in part 708a constitute a collection of information under the Paperwork Reduction Act. NCUA submitted a copy of this rule to the Office of Management and Budget (OMB) for its review. OMB has assigned control number 3133–0153 to this information collection.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. This rule applies to all federally insured credit unions, including federally insured state chartered credit unions. However, since the final rule reduces regulatory burden, NCUA has determined that the final rule does not constitute a ''significant regulatory action'' for purposes of the Executive Order.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and has determined that it is not major for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 708a

Charter conversions, Credit unions.

By the National Credit Union Administration Board on May 19, 1999.

Becky Baker,

Secretary of the Board.

For the reasons set forth above, 12 CFR part 708a is amended as follows:

PART 708a—CONVERSION OF INSURED CREDIT UNIONS TO MUTUAL SAVINGS BANKS

1. The authority citation for part 708a continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1785(b).

2. Section 708a.4 is amended by revising the last sentence of paragraph (b) to read as follows:

§ 708a.4 Voting procedures.

* * * * *

(b) * * * The notice to members must be submitted 90 calendar days, 60 calendar days, and 30 calendar days before the date of the membership vote on the conversion and a ballot must be submitted not less than 30 calendar days before the date of the vote.

* * * * *

3. Section 708a.5 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 708a.5 Notice to NCUA.

* * * * *

(c) If it chooses, the credit union may provide the Regional Director notice of its intent to convert prior to the 90 calendar day period preceding the date of the membership vote on the conversion. * * *

4. Section 708a.9 is amended by revising paragraph (b) to read as follows:

§ 708a.9 Completion of conversion.

* * * * *

(b) Upon notification by the board of directors of the mutual savings bank or mutual savings association that the conversion transaction has been completed, the NCUA will cancel the insurance certificate of the credit union and, if applicable, the charter of the federal credit union.

[FR Doc. 99–13307 Filed 5–26–99; 8:45 am]

BILLING CODE 7535–01–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Recordkeeping

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission is adopting amendments to the recordkeeping obligations established in Regulation 1.31. Specifically, the amendments will allow recordkeepers to store most categories of required records on either micrographic or electronic storage media for the full five-year maintenance period, thereby harmonizing procedures for those firms regulated by both the Commission and the Securities and Exchange Commission. Recordkeepers will have the flexibility necessary to maximize the cost reduction and time savings available from improved storage technology while continuing to provide Commission auditors and investigators with timely access to a reliable system of records.

EFFECTIVE DATE: June 28, 1999.

FOR FURTHER INFORMATION CONTACT: Edson G. Case, Counsel, or Lurie Plessala Duperier, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st. Street, NW, Washington, DC 20581. Telephone (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 5, 1998, the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') published a **Federal Register** Notice proposing several amendments to the recordkeeping requirements of Commission Regulation 1.31 (the ''Proposal'')[1] In light of the significant number of Commission registrants that are subject to the recordkeeping requirements of the Securities and Exchange Commission (''SEC''), the Proposal included many provisions similar to those adopted by the SEC in 1997.[2] The Proposal's overall design reflected the Commission's dual goals of ''maximiz[ing] the cost-reduction and time-savings arising from technological developments in the area of electronic storage media'' and maintaining the type of safeguards that ''ensure the reliability of the recordkeeping process.'' [3] The comment period on the Proposal originally was due to expire on August 4, 1998. Upon request from the Futures Industry Association (''FIA''), the Commission extended the deadline to August 18, 1998, to encourage comment by interested persons.

The commission is publishing final rules that respond to comments expressed by industry participants and that track closely the SEC's recordkeeping requirements. While the final rules are similar to the Proposal in most respects, the Commission intends to modify certain staff practices in light of the comments received. The final rules and modifications to staff practices will provide recordkeepers with opportunities to reduce costs and improve both the efficiency and security of their recordkeeping systems by initiating a transition to electronic storage of Commission-required records.

[1] 63 FR 30668 (June 5, 1998).

[2] 62 FR 6469 (Feb. 12, 1997). The SEC's rulemaking involved reporting requirements for brokers or dealers under the Securities Exchange Act of 1934. The Commission has relied on these rules in addressing recordkeeping issues on prior occasions. *See, e.g.,* 62 FR 39104 (July 22, 1997) (interpreting Commission requirements affecting the use of electronic media by commodity pool operators (''CPOs'') and commodity trading advisors (''CTAs'') and amending Part 4 of the Commission's Rules in light of the interpretation); 62 FR 31507 (June 10, 1997) (issuing guidance regarding a futures commission merchant's (''FCM's'') electronic delivery of confirmation, purchase-and-sale, and monthly statements to customers and the related recordkeeping requirements); 62 FR 7675 (February 20, 1997) (permitting the use of electronic records of customer orders generated by an electronic order-routing system).

[3] 63 FR at 30668.

The Commission recognizes the important role improved technology can play in the continued development of the futures industry. Minimizing unnecessary regulatory obstacles to the adopted of improved technology is a goal of the industry members, customers, and the Commission. Indeed, the pace of technological changes will require the Commission continually to review the standards articulated in this rule to ensure that the recordkeeping requirements reflect to the extent possible the reality of established technological innovation. The Commission therefore welcomes consultation with industry participants and specific proposals regarding how the regulations might be amended in the future to permit the futures industry to use available technology and to respond to the Commission's legitimate need to have access to complete and accurate records when necessary.

II. Nature of the Proposal

A. Current Rule 1.31

Commission Regulation 1.31 sets forth certain recordkeeping requirements imposed by the CEA and Commission regulations. Subsection (a) describes the general rule. It mandates that all records required to be kept by the Act or Commission regulations (''required records'') be maintained for five years and be kept ''readily accessible'' during the first two years. It also defines the inspection and production rights of representatives of the Commission and the Department of Justice.[4]

Subsections (b) and (c) establish alternative requirements for required records that are stored as reproductions. Recordkeepers that fulfill the conditions for alternative treatment may dispose of original required records. Eligibility for alternative treatment is limited to particular classes of records that are reproduced on microfilm, microfiche, or optical disk. Computer and machine generated records are immediately eligible for reproduction and storage on one of the alternative media. Most other required records become eligible after two years of storage. Trading cards and written customer orders are ineligible; originals must be maintained for the full five-year period. Subsection (c) describes the special inspection and production conditions applicable to recordkeepers that choose to store reproductions rather than original required records.[5]

B. Proposed Rules

The Proposal would eliminate the current requirement that the original of most required records be maintained for two years.[6] Immediate storage of reproductions maintained on micrographic or electronic storage media will enable recordkeepers to lower storage costs significantly by discarding original records following the successful storage of a reproduction. Moreover, the Proposal gave recordkeepers increased flexibility in selecting the advanced technology best suited to their business requirements by substituting the less restrictive category ''electronic storage media'' for ''optical disk'' in describing the storage media recordkeepers could employ.[7] As a result, recordkeepers may now take advantage of electronic storage technologies such as digital tape.[8]

In addition, consistent with both the SEC's approach and current Commission requirements, the Proposal set forth several conditions on recordkeepers who choose to meet their obligations by retaining reproductions rather than original records—including safeguards to endure timely access to the reproductions and the Commission's ability to maintain its access to required records despite catastrophic events.[9]

The Proposal articulated additional conditions on recordkeepers that choose to meet their obligations by retaining reproductions on electronic storage media rather than micrographic storage media. First, to ensure that there was an effective check on the reliability of the transfer process, the Proposal required electronic recordkeepers to maintain written operational procedures and controls that would provide accountability over both the initial entry of required records to the electronic storage media and the entry of each change made to any such records.[10] Second, due to practical limitations on the Commission's ability to process data stored in the full range of available formats and coding structures on the full range of storage media available to recordkeepers, the Proposal required recordkeepers to provide copies of requested records on ''Commission compatible machine-readable media'' with the format and coding structure specified in the request.[11] Third, like the SEC's rules, the Proposal required recordkeepers using electronic storage media to keep available for inspection ''all information necessary to access records and indexes maintained on electronic storage media * * *'' [12]

[4] For example, Regulation 1.31(a) provides that all required records shall be open to inspection by such representatives. It also requires recordkeepers to provide copies of originals of any required record ''promptly,'' upon request.

[5] For example, persons maintaining reproductions must maintain indexes of the records and have facilities that permit representatives of the Commission and the Department of Justice to review and obtain hard copies of the records immediately. For records stored on optical disk, Regulation 1.31(c)(1)(iii) also mandates that a copy of each record be immediately provided ''on Commission compatible machine-readable media as defined in [Commission Regulation] 15.00(1) * * *.''

[6] The Proposal retained the current regulation's requirement that original trading cards and written customers orders be retained for the full five-year period. Proposal at 30669–70. It also sought to clarify the type of records ineligible for micrographic or electronic storage by referring to ''written orders'' rather than ''written customer orders'' and to ''documents on which trade information is originally recorded in writing'' rather than ''trading cards.'' The documents included in the Proposal's revised category are among the ''original source documents'' that Commission Regulation 1.35(a) requires to be retained and produced. Proposal at 30671.

[7] The current rule's definition of acceptable optical storage systems, for example, requires that the system write files in ASCII or EBCDIC format and use removable disks. The Proposal, however, permitted recordkeepers to employ any digital storage medium or system that meets four generic requirements: (1) preserves records exclusively in a non-rewritable, non-erasable format; (2) verifies automatically the quality and accuracy of the recording process; (3) serializes the units of storage media and creates a time-date whenever information is placed on the storage media; and (4) permits the immediate downloading of indexes and records maintained on the storage media to any of the media permitted by the regulation (paper, micrographic media or electronic media).

[8] The Proposal did not require Commission approval of plans to convert to a system that maintains records on electronic storage media. Recordkeepers, however, must submit a representation to the Commission that the selected electronic storage system meets the four generic requirements.

[9] Recordkeepers were required to: (1) maintain facilities that allow immediate production of both an easily readable image of the stored records and an easily readable hard-copy; (2) maintain an index of stored documents that permits immediate location of a particular document; and (3) waive any privilege, claim of confidentiality or other objection to disclosure of non-Commission-required documents stored on the same individual medium as Commission-required documents. In regard to catastrophic events, the Proposal noted that the Commission had lost access to required records due to a fire at a Chicago storage warehouse in 1996. Proposal at 30669 n.12. To avoid this problem in the future, the Proposal required recordkeepers to maintain a duplicate of both stored records and required indexes at a separate location.

[10] The Proposal indicated that the written operational procedures and controls should provide for the systematic collection of data that includes the identities of individuals inputting records and making changes as well as the identity of any new document created and record changed.

[11] Proposal at 30699. The Proposal noted that ''compatible machine-readable media'' would be defined in accordance with Commission Regulation 15.00(1).

[12] Proposal at 30674. This condition anticipated situations in which electronic recorkeepers had stored required records but were unable or unwilling to provide Commission representatives with an appropriate means to view and copy specified documents. The Proposal did recognize that the required information might not be freely available to recordkeepers that obtained their

The Proposal contained a final, additional condition on recordkeepers who stored all required records or all of a particular class of required records solely on electronic storage media. To address those situations in which such a recordkeeper was unable or unwilling to provide Commission representatives with an appropriate means to view and copy specified records and failed to maintain or permit inspection of the information necessary to access requested records, the Proposal required such recordkeepers to enter into an arrangement with a third-party Technical Consultant.[13]

III. Final Rules

The Commission received nine comments on the Proposal. Commenters included the National Futures Association (''NFA''), four designated futures exchanges, two commodity industry associations, and First Options of Chicago, Inc. (''FOC''), a registered futures commission merchant (''FCM''), which submitted two comments.[14] Most commenters praised the Commission for proposing revisions to its recordkeeping requirements. One commodity exchange praised the Proposal for giving recordkeepers ''flexibility to use technological advances in the electronic storage media to reduce the costs associated with record retention.'' [15] A commodity industry association commended the Commission for moving toward a more generic, performance-based approach to the definition of permissible record storage technology. Another commodity exchange agreed that aspects of the Proposal could lead to improvement in both the security and availability of required records. NFA characterized the Proposal as ''a significant step in the right direction * * *.[16]

In view of the significant number of firms subject to regulation under both the federal commodity and securities laws, the final regulations recognize the value of maintaining consistency, where possible, between the Commission's approach to recordkeeping and that of the SEC. The regulations do not reflect strict conformity with the regulations the SEC adopted in 1997, however, because the Commission concluded that there were significant differences between the commodities and securities industry that justified retaining certain of its current rules.[17]

The comments focused primarily on five areas, each of which is discussed below.

A. Maintaining Original Written Trading Cards and Order Tickets

The Proposal permitted recordkeepers to transfer most categories of records to micrographic or electronic storage media immediately, eliminating the need to keep original records for two years. However, original trading cards and customer order tickets were required to be maintained for the full five-year period. A majority of commenters cited cost, efficiency and security concerns in questioning why the Commission declined to permit written trading cards and customer orders to be stored electronically. Both commodity industry associations emphasized that firms incur significant costs organizing, indexing, and storing order tickets and trading cards. FOC noted that firms also incur significant costs to retrieve such records, and one exchange estimated that it expended $100,000 each year to retrieve records requested under Commission Regulation 1.31. Commenters also questioned why retention of original trading cards and order tickets is an important element of an effective audit trail for futures transactions, particularly since the SEC permits electronic storage of written trading cards and order tickets. One commodity industry association urged the Commission to ''consider whether the high cost and burden of maintaining original written orders and trading cards is disproportionate to the limited use of these documents in enforcement cases.'' [18]

The Commission recognizes that electronic storage of written trading cards and order tickets could reduce storage costs, increase the efficiency of the retrieval process, and help eliminate certain security problems attendant to the storage of paper records. Nevertheless, given the importance these original records continue to play in the futures industry, the Commission believes that it would be imprudent to rely solely on electronic versions of these records at this time. Although the SEC permitted electronic storage of these documents, it recognized the need for caution in this area and rested its decision to eliminate the requirement that recordkeepers maintain originals largely on the diminished role such written records play due to the prevalence of electronic order routing in the securities industry.[19]

Review of written trading records for differences in the instrument used to record apparently contemporaneous information remains a regular feature of investigations focusing on potential trade practice or allocation violations.[20] FOC contended that current technology can produce superb reproductions that make differences in hand writing and time stamps clearly visible. Even if we assume this to be true,[21] this argument does not address the full range of material information Commission auditors and investigators may gather by examining original written trading records. For example, the Commission's Division of Enforcement often examines these records in the context of a variety of alleged violations.[22] If only electronically stored records were available, errors in the scanning process, such as failing to process information on

storage technology from third-party vendors. As a result, the Proposal permitted recordkeepers to employ escrow agreements to protect the third-party vendor's proprietary rights.

[13] Such recordkeepers must provide the Technical Consultant with access to the storage media containing their required records, and the Technical Consultant must (1) have the ability to download information from the recordkeeper's storage media to any medium acceptable under Regulation 1.31 and (2) undertake to provide Commission representatives with access to the records stored on the recordkeeper's storage media including, as appropriate, arrangement for downloading the records in the format designated by Commission representatives.

[14] One of FOC's submissions was a petition to amend Regulation 1.31, which was received shortly before the Commission published its Proposal. To avoid undue delay, the Commission decided to publish the Proposal and to treat this submission as a general comment on the issues raised. FOC later filed a written submission responding more specifically to the issues raised in the Proposal.

[15] Chicago Board of Trade Comment at 1.

[16] NFA Comment at 1.

[17] In addition to the mandate that original written trading cards and order tickets be maintained for five years, these include requirements that recordkeepers: (1) maintain indexes of electronically stored records that are available for immediate examination and permit the location of any particular record to be immediately ascertained; (2) keep the information necessary to access electronically stored records and indexes available for immediate examination; and (3) provide copies of specified records on Commission-compatible machine-readable media with the format and coding structure specified in the request.

[18] FIA Comment at 4.

[19] 62 FR 6471.

[20] Indeed, Commission precedent indicates that such differences—usually detected by noting differences in the color of the ink on the document—can play an important evidentiary role in cases raising trade practice allegations. *See In re Russo,* [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) 27,133 at 45,303 n. 9 (CFTC Aug. 20, 1997).

[21] FOC submitted reproductions of two order tickets in support of its contention. The limited nature of FOC's sample raises significant questions about the validity of the broad inference it draws. Moreover, the information recorded on the order tickets is displayed in black and white. Aside from these limitations, FOC's comment does not address even straight-forward implementation problems such as ensuring that all material information is scanned and stored—including time stamps and written information on the back of order tickets.

[22] Such violations include wash trading, accommodation trading, direct or indirect trading ahead of or against customer orders, offsetting or matching customer orders, unauthorized trading, and inappropriate trade allocation.

both sides of a written order ticket, would deprive investigators of material information. Moreover, even properly scanned records could deprive investigators of currently available information. For example, it is unlikely that investigators could distinguish ink colors on scanned documents or detect either erasure or the use of products such as white out. This type of discrepancy may be important in establishing that a participant in the transaction inserted some information on a trading card or order ticket after the bulk of the information had already been recorded.[23]

Many commenters offered support for a compromise position suggested by the FIA. Under this proposal, original written trading records would be retained for one year. During this period, the written trading records would be stored on ''high-quality micrographic or electronic storage media that are reasonably able to detect alterations.'' [24] After the initial year, recordkeepers would be free to destroy original written trading records and to fulfill their obligations under Regulation 1.31 by producing reproductions of the stored records.

The FIA proposal rests on an assumption that is not necessarily correct. According to FIA, the experience of futures exchanges indicates that auditors or compliance investigators generally request access to written trading documents within one year of their creation. FIA's implicit assumption is that there is no practical need to retain original written trading documents for more than a year because the experience of Commission auditors and investigators is fully consistent with their exchange counterparts.

The Commission's experience with audits and investigations indicates that there is no reliable basis for predicting the period of time that any particular original written trading record will be needed. For example, investigations of trade practice allegations are frequently lengthy due to both the complexity of the underlying transactions and efforts by many participants to disguise their intent in entering the transactions. Information may not come to the Commission's attention within a year of the wrongdoing, and the suspicious activity often spans more than a one-year period. Moreover, review of written trading records from a multi-year period may reveal the type of pattern of suspicious trading that facilitates prosecution of trade practice violations.[25]

Given the legitimate needs of its auditors and investigators, the Commission cannot endorse the one-year retention period proposed by FIA. Nevertheless, the Commission is modifying staff audit and investigative practices in order to permit recordkeepers to take advantage of some of the benefits of electronic storage technology, yet protect the Commission's interest in maintaining access to original trading records. Under the revised practice, if a recordkeeper chooses to transfer trading cards and customer order tickets to electronic media, a recordkeeper initially may respond to a request for written trading cards and order tickets by producing reproductions maintained on electronic storage media unless the staff request specifically provides to the contrary. Staff generally will review these reproductions prior to requesting production of original written trading cards or order tickets.[26] If this review confirms that further investigation or examination of original trading records is unwarranted, the recordkeeper's original trading cards and order tickets may remain in storage.

While recordkeepers transferring original written trading documents to electronic storage media will incur some additional costs, they also may obtain substantial benefits from this change in policy. For example, recordkeepers should be able to reduce retrieval costs, to locate requested records more expeditiously, and to improve the security of their stored original records.[27] Commission auditors and investigators should also benefit by obtaining more expeditious and complete responses to their requests. Of course, the success of this process will depend on the ability of recordkeepers not only to select electronic storage systems that will produce high quality reproductions, but also to manage the implementation challenges likely to arise in transitioning from a paper-based system properly. In addition, Commission experience with recordkeepers who choose to make records available on electronic storage media pursuant to this policy should provide a basis for reassessing the continued need for retention of original trading cards and order tickets.[28]

B. Timeliness of Responses to Production Requests

Under current requirements, original records must be produced ''promptly'' and reproductions stored on micrographic media or optical disk must be produced ''immediately.'' Some commenters believed that ''immediately'' is an unduly vague standard. Commenters also emphasized that this standard does not acknowledge the relevance of practical circumstances that can delay production by even cooperative recordkeepers. Thus, many commenters urged the Commission to require that both original records and reproductions stored on micrographic or electronic storage media be produced ''promptly.''

There is no evidence that the current dual production standard has created any practical problems. While the rule grants Commission staff broad discretion in determining when specified records should be produced, none of the commenters has claimed that Commission staff have abused this discretion by establishing arbitrary deadlines that ignored relevant circumstances.[29] Indeed, FIA's

[23] For example, if information about the price, quantity and contract is recorded on a written order ticket in one color ink, and the number designating the identity of the customer is written in a different color ink, an investigator might suspect that the trade was allocated to a customer after it was executed and search for additional indications that orders were being improperly allocated.

[24] FIA Comment at 5. FIA indicates that the Commission could maintain a check on the quality of available reproductions by publishing a list of acceptable media or permitting recordkeepers to seek Commission approval of a particular record storage medium or system.

[25] Participants in a suspicious transaction often seek to undermine the significance of suspicious circumstances by claiming that they are the product of peculiar market forces at the time of the challenged transactions. Proof that the participants have been involved in a pattern of suspicious transactions undertaken under varying market conditions over a period of months or years is often the most effective rebuttal to such a claim.

[26] If staff is at a point in its review that indicates a request for original written trading records is inevitable, it need not waste either its own or the recordkeeper's resources by initially requesting reproductions.

[27] For example, if access to stored original records is rarely necessary, it will be less likely that records will be lost or misplaced in the process of locating requested records.

[28] Implementation of this policy change does not require any revision to the rules. By holding out the prospect of reduced retrieval costs, the policy encourages recordkeepers to begin the transition to electronic storage systems that promise greater efficiency and security. Nevertheless, recordkeepers will still be obliged to maintain the original version of trading cards, documents on which trade information is originally recorded in writing, and written orders required to be kept pursuant to Commission Regulation 1.35(a), (a–1)(1), (a–1)(2) and (d) for five years and to produce those records in response to a request by an appropriate Commission representative.

[29] The current standards do not describe a level of timeliness that staff auditors and investigators must invariably demand from recordkeepers. Indeed, Commission representatives frequently tailor the deadline applicable to a particular document request in light of the scope and nature of the request, as well as unusual or unforeseen circumstances affecting a recordkeeper's ability to respond quickly or completely. Nonetheless, because delay in the production of required records can sometimes represent an undue threat to the public interest, Regulation 1.31 grants Commission

comment stated that Commission staff ''typically exhibits flexibility when requesting documents to accommodate practical considerations.[30]

The ''immediately'' standard provides recordkeepers with notice of the highest level of timeliness Commission representatives may demand in seeking production. As indicated in the Proposal, Regulation 1.31 requires that reproductions stored on micrographic or electronic storage media be produced ''immediately'' rather than ''promptly'' because, in general, it is easier to locate and to produce such reproductions than to locate and to produce original records. The dual standards make it clear that Commission auditors and investigators are authorized to demand that reproductions be produced more quickly than original records. At the same time, they require auditors and investigators to weigh a recordkeeper's potentially more limited ability to locate and produce original records in establishing a deadline for their production.

The Commission recognizes that applicable deadlines should reflect an evaluation of factors such as the volume of documents covered by a request, competing requests from other regulators, or unusual and unforeseeable circumstances that prevent the recordkeeper from accessing electronically controlled records. Staff discretion, however, plays a necessary role in an effective production process, and there is no indication that staff has failed to exercise their discretion sensibly.[31] On the current record, there is no basis for imposing further limitations on the discretion exercised by Commission auditors and investigators.

C. Retention of a Consultant

As noted above, the Proposal, like the SEC rules, required recordkeepers who stored all required records or all of a particular class of required records solely on electronic storage media to enter into an arrangement with a third-party Technical Consultant.[32] Commenters criticized this aspect of the Proposal for imposing a costly burden that will discourage transition to electronic storage systems. Commenters also argued that this safeguard will threaten the confidentiality of information maintained by recordkeepers.

The Commission has decided to adopt this aspect of the Proposal without change. The SEC has required this type of safeguard since 1993.[33] A significant number of Commission registrants are subject to the SEC's recordkeeping requirements, and none of the comments on the Proposal describes any problems with the implementation of this safeguard under the SEC's rules. Recordkeepers are only required to enter an arrangement with a Technical Consultant if they choose to store all required records or all of a particular class of required records solely on electronic storage media. As a result, recordkeepers may protect themselves from costs related to retaining a Technical Consultant by maintaining backup copies of electronically stored records in either a hard copy or micrographic version. As to confidentiality concerns relating to a Technical Consultant's access to required records, recordkeepers may protect themselves by entering into appropriate confidentiality agreements with their Technical Consultants. In short, the objections that have been raised by commenters do not establish that there are circumstances unique to the futures industry that warrant a deviation from the SEC policy.[34]

D. Production on Commission Compatible Machine-Readable Media

The Proposal required recordkeepers using electronic storage media to provide copies of requested records on Commission compatible machine-readable media (as defined by Commission Regulation 15.00(l)) [35] with the format and coding structure specified in the request. Two commenters stated that neither the Proposal nor Regulation 15.00(l) provides adequate notice of either the range of media that the Commission will deem compatible or the range of formats and coding structures that may be required. In response to these comments, the Commission has decided to provide guidance about the intent underlying this provision and to direct staff to take steps to provide recordkeepers with ongoing notice of the applicable requirements.[36]

The requirement that recordkeepers provide documents to the Commission in one of the many identified formats arises out of practical limitations on the Commission's ability to process data stored in the full range of available formats and coding structures on the full range of storage media available to recordkeepers. The Commission uses standard desktop tools including Microsoft Office Professional 97. Recordkeepers using storage systems with compatible format and coding structures should not experience significant problems providing Commission auditors and investigators with acceptable machine-readable media. Records that include data files and images will be acceptable if accompanied by appropriate

representatives the discretion to specify production deadlines sufficient to address such threats.

[30] FIA Comment at 8.

[31] One commenter indicated that the production process under Regulation 1.31 should be modeled on the discovery process in an adjudicatory proceeding. The Regulation 1.31 process, however, is specifically designed to avoid both the delay and diversion of resources common to such an adversarial process. As a result, Regulation 1.31 does not provide that a response can be delayed until a recordkeeper's counsel has had an opportunity to review requested records. Nor does it establish a process for settling objections over issues such as breadth or relevance. Moreover, recordkeepers are expected to manage their affairs in a manner that permits them to fulfill the duties described in Regulation 1.31. For example, recordkeepers using micrographic or electronic storage systems are expected to retain a sufficient number of expert personnel to meet their regulatory responsibilities. The absence of a single individual due to sickness or vacation should not make it impossible for the recordkeeper to make an immediate response to an auditor's or investigator's request in the infrequent circumstance when immediacy is a critical component of the request, *e.g.* in a financial crisis or where customer positions or other assets are at risk.

[32] Such recordkeepers must provide the Technical Consultant with access to the storage media containing their required records, and the Technical Consultant must (1) have the ability to download information from the recordkeeper's storage media to any medium acceptable under Regulation 1.31 and (2) undertake to provide Commission representatives with access to the records stored on the recordkeeper's storage media including, as appropriate, arrangement for downloading the records in the format designated by Commission representatives.

[33] As noted above, the SEC adopted this safeguard as part of its 1997 rulemaking. In June 1993, however, the SEC's Division of Market Regulation issued a no-action letter allowing broker-dealers to utilize optical storage technology for recordkeeping under certain conditions. The availability of a third-party backup was one of the conditions to this relief. *See* Letter from Michael A. Macciaroli, Associate Director, Division of Market Regulation, SEC to Michael D. Udoff, Chairman, Ad Hoc Record Retention Committee, Securities Industry Association (June 18, 1993), 1993 WL 246230 (SEC).

[34] The Commission does not intend that Commission investigators or auditors regularly seek required records from Technical Consultants. Indeed, staff will only seek performance of the Technical Consultant's undertaking with the Commission when the recordkeeper itself has shown that it is unable or unwilling to meet its regulatory obligations.

[35] Commission Regulation 15.00(l) provides that the term compatible data processing media means: [D]ata processing media approved by the Commission or its designee. The rule delegates the Commission's approval authority to the Executive Director and provides that the Executive Director may designate employees to exercise the approval authority on her behalf.

[36] When the Commission amended Regulation 15.00(l) in 1997, it deleted references to specific media in light of comments suggesting that a regulatory definition was impractical because electronic media are evolving at such a rapid pace. 62 FR 24026, 24028 (May 2, 1997).

information.[37] Where the records are from a relational data base management system, the Commission would prefer that the recordkeeper convert the records to an acceptable data file format. Under appropriate conditions, however, the Commission will also accept such records in another format.[38] Where the records are from a different source, providers will need to coordinate with the Commission to determine acceptability.

Recordkeepers can provide information to the Commission on a number of different media. Clearly, a small file can be placed on a diskette or set of diskettes. CD–ROM, 4mm tape, 30 GB DLT tape, nine-track tape and IBM 3490 cartridge tapes are also acceptable. Absent security concerns, email attachments and FTP transmitted files are acceptable. Providers will need to coordinate with the Commission if different media are contemplated.

Of course the Commission's capabilities in this regard will change over time. To provide affected recordkeepers with continuous notice of what is currently acceptable, the Commission is modifying current staff practice to require preparation of an updated list of formats and coding structures as changes are made. Notice of any changes to the list will be available both in writing and on the Commission's web page, and an updated list will be published in the **Federal Register**.

E. Waiver of Privilege

Consistent with current Commission requirements, the Proposal provided that recordkeepers employing micrographic or electronic storage systems must agree to waive any privilege, claim of confidentiality or other objection to the disclosure of non-Commission-required records stored on the same individual medium as Commission-required documents. Some commenters characterized this approach as inflexible and urged the Commission to adopt an approach modeled on ABA Op. No. 92–368 (Standing Committee on Ethics and Professional Responsibility, Nov. 10, 1992).[39]

The Commission has decided that the waiver language should be deleted from Regulation 1.31. While courts are not in agreement about the proper application of the ''inadvertent waiver'' theory discussed in the ABA's Opinion, the Commission does not believe that a recordkeeper should be precluded by rule from raising a question about privilege if a privileged document has been inadvertently stored and/or produced on the same medium as Commission-required documents.[40] In an effort to avoid this problem, the deleted waiver language will be replaced with the current Commission requirement that recordkeepers store Commission-required records on a separate individual medium from non-Commission-required records. Waiver, however, will no longer be a mandatory consequence of failing to fulfill this segregation requirement, at least by operation of regulation.

F. Other Issues

1. Generic standards

Several commenters urged the Commission to adopt generic standards of accessibility, security, and reliability that do not distinguish between original records and eligible substitutes. One of the commodity industry associations argued that the adoption of generic performance standards would increase flexibility and decrease the likelihood that the applicable standards would become ''outdated'' due to continued technological developments. One exchange commenter claimed that such a unitary approach would ensure consistency and lessen confusion.

A generic approach may have certain advantages in an area likely to be affected by rapid technological change. Some comments on the Proposal, however, illustrate the weaknesses of any approach that fails to provide sufficiently specific notice of the procedures the Commission considers necessary to a reliable system of records. These comments suggest that, absent specific guidance, many industry participants would interpret their recordkeeping duties in a manner the Commission views as incompatible with the public interest.[41]

More importantly, none of the commentators that urged adoption of more generic standards offered the type of specific proposal that would permit the Commission to make a reasoned evaluation of the practical costs and benefits of a more generic approach. Indeed, none of the commenters cited to generic standards adopted by a state or federal regulatory body with responsibilities comparable to those the CEA entrusts to the Commission. The absence of any specific proposals may be a product of the futures industry's limited experience with the design or implementation of large-scale electronic storage systems.[42] We emphasize that

[37] For records that include data files, the required information includes:

(1) how to identify individual records and record types;

(2) how to identify individual fields within records;

(3) how the individual fields and record types are defined; and

(4) the format of each quantitative field and the meaning of each field value for other fields.

For records that include images, the required information includes:

(1) how any data files are linked to images;

(2) how to identify individual images; and

(3) the format of the images.

The Commission uses ''Wang Imaging for Windows 95.'' The Commission will accept images in another format if:

(1) software is provided with the records that makes it feasible to view and print the images;

(2) this software will run under Windows NT or Windows 95/98;

(3) this software can be freely provided to the Commission under the terms of the provider's licensing agreements with the concerned software vendor(s); and

(4) information is provided on how individual images can be accessed.

[38] The applicable conditions include:

(1) the records are accompanied by software that makes it feasible to access the records using standard office tools,

(2) this software will run under Windows NT or Windows 95/98,

(3) this software can be freely provided to the Commission under the terms of the provider's licensing agreements with the concerned software vendor(s),

(4) information is provided on how the individual fields and record types are defined, and

(5) information is provided on the format of each quantitative field and the meaning of each field value for other fields.

[39] In that opinion, the American Bar Association Standing Committee on Ethics and Professional Responsibility addressed circumstances in which an attorney inadvertently sends another lawyer privileged or otherwise confidential materials belonging to an opposing party. The committee found that a lawyer receiving such confidential material has a professional obligation, when he or she recognizes opposing counsel's error, to avoid further review of the material. The committee also concluded that the affected lawyer should notify opposing counsel of the error and follow counsel's directions as to the disposition of the material.

[40] As is currently the case with all Commission-required records, recordkeepers may not deny authorized Commission representatives access to any individual storage medium that includes Commission-required records or delay production while the individual storage medium is reviewed for the presence of privileged material. The final rule merely eliminates the regulatory inference that the commingling of Commission-required records with non-Commissioned-required records necessarily amounts to a waiver of any privilege otherwise covering the latter category of records.

[41] FOC argued that any required record should be deemed accessible if produced within 10 days. One commodity industry association noted that Regulation 1.31 does not include any requirements for the security and integrity of paper records and argued that firms have no duty to supervise the security and reliability of hard copy records under the generic standard set forth in Commission Regulation 166.3. One exchange commenter indicated that it would be burdensome to require recordkeepers to maintain an accurate and complete index of records stored on micrographic or electronic storage media.

[42] Even if the capabilities of electronic storage systems meet the high expectations of their proponents, the Commission expects that the transition process from paper-based systems to electronic-based systems will involve implementation problems requiring significant

movement toward more generic standards may well be appropriate as industry experience and expertise develop. Indeed, as part of its ongoing evaluation of developments warranting additional amendments to its recordkeeping requirements, the Commission encourages the submission of specific proposals for generic standards that both provide recordkeepers with the flexibility necessary to maximize the cost reduction and time savings available from improved storage technology and ensure that Commission auditors and investigators maintain timely access to a reliable system of records.

2. Format of Storage Media

One exchange commenter noted that one of the Proposal's four characteristics for defining electronic storage media could be misconstrued as requiring that the storage system itself exclusively preserve records in a non-rewritable, non-erasable format. It suggests that such an interpretation could disqualify CD–ROM storage systems with rewritable CD–ROM capabilities. The Commission agrees that the medium, not the storage system itself, must exclusively preserve records in a non-rewritable, non-erasable format.

3. Escrow Agreements

Two exchange commenters opposed the Proposal's requirement that recordkeepers using electronic storage media keep available for inspection all information necessary to access records and indexes maintained on electronic storage media or, in the alternative, place such information in escrow and, as necessary, update the information. These commenters raised the possibility that third-party vendors may be unwilling to enter into source code escrow agreements. As noted in the Proposal, however, such escrow agreements are a common feature of software licensing agreements. There is no indication that the similar safeguard in the SEC's rules has resulted in problems with third-party vendors. Given the speculative nature of the information provided by the commenters, modification of this safeguard is not warranted.

adjustments. If the security, reliability, and accessibility of the recordkeeping process are to be protected during this period of learning and adjustment, it is important that recordkeepers have clear notice of their ongoing obligations under Regulation 1.31. It is equally important that recordkeepers keep the Commission informed of the experience gained during this period so that the Commission can develop a reliable basis for making necessary adjustments to its rules.

4. Written Procedures

Several commenters objected to the Proposal's requirement that electronic recordkeepers maintain written operational procedures and controls that would provide accountability over both the initial entry of required records to the electronic storage media and the entry of each change made to any such records. As noted in the Proposal, the Commission believes that all recordkeepers must have and enforce procedures to keep their required records from being altered or destroyed.[43] The Proposal's specific requirements for electronic storage systems reflect the special security/integrity concerns that attend the transition process from paper-based recordkeeping systems. While experience may prove these special precautions unnecessary, the arguments raised by the commenters do not warrant their deletion at this time.

5. Adjusting Requirements in Response to Technological Change

Several commenters noted that some of the Proposal's requirements may quickly become outdated due to rapid developments in the technology underlying electronic storage media. These commenters observed that addressing the necessary adjustments through the rulemaking process may prove unduly slow, costly and inflexible.

The rulemaking process can play an important role in identifying and removing such obstacles. While the notice and comment process that underlies rulemaking can result in limited delays, this process helps ensure that the Commission's deliberations are informed by the perspectives of a broad range of interested parties. Moreover, as in this instance, the rulemaking process can play an important rule in harmonizing the approach different regulators take to common areas of concern, thereby minimizing the regulatory burden imposed on firms subject to dual regulation.

The Commission has adequate tools to address short-term inefficiencies in the regulatory process. On several occasions during the past two years, the Commission has provided interim relief from the current requirements of Rule 1.31 to Commission registrants using advanced technology.[44] This relief has helped minimize obstacles to the adoption of new technology while the Commission addressed the need for final amendments to Rule 1.31. If circumstances warrant, similar relief can be made available in the future.

[43] Proposal at 30672.

[44] The Commission has permitted these registrants to substitute compliance with the SEC's recordkeeping requirements for compliance with the current requirements of Rule 1.31. *See* note 2, *supra.*

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601, *et seq.,* 611, requires that, in adopting rules and regulations, all federal agencies consider their impact on small entities. In accordance with Section 601(3) of the RFA, the Commission published a ''Policy Statement of Definitions of Small Entities for Purposes of the Regulatory Flexibility Act,'' 47 FR 18618 (Apr. 30, 1982). In that statement,[45] the Commission indicated that some classes of persons were excluded from the definition of small entities. These include: futures commission merchants registered or required to be registered; floor brokers employed by registered futures commission merchants; commodity pool operators registered or required to be registered; and large traders in the futures market. The Commission considers other entities to be small under particular facts and circumstances. These include: futures commission merchants exempt from registration; commodity pool operators exempt from registration; introducing brokers; floor brokers not employed by futures commission merchants; floor traders; and commodity trading advisors. Because the rules discussed herein will affect the full spectrum of Commission registrants, it is likely that small entities within the meaning of the RFA will be affected.

The final rules would generally expand the category of record storage systems permissible under the Commission's rules. The Commission anticipates that these rules will increase small entities' freedom to tailor their record storage systems to the overall needs of their businesses. The final rules will have no impact on a small entity chooses to maintain a paper-based record storage system. However, if a small entity chooses to use micrographic storage media, it may incur costs related to creation of the duplicate record and storage at a location separate from the micrographic record. Costs can be reduced by moving the hard copies of the records to a separate location.

[45] The Commission subsequently clarified some of the definitions *See* 48 FR 35276 (Aug. 3, 1983); 55 FR 13550 (Apr. 11, 1990); 58 FR 40347 (Jul. 28, 1993).

The final rules will permit small entities that choose to use electronic storage media for their storage record systems to select systems that may be less costly and simpler to manage. The final rules will impose limited additional burdens on these entities, including requirements that the recordkeeper: (1) provide a representation that the system meets pertinent regulatory requirements prior to converting to an electronic storage system; (2) create a duplicate of both required records and an index of those records and maintain the duplicate at a separate location; (3) create and maintain an audit system for transferring records to electronic storage media; (4) take steps to ensure Commission access to information necessary to download records from the electronic storage media; and (5) provide an independent source for the downloading of records that are maintained solely on electronic storage media. The Commission anticipates that small entities will not convert their recordkeeping systems to electronic storage media unless the accompanying burdens are outweighed by the financial savings and operational efficiency that would result from the change to electronic storage media.

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.

B. Paperwork Reduction Act

When publishing final rules, the Paperwork Reduction Act of 1995 [46] (''PRA'') imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, 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) the 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 on October 24, 1998, and assigned OMB control number 3038–0022, Rules Pertaining to Contract Markets and Their Members, to these rules. The burden associated with this entire collection 3038–0022, including these final rule amendments, is as follows:

Average burden hours per response: 3,609,89.

Number of respondents: 15,893.

Frequency of response: On occasion.

The burden associated with the final rule amendments, is as follows:

Average burden hours per response: 17.50

Number of respondents: 3,412.

Frequency of response: On occasion.

Persons wishing to comment on the information required by these final rules should contact the Desk 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 N.W., Washington, DC 20581, (202) 418–5160.

List of Subjects in 17 CFR Part 1

Recordkeeping requirements.

Accordingly, 17 CFR part 1 is amended as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, 24.

2. Section 1.31 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 1.31 Books and records; keeping and inspection.

* * * * *

(b) Except as provided in paragraph (d) of this section, immediate reproductions on either ''micrographic media'' (as defined in paragraph (b)(1)(i) of this section) or ''electronic storage media'' (as defined in paragraph (b)(1)(ii) this section) may be kept in that form for the required time period under the conditions set forth in this paragraph (b).

(1) For purposes of this section:

(i) The term ''micrographic media'' means microfilm or microfiche or any similar medium.

(ii) The term ''electronic storage media'' means any digital storage medium or system that:

(A) Preserves the records exclusively in a non-rewritable, non-erasable format;

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

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

(D) Permits the immediate downloading of indexes and records preserved on the electronic storage media onto paper, microfilm, microfiche or other medium acceptable under this paragraph upon the request of representatives of the Commission or the Department of Justice.

(2) Persons who use either micrographic media or electronic storage media to maintain records in accordance with this section must:

(i) Have available at all times, for examination by representatives of the Commission or the Department of Justice, facilities for immediate, easily readable projection or production of micrographic media or electronic storage media images;

(ii) Be ready at all times to provide, and immediately provide at the expense of the person required to keep such records, any easily readable hard-copy image that representatives of the Commission or Department of Justice may request;

(iii) Keep only Commission-require records on the individual medium employed (e.g., a disk or sheets of microfiche);

(iv) Store a duplicate of the record, in any medium acceptable under this regulation, at a location separate from the original for the period of time required for maintenance of the original; and

(v) Organize and maintain an accurate index of all information maintained on both the original and duplicate storage media such that:

(A) The location of any particular record stored on the media may be immediately ascertained;

(B) The index is available at all times for immediate examination by

[46] Pub. L. 104–13 (May 13, 1995).

representatives of the Commission or the Department of Justice;

(C) A duplicate of the index is stored at a location separate from the original index; and

(D) Both the original index and the duplicate index are preserved for the time period required for the records included in the index.

(3) In addition to the foregoing conditions, persons using electronic storage media must:

(i) Be ready at all times to provide, and immediately provide at the expense of the person required to keep such records, copies of such records on such approved machine-readable media as defined in § 15.00(1) of this chapter which any representative of the Commission or the Department of Justice may request. Records must use a format and coding structure specified in the request.

(ii) Develop and maintain written operational procedures and controls (an ''audit system'') designed to provide accountability over both the initial entry of required records to the electronic storage media and the entry of each change made to any original or duplicate record maintained on the electronic storage media such that:

(A) The results of such audit system are available at all times for immediate examination by representatives of the Commission or the Department of Justice;

(B) The results of such audit system are preserved for the time period required for the records maintained on the electronic storage media; and

(C) The written operational procedures and controls are available at all times for immediate examination by representatives of the Commission or the Department of Justice.

(iii) Either

(A) Maintain, keep current, and make available at all times for immediate examination by representatives of the Commission or Department of Justice all information necessary to access records and indexes maintained on the electronic storage media; or

(B) Place in escrow and keep current a copy of the physical and logical format of the electronic storage media, the file format of all different information types maintained on the electronic storage media and the source code, documentation, and information necessary to access the records and indexes maintained on the electronic storage media.

(4) In addition to the foregoing conditions, any person who uses only electronic storage media to preserve some or all of its required records (''Electronic Recordkeeper'') shall, prior to the media's use, enter into an arrangement with at least one third party technical consultant (''Technical Consultant'') who has the technical and financial capability to perform the undertakings described in this paragraph (b)(4). The arrangement shall provide that the Technical Consultant will have access to, and the ability to download, information from the Electronic Recordkeeper's electronic storage media to any medium acceptable under this regulation.

(i) The Technical Consultant must file with the Commission an undertaking in a form acceptable to the Commission, signed by the Technical Consultant or a person duly authorized by the Technical Consultant. An acceptable undertaking must include the following provision with respect to the Electronic Recordkeeper:

> With respect to any books and records maintained or preserved on behalf of the Electronic Recordkeeper, the undersigned hereby undertakes to furnish promptly to any representative of the United States Commodity Futures Trading Commission or the United States Department of Justice (the ''Representative''), upon reasonable request, such information as is deemed necessary by the Representative to download information kept on the Electronic Recordkeeper's electronic storage media to any medium acceptable under 17 CFR 1.31. The undersigned also undertakes to take reasonable steps to provide access to information contained on the Electronic Recordkeeper's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be maintained under the Commodity Exchange Act or the rules, regulations, or orders of the United States Commodity Futures Trading Commission, in a format acceptable to the Representative. In the event the Electronic Recordkeeper fails to download a record into a readable format and after reasonable notice to the Electronic Recordkeeper, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to do so, at no charge to the United States, as the Representative may request.

(ii) [Reserved]

(c) Persons employing an electronic storage system shall provide a representation to the Commission prior to the initial use of the system. The representation shall be made by the person required to maintain the records, the storage system vendor, or another third party with appropriate expertise and shall state that the selected electronic storage system meets the requirements set forth in paragraph (b)(1)(ii) of this section. Persons employing an electronic storage system using media other than optical disk or CD–ROM technology shall so state. The representation shall be accompanied by the type of oath or affirmation described in § 1.10(d)(4).

(d) Trading cards, documents on which trade information is originally recorded in writing, and written orders required to be kept pursuant to § 1.35(a), (a–1)(1), (a–1)(2) and (d) must be retained in hard-copy for the required time period.

Issued in Washington, DC on May 21, 1999 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–13514 Filed 5–26–99; 8:45 am]

BILLING CODE 6351–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1603

RIN 3046–AA45

Procedures for Previously Exempt State and Local Government Employee Complaints of Employment Discrimination Under the Government Employee Rights Act of 1991

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is adopting as final an interim rule establishing procedures for implementing Title III of the Civil Rights Act of 1991, entitled the Government Employee Rights Act of 1991, which extends the protections against employment discrimination based on race, color, religion, sex, national origin, age and disability to previously exempt state and local government employees.

DATES: This rule will become effective on May 27, 1999.

FOR FURTHER INFORMATION CONTACT: Nicolas M. Inzeo, Deputy Legal Counsel, Thomas J. Schlageter, Assistant Legal Counsel, or Stephanie D. Garner, Senior Attorney, at (202) 663–4669 or TDD (202) 663–7026. This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: On April 10, 1997, at 62 FR 17542–17548, the Equal Employment Opportunity Commission published an interim rule to implement Section 321 of the Civil Rights Act of 1991. 2 U.S.C. 1220. That section provided new equal employment opportunity protections for previously exempt state and local