

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated

impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on December 1, 1995.

Thomas C. Accardi,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective January 4, 1996*

Jacksonville, FL, Jacksonville Intl, ILS RWY 13, Amdt 5
Olive Branch, MS, Olive Branch, LOC/DME RWY 18, Orig
Salt Lake City, UT, Salt Lake City Intl, ILS/DME RWY 16L, Amdt 9
Salt Lake City, UT, Salt Lake City Intl, ILS/DME RWY 16R, Amdt 1
Salt Lake City, UT, Salt Lake City Intl, ILS/DME RWY 34L, Amdt 1
Salt Lake City, UT, Salt Lake City Intl, ILS/DME RWY 34R, Amdt 1
Superior, WI, Richard I. Bong, GPS RWY 13, Orig
Superior, WI, Richard I. Bong, GPS RWY 31, Orig

* * * *Effective February 1, 1996*

Syracuse, NY, Syracuse Hancock Intl, VOR or GPS RWY 14, Amdt 21

* * * *Effective February 29, 1996*

Crossett, AR, Z M Jack Stell Field, GPS RWY 23, Orig

De Kalb, IL, De Kalb Taylor Muni, GPS RWY 9, Orig
Indianapolis, IN, Indianapolis Metropolitan, GPS RWY 33, Orig
New Castle, IN, New Castle-Henry Co Muni, VOR OR GPS RWY 27, Amdt 9
New Castle, IN, New Castle-Henry Co Muni, NDB OR GPS RWY 9, Amdt 5
New Castle, IN, New Castle-Henry Co Muni, NDB RWY 27, Amdt 5
Ames, IA, Ames Muni, GPS RWY 31, Orig
Fairfield, IA, Fairfield Muni, GPS RWY 36, Orig
Houma, LA, Houma-Terrebonne, GPS RWY 12, Orig
New Orleans, LA, Lakefront, GPS RWY 18R, Orig
Bar Harbor, ME, Hancock County-Bar Harbor, GPS RWY 4, Orig
Sullivan, MO, Sullivan Regional, GPS RWY 24, Orig
Woodbine, NJ, Woodbine Muni, VOR-A, Orig
Woodbine, NJ, Woodbine Muni, VOR or GPS-A, Amdt 2 Cancelled
Silver City, NM, Grant County, GPS RWY 26, Orig
Ponca City, OK, Ponca City Muni, NDB OR GPS RWY 17, Amdt 4
Ponca City, OK, Ponca City Muni, NDB RWY 35, Amdt 3
Ponca City, OK, Ponca City Muni, GPS RWY 35, Orig

[FR Doc. 95-30368 Filed 12-12-95; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

Ethics Training for Registrants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: On July 22, 1994, the Commodity Futures Trading Commission (Commission) published for comment proposed amendments to Rule 3.34, which governs ethics training for Commission registrants. 59 FR 37446. Based upon its review of the comments received and its own reconsideration of the proposed amendments, the Commission has determined to adopt the rule amendments as proposed, with certain modifications discussed herein.

EFFECTIVE DATE: These rule amendments will become effective January 12, 1996. However, with respect to existing ethics training providers, the provision of § 3.34(b)(5) relating to promotional and instructional materials, including videotape and computer presentations, will become applicable March 12, 1996.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Myra R. Silberstein,

Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone (202) 418-5450.

SUPPLEMENTARY INFORMATION:

I. Background

Section 210 of the Futures Trading Practices Act of 1992 added a new paragraph (b) to Section 4p of the Commodity Exchange Act (Act), mandating ethics training for all persons registered under the Act.¹ On April 15, 1993, the Commission adopted Rule 3.34 to implement this Congressional mandate.² By Federal Register release issued on September 13, 1993, the Commission provided further guidance with respect to the contents of applications to be submitted by persons seeking to provide ethics training to registrants.³

Proposed amendments to Rule 3.34, published in July 1994, would: (1) require a certification by persons seeking to provide ethics training that they would not be disqualified from registration under the Act; (2) limit certain representations that ethics training providers may make concerning their status as such; (3) facilitate the use of videotape and electronic presentations; and (4) enhance the ability of a registered futures association to track the ethics training attendance dates of registrants. The Commission received four comment letters on the proposed rule amendments. The commenters included a registered futures association, a computer-based ethics training provider and two other ethics training providers. The commenters generally supported, or acknowledged their understanding of, the objectives of the proposed rule amendments. Some commenters, however, criticized the scope of the proposed rule amendments. Further, one of the ethics training providers who submitted comments requested

¹ This provision of the Act is codified at 7 U.S.C. 6p(b)(1994) and states that:

The Commission shall issue regulations to require new registrants, within 6 months after receiving such registration, to attend a training session, and all other registrants to attend periodic training sessions, to ensure that registrants understand their responsibilities to the public under this Act, including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, registered futures association, or other self-regulatory organization, or any other applicable Federal or state law, rule or regulation.

² 58 FR 19575, 19584-19587, 19593-19594 (April 15, 1993).

³ 58 FR 47890 (September 13, 1993). The Commission has reviewed applications from more than twenty-five persons seeking to provide ethics training to registrants.

additional time to update its program materials to comply with the changes that would be required by the rule amendments. Comments addressed to specific provisions of the proposed rule amendments and the Commission's resolution of the issues raised therein are discussed below in the context of the relevant rule provision.

Based upon its review of the comments received on the proposed amendments and in light of its experience in administering this program, the Commission has adopted amendments to Rule 3.34 regarding ethics training providers. The provisions of Rule 3.34 relating to the topics to be covered in ethics training and the minimum requirements for attendance at such training remain unchanged. The amendments adopted herein will, subject to proposed amendments to Rule 3.34 published in this edition of the Federal Register, permit a person to be included by a registered futures association on a list of authorized providers of such training upon filing of a notice with a registered futures association certifying that: (1) he is not subject to a statutory disqualification from registration under the Act;⁴ (2) barred from service on self-regulatory organization (SRO) governing boards or committees pursuant to Commission Rule 1.63 or SRO rules; or (3) subject to a pending proceeding with respect to possible violations of the Act or rules or orders promulgated thereunder. These amendments will also prohibit certain representations with respect to a person's status as an ethics training provider; allow wider use of ethics training presentations by videotape and computer; and require ethics training providers to furnish records of attendees to a registered futures association upon request.

By separate release published in this edition of the Federal Register, the Commission is proposing several additional amendments to Rule 3.34 to address certain further issues relating to ethics training providers. These amendments would require ethics training providers other than SROs: (1) To satisfy the same proficiency testing requirements as registrants; and (2) have at least three years of pedagogical or relevant industry experience.

II. Amendments to Commission Rule 3.34

A. Required Certifications by Applicants to Become Ethics Training Providers

Currently, three categories of persons may provide ethics training to

Commission registrants pursuant to Rule 3.34: (1) SROs; (2) entities accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics; or (3) any other person whose program "is approved by the Commission for this purpose."⁵ The amendments to Rule 3.34 proposed in July 1994 would have continued to permit SROs and state-accredited continuing education providers to act as ethics training providers without compliance with any additional requirements. With respect to persons other than SROs or state-accredited entities, the proposed amendments would permit such persons to provide ethics training upon filing of a notice with a registered futures association certifying that the person, all principals thereof (as defined in Commission Rule 3.1(a))⁶ and any individuals who, on behalf of such person, conduct in-person ethics training sessions or prepare ethics training videotape or electronic presentations,⁷ are not subject to: (1) any statutory disqualification from registration under Sections 8a(2) or (3) of the Act;⁸ (2) a bar from service on SRO governing boards or committees arising from relevant disciplinary history, as specified in Commission Rule 1.63⁹ or any SRO rule adopted thereunder; or (3) a pending adjudicatory proceeding under Sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or

⁵ 17 CFR 3.34(b)(3)(1995).

⁶ 17 CFR 3.1(a)(1995).

⁷ Thus, if an entity organizes a corporation to offer ethics training and hires an instructor to conduct the lectures, the notice must include within its coverage the entity, the corporation and the instructor. Such notice must also be amended as necessary to cover any additional instructors required to handle the number of persons enrolling in the ethics training program.

⁸ 7 U.S.C. 12a(2) or (3)(1994). The Act specifies several grounds for disqualification from registration including, among others, a prior revocation of registration, felony conviction, and an injunction relating to futures or securities activities.

⁹ Pursuant to Rule 1.63, each SRO must maintain in effect rules which render a person ineligible to serve on its governing boards, disciplinary committees, or arbitration panels who, among other things, has been found within the prior three years to have committed a disciplinary offense or entered into a settlement agreement where the charge involved a "disciplinary offense," is currently suspended from trading on any contract market, is suspended or expelled from membership in any SRO, or is currently subject to an agreement with the Commission or an SRO not to apply for registration or membership. A "disciplinary offense" for these purposes means any violation of the Act or the rules promulgated thereunder or SRO rules other than those relating to (1) decorum or attire, (2) financial requirements, or (3) reporting or recordkeeping, unless resulting in fines aggregating more than \$5,000 in a calendar year, provided such SRO rule violations did not involve fraud, deceit or conversion, or result in a suspension or expulsion. 17 CFR 1.63 (1995).

⁴ Sections 8a (2) and (3) of the Act, 7 U.S.C. 12a (2) and (3) (1994).

Commission Rules 3.55, 3.56 or 3.60.¹⁰ This certification procedure will replace the existing application procedure for entities that are not SROs or state-accredited providers of continuing education in the fields of law, finance, accounting or economics.

The Commission believes that it is appropriate to require persons seeking to act as ethics trainers to provide a certification of the nature outlined above in order to assure a minimum level of fitness to act as ethics trainers.¹¹ The statutory requirement for ethics training is intended "to ensure that registrants understand their responsibilities to the public under [the] Act, including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rules of any appropriate contract market, registered futures association, or other self-regulatory organization or any other applicable Federal or State law, rule or regulation."¹² The Commission believes that, generally, it would be inconsistent with this Congressional mandate and contrary to the public interest for a person to instruct others about their responsibilities under the Act and other applicable requirements if such person has a disciplinary history that reflects a failure to comply with such provisions.

The Commission has used several objective, established benchmarks to identify persons with disciplinary histories that call into question their suitability to provide ethics training. Disqualifying disciplinary histories for this purpose would be those which constitute disqualifications from registration under the Act or bars from service on SRO governing boards or committees, pending adjudicatory proceedings, including disqualification proceedings relating to possible violations of the Act or Commission rules. The Commission has also provided in the final rules, as in the proposed rules, that the certification requirement imposes a continuing duty; consequently, if the certification

becomes inaccurate, the provider must so inform the registered futures association, which shall then refuse to include such person on, or remove such person from, the list of ethics training providers.¹³

One effect of these amendments is to permit the National Futures Association (NFA), currently the only registered futures association, to maintain a list of eligible ethics training providers for purposes of Commission Rule 3.34. In its comment letter on the proposed amendments, NFA recommended that the rule amendments provide procedural protection for ethics training providers who are either rejected or removed from the list by NFA. In particular, NFA recommended that providers rejected or removed from the list be afforded a hearing before NFA with an opportunity to appeal to the Commission. The Commission believes such a procedure to be appropriate and, accordingly, has incorporated it in the final rules as subparagraph 3.34(b)(3)(v). The Commission contemplates that the hearing before NFA in these circumstances could be limited to written submissions and that any subsequent appeal to the Commission would be based on the record before NFA.

NFA also stated in its comment letter that it was uncertain how information regarding statutory disqualifications could be verified, particularly if it could not require that fingerprints be provided and thus would be unable to access the Federal Bureau of Investigations criminal records database. Although cognizant of this limitation, the Commission believes that, in the first instance, NFA should employ the other existing databases that it uses to verify applications of registrants, including the Clearinghouse of Disciplinary Information which NFA maintains with respect to futures industry data and the Securities and Exchange Commission database on securities industry violations.

Another commenter stated that all ethics training providers, including

state-accredited continuing education entities and SROs, should be subject to prior approval by the Commission. The Commission's ethics training rule has not previously required state-accredited entities and SROs to file an application before providing ethics training to registrants. When the Commission originally adopted Rule 3.34(b), it did not require applications for authorization to provide ethics training by SROs and state-accredited entities because SROs are subject to the Commission's regulatory framework and oversight, while state-accredited entities are subject to certification and review by the relevant state. However, in the proposed rule amendments published elsewhere in this edition of the Federal Register, the Commission is now proposing that state-accredited entities be subject to certification and monitoring applicable to other ethics training providers, as discussed above. The Commission believes that in the absence of such compliance, given the lack of uniformity in state continuing education accreditation requirements, it will not have sufficient assurance that such providers have a minimum level of knowledge of relevant statutory and regulatory requirements or of fitness to provide ethics training.¹⁴

One commenter stated that those ethics training providers whose applications to provide ethics training have already been granted by the Commission should be exempt from the certification process set forth in the proposed amendments to Rule 3.34. The Commission agrees with this view and will provide NFA with the current list of authorized ethics training providers for inclusion in the list of authorized providers. However, NFA will be expected to monitor existing providers as well as new providers and may remove any provider for cause as contemplated by subparagraph (b)(3)(iv). As noted above, if circumstances change such that an ethics provider's certification becomes inaccurate, the provider must so inform the NFA. Upon such notice from the provider (or otherwise), NFA shall refuse to include such person on or remove such person from the list of authorized providers.

B. Delegation of Authority

The purposes of subparagraphs (b)(3)(iii) through (b)(3)(v) of Rule 3.34 are to permit NFA to maintain a list of eligible ethics training providers.

¹⁴ In the proposing release, the Commission also is inviting comments concerning the continued appropriateness of permitting SROs to offer ethics training without qualifying to do so in the same manner as other providers.

¹⁰ A pending proceeding is a basis to bar a person whose registration has expired within the preceding sixty days from obtaining a temporary license upon mailing a new registration application (see 17 CFR 3.11(c)(1)(i)(B), 3.11(c)(1)(ii)(B), 3.12(d)(1)(iv), and 3.12(i)(1)(iv)(1995)), to bar a person from serving as a sponsor or special supervisor of a conditioned or restricted registrant (see 17 CFR 3.60(b)(2)(i)(A)(1995)), and to prevent withdrawal from registration (see 17 CFR 3.33(f)(1)(1995)).

¹¹ The requirements discussed above apply to a certification from any ethics training provider. As discussed below, if the ethics training provider will offer training by means of videotape or electronic presentation, the provider's certification would also be required to include a statement with respect to verification of registrants' attendance.

¹² Section 4p(b) of the Act.

¹³ However, if a firm is subject to a pending adjudicatory proceeding as described above, the firm may submit a certification to a registered futures association with an explanation describing the circumstances of the proceeding, particularly with respect to the scope and nature of the proceeding in relation to the size of the firm. For example, a proceeding that is limited to a single branch office of a firm and that does not involve fraud or failure to supervise might be treated differently than a proceeding involving allegations extending to the overall operations of the firm or making claims of fraud. The Commission would expect the registered futures association to consult the Commission concerning specific certifications in cases involving an ethics provider that is or becomes subject to a proceeding.

Therefore, the Commission hereby delegates authority to NFA: (1) To maintain the list of eligible ethics training providers for purposes of Commission Rule 3.34, including the authority to refuse to include persons on such list pursuant to the criteria set forth in Rule 3.34(b)(3)(iii) or criteria established by NFA and approved by the Commission; (2) to establish guidelines as to the required proficiency and experience of ethics training providers; (3) to receive and evaluate complaints concerning such providers and conduct other appropriate reviews of providers' operations, subject to Commission oversight; (4) to develop appropriate procedures to verify certifications filed by potential ethics training providers; and (5) to require that such certifications be updated periodically. NFA's procedures must be submitted to the Commission for review pursuant to Section 17(j) of the Act,¹⁵ which governs Commission review and approval of registered futures association rules.

In its comment letter on the proposed amendments to Rule 3.34, NFA supported the Commission's proposal to delegate responsibility to NFA for the processing and review of applications of prospective ethics training providers and confirmed its willingness to assume this responsibility. However, NFA suggested that the Commission establish objective standards for NFA to follow in discharging these responsibilities. NFA expressed the view that ethics training providers should satisfy a proficiency standard that is objective, readily measurable and would assure that providers possess a working knowledge of the industry and its regulations.

As noted above, the Commission is proposing, by separate Federal Register release, certain minimum requirements with respect to proficiency testing and experience to be applicable to ethics training providers other than SROs. These proposals include a requirement that ethics training providers be subject to the same proficiency testing requirements as the registrants they propose to instruct. This proficiency test will generally be the National Commodity Futures Examination (Series 3 Exam).

The Commission is also proposing to require that ethics training providers other than SROs demonstrate that they have at least three years of pedagogical or relevant industry experience. The Commission's delegation of authority to NFA includes authority to establish guidelines concerning the specific types of pro-ficiency tests and experience

necessary to satisfy these requirements.¹⁶ Of course, NFA may submit to the Commission for decision any specific matters which have been delegated to it and Commission staff will be available to discuss with NFA staff issues relating to the implementation of these rules, including the review of operations of ethics training providers.

C. Permissible Representations

To date, in granting the applications of persons seeking to provide ethics training, the Commission has made clear that it is not approving the specific content of the proposed ethics training program or expressing any opinion as to the program's quality or accuracy. The Commission believes that it is appropriate to clarify by rule the effect of authorization to provide ethics training under Rule 3.34 for all providers. Accordingly, the Commission proposed in Rule 3.34(b)(5) to prohibit any representation or implication that an ethics training provider has been sponsored, recommended or approved, or the provider's abilities or qualifications or the content, quality or accuracy of the training program provided, has in any respect been passed upon or endorsed by the Commission, a registered futures association, or any representative thereof.

The commenters voiced no objections to this proposed provision. However, one commenter requested that the effective date of these rule amendments be delayed for ninety days for existing ethics training providers to enable them to modify their presentations and materials to comply with the adopted changes. The Commission believes that all providers should be given ninety days in which to comply with the requirement to include the specified statement in promotional and instructional material. Therefore, the effective date of Rule 3.34(b)(5) will be ninety days following publication, rather than thirty days following publication, which is the effective date for all other provisions.

Accordingly, the Commission has adopted Rule 3.34(b)(5) to provide that no SRO, state-accredited continuing education entity or other person included on a list of ethics training

providers "may represent or imply in any manner whatsoever that such person has been sponsored, recommended or approved, or that such person's abilities or qualifications, the content, quality or accuracy of his training program, or the positions taken in the course of resolving any actual or hypothetical situations presenting ethical or legal issues,¹⁷ have in any respect been passed upon or endorsed, by the Commission or a registered futures association." Rule 3.34(b)(5) further provides that any promotional or instructional material used in connection with ethics training "must prominently state that the Commission and any registered futures association have not reviewed or approved the specific content of the training program and do not recommend the provider of such training."¹⁸

In the July 1994 release, the Commission also proposed to limit the use an ethics training provider may make of that status in certain adjudicatory proceedings. As stated in the proposing release, the Commission did not believe that a person should be able to use his or her status as an ethics training provider to qualify as an expert witness or to present expert testimony in an adjudicatory proceeding before the Commission or to which the Commission is a party. While the commenters voiced no objections to this provision, the Commission, upon reconsideration of this issue, has determined that the prohibitions of the representations specified in paragraph (b)(5) should suffice to bar inappropriate use of status as an ethics training provider. Therefore, the Commission has not adopted proposed paragraphs (b)(5)(ii) and (b)(5)(iii) of Rule 3.34, which would have limited certain uses of status as an ethics training provider. However, the Commission emphasizes that inclusion on the list of authorized ethics training providers should not be viewed as a warranty of expertise and that in its view such status should not be accorded weight in determinations of the provider's qualifications as an expert witness.

D. Videotape and Electronic Presentations

Commission Rule 3.34(b)(3) provides that a program of ethics training may be

¹⁶In comparable areas, such as registration and review of promotional material, the Commission has delegated authority to NFA to develop and implement specific standards and, in those instances, NFA has established standards above the minimum levels previously established by the Commission or set forth in the Act. See, e.g., NFA Rule 2-8(d) (minimum experience requirements for an associated person to exercise discretion over an account).

¹⁷This additional language has been added to clarify the proposal and is consistent with the intent of Rule 3.34.

¹⁸Rule 3.34(b)(5) also contains a proviso that it "shall not be construed to prohibit a statement that a person is included on a list of ethics training providers maintained by a registered futures association if such statement is true in fact and if the effect of such a listing is not misrepresented."

¹⁵ 7 U.S.C. 21(j)(1994).

offered by videotape or electronic presentation. In adopting Rule 3.34, the Commission initially provided that videotape or computer training, in lieu of in-person ethics training, should only be available when geographical inconvenience or other factors made in-person training impracticable.¹⁹ However, in proposing amendments to Rule 3.34 in July 1994, the Commission indicated that any registrant may meet his ethics training requirement through in-person courses or through the use of videotape or computer presentations regardless of circumstances.²⁰

The Commission also wishes to make clear, however, that if videotape or electronic training is offered, the provider must be able to verify that the video has been viewed or the electronic training completed by the registrant before the provider issues a certificate of attendance to the registrant.²¹ Therefore, Rule 3.34(b)(3)(iii)(B), as revised by the amendments adopted herein, requires that, if a provider will conduct training by means of videotape or electronic presentations, either exclusively or in addition to in-person training, the provider's certification required under Rule 3.34(b)(3)(iii) must be supplemented to include a representation that the provider will maintain documentation reasonably designed to verify that registrants have properly completed ethics training for the minimum time required (one, two or four hours).

The Commission envisages that an appropriate verification regime for a provider would include procedures such as the following. The provider would maintain a list of the computer-based ethics program purchasers and match each completed program with a record of purchase. Registrants would be required to enter identifying information, such as name, firm's name, business address, telephone number, date of birth, NFA and/or Social Security number, on the control disk and return a signed statement with the completed computer disk certifying that he did in fact complete the ethics training course in the manner set out in the instructions.

With respect to the fulfillment of the minimum time requirements and verification of the registrants' participation in the program, the ethics training provider could use a computer-based test to assure that the registrant has attained a minimum level of understanding of the materials covered, drawing upon matters covered in video

and written materials, as well as the computer program, to the extent applicable. To assure that each section of the program is completed, registrants would be required to pass each section of the test prior to answering questions in later sections of the test. While those who fail the test would be required to retake it until it is successfully completed, only the time spent on the first test could be credited toward the ethics training time required by Rule 3.34. Registrants answering quickly would be given additional questions to answer, and the program would cease recording elapsed time for those slow to answer questions. Thus, registrants would be monitored both as to time spent and material covered. If a provider wished to follow a different verification regime, he could do so if such steps had been submitted to and not found objectionable by a registered futures association.

The Commission contemplates that an ethics training provider would be able to document that a registrant had undertaken the various steps required for the provider to verify completion. The provider would be required under revised Rule 3.34(b)(4) to maintain documentation substantiating its determination that ethics training has been properly completed by a registrant and to support its issuance of a certificate of attendance.²²

As noted above with respect to the limitations upon representations concerning authorization to provide ethics training, certain commenters requested that the effective date of the rule amendments be delayed for ninety days for existing ethics training providers to enable the providers to modify their video or electronic presentations and materials to comply with the rule amendments. Since new paragraph (b)(5) of Rule 3.34 concerning permissible representations applies to all promotional or instructional materials, that provision encompasses videotape and electronic presentations. Accordingly, the deferred effective date for the provision discussed above should accommodate any concerns of these commenters with respect to videotape or electronic presentations and materials.

E. Recordkeeping

Rule 3.34(b)(4), which governs recordkeeping by an ethics training provider, requires ethics training providers to maintain records of materials used in and attendees at such training in accordance with Commission

Rule 1.31, *i.e.*, for a five-year period.²³ The Commission proposed to add a provision to these recordkeeping requirements to require providers of ethics training to furnish records of attendees at such training to a registered futures association in such format as the registered futures association may request. As noted in the proposing release, NFA is willing to compile information on ethics training attendance for inclusion in the registration database and believes that ethics training providers should cooperate with NFA requests for the information which providers are already required to maintain. In its comment letter, NFA stated that it was confident that the Commission's amendment to Rule 3.34(b), requiring providers to furnish a list of ethics training attendees to NFA, will streamline the recordkeeping needed in this area. Further, NFA believes that this requirement will reduce the burden borne by registrant firms in determining whether a prospective employee has satisfied his ethics training requirement. The Commission believes compilation of ethics training attendance data by NFA (or other registered futures associations) will produce a central repository of such information, which should benefit all registrants and facilitate oversight of compliance with the ethics training requirement. To facilitate NFA's incorporation of this data in the registration database, ethics training providers should include appropriate identifiers of registrants, such as NFA identification number, and follow other format conventions requested by NFA.

One commenter requested that ethics training providers be permitted to use identifiers other than NFA identification numbers, *e.g.*, name, date of birth or social security number, in reporting attendees to NFA. While this comment may have merit, the final rule amendments require providers to respond to NFA requests for information and to furnish to NFA the information that providers are already required to maintain. The specific data needed by NFA to maintain and compile its database may be decided by NFA. The Commission does not believe that it should be unduly burdensome for ethics training providers to obtain NFA identification numbers from attendees, unless such persons have not yet registered or filed an application for

¹⁹ 58 FR 19575, 19586-19587.

²⁰ 59 FR 37446, 37448.

²¹ 58 FR 19575, 19586-19587.

²² Revised Rule 3.34(b)(4) also requires that records of trainer evaluations be maintained.

²³ 17 CFR 1.31 (1995). When the Commission adopted Rule 3.34, it stated that it would monitor the effectiveness of the requirement for maintaining a record of ethics training attendance and might reconsider the issue at a later date if appropriate. 58 FR 19575, 19587.

registration.²⁴ However, NFA should arrange with providers to accomplish this task by the most efficient means for all concerned.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments discussed herein will affect only those ethics training providers that are not SROs or entities accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics. The Commission believes that the impact of these rule amendments on other providers of ethics training or persons seeking to become providers of ethics training should be minimal. The procedure for becoming an ethics training provider will be simplified. The restrictions upon permissible representations by ethics training providers concerning their status as such essentially codify conditions already imposed by the Commission to date in granting applications of individual ethics training providers. Finally, since ethics training providers are already required to maintain records of attendees, furnishing such information to NFA upon request should not be unduly burdensome. Therefore, these rules will not have significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, 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, the Commission has previously submitted this rule and its associated information collection requirements to the Office of Management and Budget. While the amendments adopted herein have no burden, Rule 3.34 is a part of a group of rules which has the following burden:

Rules 3.16, 3.32 and 3.34 (3038-0023, approved June 2, 1993):
 Average Burden Hours Per Response—1.13
 Number of Respondents—60,980
 Frequency of Response—On Occasion and Triennially

Persons wishing to comment on the information which will be required by these rules as amended should contact Jeff Hill, Office of Management and Budget, room 3228, NEOB, Washington, D.C. 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 1155 21st St. N.W., Washington, D.C. 20581, (202) 418-5170.

List of Subjects in 17 CFR Part 3

Registration, Ethics training

Accordingly, the Commission, pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 1a, 4d, 4e, 4g, 4m, 4p, 8a and 17 thereof (7 U.S.C. 1a, 6d, 6e, 6g, 6m, 6p, 12a and 21 (1994)), hereby amends Part 3 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 3—REGISTRATION

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

Authority: 7 U.S.C. 1a, 2, 4, 4a, 6, 6b, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21 and 23; 5 U.S.C. 552, 552b.

2. Section 3.34 is amended by revising paragraphs (b)(3) and (b)(4) and by adding paragraph (b)(5) to read as follows:

§ 3.34 Mandatory ethics training for registrants.

* * * * *

(b) * * *
 (3) The training required by this section must be provided by or pursuant to a program of training (including videotape or electronic presentation) sponsored by:

- (i) A self-regulatory organization;
- (ii) An entity accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics; or,
- (iii) A person included on a list maintained by a registered futures association who has filed a notice with the registered futures association certifying that:

(A) Such person, any principals thereof (as defined in § 3.1(a)) and any individuals, on behalf of such person, who present ethics training or who prepare an ethics training videotape or electronic presentation are not subject to:

- (1) Statutory disqualification from registration under Sections 8a(2) or (3) of the Act;
- (2) A bar from service on self-regulatory organization governing

boards or committees based on disciplinary histories pursuant to § 1.63 of this chapter or any self-regulatory organization rule adopted thereunder; or

(3) A pending adjudicatory proceeding under Sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act, or §§ 3.55, 3.56 or 3.60; and

(B) If the person will conduct training via videotape or electronic presentation, either exclusively or in addition to in-person training, he will maintain documentation reasonably designed to verify the attendance of registrants at such videotape or electronic presentation for the minimum time required.

(iv) The certification required by paragraph (b)(3)(iii) of this section is continuous and if circumstances change which result in the certification becoming inaccurate, the person must promptly so inform the registered futures association. Upon notice of such inaccuracy, the registered futures association shall refuse to include such person on or remove such person from the list referred to in paragraph (b)(3)(iii) of this section.

(v) The registered futures association shall develop and submit to the Commission in accordance with Section 17(j) of the Act rules to provide reasonable procedures for making determinations not to include or to remove persons from the list referred to in paragraph (b)(3)(iii) of this section. Such rules shall permit a hearing before the registered futures association with an opportunity for appeal to the Commission. Such appeal shall consist solely of consideration of the record before the registered futures association and the opportunity for the presentation of supporting reasons to affirm, modify, or set aside the decision of the registered futures association.

(4) Any person providing ethics training under this section must maintain records of the materials used in such training, and of the attendees at such training, documentation to verify completion by a registrant of training through videotape or electronic presentation and evaluations of trainers in accordance with § 1.31 of this chapter. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice and persons providing ethics training shall be subject to audit by any representative of the Commission. Records of attendees at such training shall be provided upon request to a registered futures association in such format as specified by the registered futures association.

(5) No person referred to in paragraph (b)(3) of this section may represent or

²⁴ Ethics training may be taken up to six months prior to the date of application for registration. See 58 FR 19575, 19585.

imply in any manner whatsoever that such person has been sponsored, recommended or approved, or that such person's abilities or qualifications, the content, quality or accuracy of his training program, or the positions taken in the course of resolving any actual or hypothetical situations presenting ethical or legal issues, have in any respect been passed upon or endorsed, by the Commission, a registered futures association, or any representative thereof. Any promotional or instructional material used in connection with the training required by this section must prominently state that the Commission and any registered futures association have not reviewed or approved the specific content of the training program and do not recommend the provider of such training: *Provided, however*, that this paragraph shall not be construed to prohibit a statement that a person is included on a list of ethics training providers maintained by a registered futures association if such statement is true in fact and if the effect of such a listing is not misrepresented.

* * * * *

Issued in Washington, D.C. on December 7, 1995, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95-30358 Filed 12-12-95; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, and 25

[TD 8630]

RIN 1545-AR56

Actuarial Tables Exceptions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final income, estate, and gift tax regulations relating to exceptions to the use of the valuation tables in the regulations for valuing annuities, interests for life or a term of years, and remainder or reversionary interests, the valuation of which was the subject of final regulations published on June 10, 1994. These regulations are necessary in order to provide guidance consistent with court decisions concluding that the valuation tables are not to be used in certain situations.

EFFECTIVE DATE: These regulations are effective December 13, 1995.

FOR FURTHER INFORMATION CONTACT: William L. Blodgett, telephone (202) 622-3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On June 10, 1994, the IRS published in the Federal Register (59 FR 30100) final income tax regulations under sections 170, 642, 664 and 7520 of the Internal Revenue Code (Code), and final estate and gift tax regulations under sections 2031, 2512 and 7520 of the Code providing actuarial tables to be used in valuing annuities, interests for life or a term of years, and remainder or reversionary interests under section 7520. On June 10, 1994, the IRS also published in the Federal Register (59 FR 30180) proposed amendments to the income, estate, and gift tax regulations prescribing circumstances when the published actuarial tables cannot be used to value interests. This regulation finalizes those amendments.

Written comments responding to the notice of proposed rulemaking were received. Requests for a public hearing were also received but were subsequently withdrawn. After consideration of all the comments received, those amendments are revised and adopted by this Treasury decision.

Explanation of Provisions

Section 7520(a), which is effective for transfers after April 30, 1989, provides that the value of annuities, interests for life or a term of years, and remainder or reversionary interests is to be determined under tables published by the IRS. Section 7520(e) provides that, for purposes of section 7520, the term *tables* includes formulas. Section 7520(b) provides that section 7520 shall not apply for purposes of any provision specified in regulations. The Conference Report accompanying the Technical and Miscellaneous Revenue Act of 1988, H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. 113 (1988) (1988-3 C.B. 603), states that section 7520 does not apply in "situations specified in Treasury regulations." A summary of the principal comments received and revisions made in the final regulations in response to those comments is provided below.

1. Valuation of Annuities, Income Interests, etc.

Under the proposed regulations, the tables cannot be used if the instrument of transfer does not provide the beneficiary of the annuity, income interest, or remainder interest with the degree of beneficial enjoyment that is consistent with the traditional character of that property interest under

applicable local law. One comment letter suggested that, as a result of enactment of section 2702, it may no longer be necessary to prescribe special rules in the case of a trust corpus consisting of nonproductive property. It was decided to retain these rules because this issue will continue to arise in certain situations where section 2702 does not apply; e.g., the valuation of a gift of an income interest for purposes of determining the section 2503(b) gift tax exclusion; the valuation of the bequest of an income interest for purposes of the section 2013 estate tax credit.

In response to comments, the final regulations provide additional guidance for determining under what circumstances a life tenant or term certain beneficiary of tangible property possesses adequate beneficial use such that the tables would be used to value the interest.

A number of comments were received on the valuation of an annuity that is payable from a trust corpus that will exhaust prior to the annuitant reaching the presumed terminal age prescribed by the tables (age 110). Under the proposed regulations, the interest would be valued, not as a right to receive the annuity for the life of the annuitant, but rather as the right to receive the annuity for the shorter of the life of the annuitant or the date on which the corpus will exhaust. One commentator agreed that the possibility of exhaustion of corpus should be taken into account in cases of relatively severe underfunding of the trust. However, it was suggested that, if the underfunding was relatively less severe, it should be disregarded. After further consideration of this issue, the IRS has concluded that the method described in the proposed regulations for determining the value of the annuity is consistent with fundamental principles for determining present value and long-standing IRS position. See, Rev. Rul. 77-454 (1977-2 C.B. 351); Rev. Rul. 70-452 (1970-2 C.B. 199); *Moffett v. Commissioner*, 269 F.2d 738 (4th Cir. 1959); *United States v. Dean*, 224 F.2d 26 (1st Cir. 1955). However, in response to requests, the explanation of the methodology and computation has been amplified.

2. Terminal Illness

Under the proposed regulations, the tables cannot be used if the individual, who is the measuring life with respect to the property interest, is terminally ill. Under the proposed regulations, the individual is terminally ill if that individual was known to have an incurable illness or deteriorating physical condition such that there is at