactly the format in which it is transmitted to customers. The FCM must be able to store and maintain records of Statements in order that, upon request of any representative of the Commission or the United States Department of Justice, the FCM can reproduce the Statements in substantially the same form²⁴ and containing the same account and trading information as was transmitted to customers.²⁵ If the FCM provides continual, real-time updates to customers of activity throughout the day, the FCM would generate several different intraday "screens" as trades were placed and available to customers. For record retention purposes, an FCM need only retain the daily confirmation statement as of the end of the trading session, provided it reflects all trades made during the trading session. This would be consistent with the record provided to a customer and retained using a paper-based medium.

To facilitate FCMs' efforts to use electronic media when possible and to

²³ Rule 1.31(d) states, among other things, that all records preserved on optical media pursuant to Rule 1.31(b) must be preserved on non-rewritable, write once read many ("WORM") media. In addition, the technology must have write-verify capabilities that continuously and automatically verify the quality and accuracy of the information stored and automatically correct quality and accuracy defects. Rule 1.31(d)(1) states that the optical storage system must: (i) Use removable disks; (ii) serialize the disks; (iii) time-date all files of information placed on the disks, reflecting the computer run time of the file of information and using a permanent and non-erasable time-date; and (iv) write files in ASCII or EBCDIC format. As the Commission has noted, the ASCII and EBCDIC formats "generally do not allow storage of paper records or electronic images, such as webpages, since such records images are normally not written in ASCII or EBCDIC format. Therefore, these records would be required to be retained in hard [] copy form." 61 FR at 42162.

²⁴ For example, FCM logos can be deleted.

²⁵ As mentioned *supra*, statements delivered electronically must satisfy the requirements of Commission Rules 1.33 and 1.46.

avoid imposing duplicative or inconsistent requirements on broker-dealer firms, the Commission hereby permits an FCM to use guidelines recently set forth by the SEC in its recent rulemaking in connection with recordkeeping requirements for broker-dealers.²⁶ Accordingly, an FCM may maintain Statements pursuant to Commission Rule 1.31 or as allowed by SEC regulations.²⁷

Issued in Washington, DC on June 4, 1997 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97-15071 Filed 6-9-97; 8:45 am]

BILLING CODE 6351-01-M

²⁶ 62 FR 6469 (February 12, 1997). The SEC amended its Rule 17a-4(f) to provide for the production or reproduction of records by means of electronic storage media, with the limited exception of those records required for penny stocks. Rather than specify particular electronic storage media, the SEC provided that the particular medium chosen must meet certain criteria:

(A) Preserve the records exclusively in a non-rewrit [] able, non-erasable format;

(B) Verify automatically the quality and accuracy of the storage media recording process;

(C) Serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media; and

(D) Have the capacity to readily download indexes and records preserved on the electronic storage media to any medium acceptable under [Rule 17a-4(f)] as required by the [SEC] or the [SROs] of which the member, broker, or dealer is a member.

17 CFR 240.17a4(f)(ii) (1997). If a broker-dealer chooses to use electronic storage media, it must notify its designated examining authority prior to using such media and, if the broker-dealer uses media other than optical disk technology or CD-ROM, it must provide notice of at least 90 days. The SEC also set forth, among other things, the following requirements: maintenance of duplicates of records, which can be stored on any medium satisfying the above criteria; organizing and indexing of both original and duplicate records; an audit system that can record both the entry and modification of records; a third-party download provider, whose name is provided to the SRO and who agrees to promptly furnish to the SEC and SRO(s) information necessary to access and download records; and, where a broker-dealer uses an outside service bureau to preserve records, and escrow agent who keeps a current copy of the information necessary to access and download records.

²⁷ As of March 31, 1997, 113 of 236 FCMs were registered with the SEC as broker-dealers. Therefore, the Commission has attempted, where possible, to coordinate its regulatory efforts with SEC requirements. For instance, Rule 1.10(h) permits and FCM to file reports concerning its financial condition by submitting a copy of its Financial and Operational Combined Uniform Single report filed with the SEC in lieu of the Commission's Form 1-FR-FCM, and Rules 1.14 and 1.15, the Commission's risk assessment rules, attempt to avoid duplication of similar SEC rules with regard to recordkeeping and reporting.