

United States." The President has delegated this authority with respect to the tomato tariff-rate quotas (TRQ's) to the United States Trade Representative (USTR).

Concern has been expressed about the impact on domestic markets of surges in imports of Mexican tomatoes.

Allocation of the existing seasonal TRQ's on a weekly basis is an option which could address that concern. USTR is considering that option and seeking public comment.

Mexico typically supplies over 90 percent of U.S. fresh tomato imports. During the winter months, more than 25 percent of the fresh tomatoes consumed in the United States are grown in Mexico.

In accordance with terms of the NAFTA, this proposal would affect only tomatoes imported into the United States from Mexico during the periods March 1 through July 14 through the year 2002 and November 15 through February until February 2003. Tomatoes entered from Mexico eligible for the in-quota tariff would be charged the declining NAFTA rate. All other Mexican tomatoes would be charged the most favored nation rate.

Tariffs on tomatoes imported from Mexico during the period July 15 through November 14 are being phased out over five years. No TRQ's apply from July 15 through November 14. Entries during this period would be unaffected.

**Allocation Methodology:** One method for allocating the in-quota quantity for each of the tariff-rate quotas would be to distribute the specified quantity evenly on a weekly basis throughout each TRQ period. Since the in-quota quantity for each TRQ increases each year, an annual re-calculation of the weekly TRQ's would be necessary.

The following is an example of how the in-quota quantity could be distributed on a weekly basis:

According to U.S. Note 10 to subchapter VI of chapter 99 of the HTS, for the period November 15, 1995 through February 29, 1996, the in-quota quantity is 177,469,000 kilograms (kg.).

The seasonal TRQ would be divided evenly into weekly allocations. The period from November 15, 1995, through February 29, 1996, includes 14 complete weeks and portions of two weeks at the beginning and end of the period. To calculate the weekly allocation for the season, the total seasonal TRQ of 177,469,000 kg would be divided by 107, the total number of days in the period. A week would be defined as a seven-day period running from Monday through Sunday. The daily amount would be multiplied times

7 to establish an allocation for each of 14 full weeks. For the period November 15 through November 19, the daily amount would be multiplied by 5 and for the February 26 through February 29 period, the daily amount would be multiplied by 4. This establishes a weekly allocation of 11,610,121 kg. for each of the 14 full weeks, an allocation of 8,292,248 kg. for the November 15-18, 1995, period, and 6,634,358 kg. for the February 26-29, 1996, period.

For the period November 15, 1995, through February 29, 1996, the tariff on tomatoes imported from Mexico within the weekly quotas would be 2.6 cents per kilogram. The tariff on any amounts which exceed the weekly quotas would be 3.2 cents per kilogram.

USTR is particularly interested in comments from the public which address the following points:

(a) To what extent do surges in imports of Mexican tomatoes disrupt, or threaten to disrupt, the U.S. market for fresh tomatoes?

(b) Would a weekly allocation of the current seasonal TRQ's be an effective mechanism for moderating any disruption that might otherwise occur?

(c) If the seasonal TRQ is to be subdivided into weekly TRQ's, how should it be equitably allocated among the weeks?

(d) Are there alternative mechanisms available to cushion the impact of surges in imports of Mexican tomatoes that could be more effective, but still consistent with U.S. obligations under NAFTA?

#### Written Comments

Comments on the above Advance Notice of Proposed Rulemaking are invited. Written comments should be directed to Leonard W. Condon, Deputy Assistant United States Trade Representative for Agricultural Affairs, Office of the United States Trade Representative, Washington, DC, 20508. Comments, with two copies, should be received by March 13, 1996.

Michael Kantor,

*United States Trade Representative.*

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BILLING CODE 3190-01-M

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 3

#### Ethics Training for Registrants

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rule.

**SUMMARY:** On July 22, 1994, the Commodity Futures Trading Commission (Commission) proposed amendments to Rule 3.34, which governs ethics training for Commission registrants. The Commission has published a release announcing the adoption of those rule amendments in the Federal Register on December 13, 1995. The Commission also is proposing to amend Rule 3.34 to require that persons who seek to provide ethics training must present satisfactory evidence that they meet a proficiency testing requirement established by a registered futures association and possess a minimum of three years of relevant experience. The Commission is also proposing to amend Rule 3.34 to eliminate the provision permitting state-accredited entities to provide ethics training without being subject to the requirements pertaining to other providers under the rule.

**DATES:** Comments must be received by January 16, 1996.

**ADDRESSES:** Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581 and should refer to "Ethics Training for Registrants."

**FOR FURTHER INFORMATION CONTACT:** Lawrence B. Patent, Associate Chief Counsel or Myra R. Silberstein, Attorney-Advisor, Division of Trading and Markets, 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) to mandate ethics training for persons required to be registered under the Act.<sup>1</sup> On April 6, 1993, the Commission adopted Rule 3.34 to implement this Congressional mandate.<sup>2</sup> In September, 1993, the Commission issued a Federal Register release to clarify the procedures to be followed by persons

<sup>1</sup> 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.

<sup>2</sup> 58 FR 19575, 19584-19587, 19593-19594 (Apr. 15, 1993).

seeking to provide ethics training pursuant to Rule 3.34.<sup>3</sup>

Rule 3.34 requires natural persons registered under the Act to attend ethics training to ensure that they understand their responsibilities to the public under the Act. The required training must address the requirements of the Act and all rules concerning the treatment and handling of customer orders and business. Issues to be addressed may include: honesty, fairness and the interests of customers and the integrity of the markets; effective supervisory systems and controls; assessment of financial situations and the investment experience of customers; disclosure of material information; and avoidance of conflicts of interest. New registrants must attend ethics training within six months of being granted registration and every three years thereafter. The initial training must be at least four hours in duration; subsequent training must be of at least one hour in duration. Persons registered when Rule 3.34 became effective on April 26, 1993 were granted until April 26, 1996 to attend an initial training session, of at least two hours in duration, and must thereafter attend a one-hour session every three years. Ethics trainers must maintain records of materials used in such training and of attendees at such training.

In July 1994, the Commission proposed amendments to Rule 3.34 to improve the operation of its ethics training program and furnish additional guidance with respect to the activities of ethics training providers.<sup>4</sup> The Commission has published a release announcing the adoption of those amendments published in the Federal Register on December 13, 1995. The amendments adopted will, among other things, require a person seeking to provide ethics training to certify that he is not subject to a statutory disqualification from registration under the Act,<sup>5</sup> barred from service on self-regulatory organization (SRO) governing boards or committees,<sup>6</sup> or subject to a

pending proceeding concerning possible violations of the Act or rules or orders promulgated thereunder.

## II. Proposed Amendments

### A. Proficiency Testing and Minimum Experience Requirements

The Commission is now proposing further amendments to Rule 3.34 to require any person seeking to provide ethics training to furnish satisfactory evidence to a registered futures association that he has met the proficiency testing requirement<sup>7</sup> established by a registered futures association<sup>8</sup> pursuant to Section 17(p)(1) of the Act for the registration of commodity professionals<sup>9</sup> and possesses three years of relevant experience. Currently, the National Commodity Futures Examination (Series 3 Exam) is the proficiency test required to be completed by most commodity professionals.<sup>10</sup>

In commenting on the amendments proposed in July, 1994, NFA suggested that a proficiency testing requirement be incorporated in Rule 3.34 to require ethics training providers to satisfy an objective standard designed to reflect a minimum level of knowledge of the futures industry and the relevant statutory and regulatory structure. NFA and another commenter also recommended that to ensure that an ethics training provider possesses a working knowledge of the futures industry and is capable of teaching relevant rules and regulations, ethics training providers should be required to have at least three years of industry or teaching experience.

The Commission agrees that requiring persons who seek to provide ethics training to provide proof of satisfactory completion of a proficiency testing requirement applicable to registrants and of possession of three years of relevant industry or pedagogical experience provides an objective, readily administered measure for

determining knowledge of relevant matters and should not be unduly burdensome. The Commission believes that it would be inconsistent with the Congressional mandate for ethics training and contrary to the public interest for a person to teach others about their responsibilities under applicable laws and rules if such a person is not able to demonstrate at least the same minimum acceptable level of proficiency as is required of those he intends to educate. Further, such requirements would be consistent with the approach followed by the Commission to date in evaluating applications from potential offerors of ethics training. In proposing Rule 3.34, the Commission noted its belief that "pedagogical expertise and knowledge of futures are factors that should be taken into consideration in evaluating potential offerors of ethics training."<sup>11</sup> Consequently, in reviewing applications filed under Rule 3.34 for authorization to provide ethics training, the Commission has endeavored to assure that such providers demonstrate pedagogical experience and knowledge of the futures markets. Should these proposed amendments be adopted, the Commission anticipates that NFA will promulgate rules establishing specific proficiency standards for ethics training providers.

The Commission believes that the proposed requirement of three years of relevant experience may be satisfied not only by pedagogical or teaching experience but, also, by relevant industry experience. For example, such industry experience might be acquired by the practice of law in the fields of futures or securities or employment as a trader or risk manager at a brokerage or end-user firm. The Commission welcomes comments as to the types of experience that should be deemed sufficient for this purpose.

The Series 3 Exam is the only relevant proficiency test currently available for ethics training providers, since it is the proficiency test that is generally applicable to Commission registrants and is designed to assure a broad working knowledge of the futures industry. Successful completion of the Series 3 Exam is required of all natural persons seeking to be registered as a commodity pool operator (CPO), commodity trading advisor (CTA), futures commission merchant, introducing broker, leverage transaction merchant or an associated person (AP)

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).

<sup>7</sup> 7 U.S.C. 6p(a)(1994).

<sup>8</sup> Presently, the National Futures Association (NFA) is the only registered futures association.

<sup>9</sup> Section 17(p)(1) of the Act, 7 U.S.C. 21(p)(1)(1994), provides, in part, that a registered futures association must establish training standards and proficiency testing for persons involved in the solicitation of transactions subject to the Act, supervisors of such persons, and all persons for whom it has registration responsibilities.

<sup>10</sup> See NFA Registration Rule 401.

<sup>11</sup> 58 FR 19575, 19586. However, initially the Commission elected not to establish specific requirements with respect to these matters in Rule 3.34.

<sup>3</sup> 58 FR 47890 (Sept. 13, 1993).

<sup>4</sup> 59 FR 37446 (July 22, 1994).

<sup>5</sup> 7 U.S.C. 12a (2) and (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.

<sup>6</sup> No person may serve on SRO governing boards or committees who, among other things, has been found within the prior three years to have committed a "disciplinary offense" or entered into a settlement agreement with respect to a charge involving 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

of any of the foregoing.<sup>12</sup> The Commission recently approved an alternative proficiency testing requirement under which general securities representatives whose commodity interest activity will be limited to managed accounts or commodity pool interests may take the Futures Managed Funds Examination (Series 31 Exam) in lieu of the Series 3 Exam. The Commission believes that even if an ethics training provider wishes to instruct only CPOs, CTAs and their APs, the more comprehensive based Series 3 Exam is the appropriate proficiency test.

#### *B. Applicability of Certification, Proficiency Testing and Experience Requirements*

Currently, Rule 3.34 requires that any provider of ethics training other than an SRO offering ethics training to its members or employees or an entity accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics must be approved by the Commission for this purpose. A comment letter addressing the amendments to Rule 3.34 published in the Federal Register on December 13, 1995, suggested that SROs and state-accredited entities should no longer be exempted from the general requirement under Rule 3.34 that entities seeking to provide ethics training submit an application to the Commission summarizing their ethics training program, as all ethics training providers should be subject to equivalent standards. The Commission believes that the business purposes and functions of SROs, the statutory and regulatory requirements applicable to SROs, and the Commission's oversight program for assuring compliance by SROs with their responsibilities under the Act and Commission rules provide sufficient assurance of the expertise and fitness of SROs as ethics training providers without the necessity for imposing additional requirements. Consequently, the Commission's proposals with respect to proficiency training and pedagogical or industry experience do not apply to SROs seeking to provide ethics training to their members or employees. The

Commission invites commenters to address the continued appropriateness of this approach for SROs in light of the proposed modifications of the requirements with respect to other types of ethics training providers.

The Commission has determined, however, to propose that state-accredited entities be required to file with the NFA the certification required under Rule 3.34(b)(3)(iii) and to comply with the other relevant provisions of Rule 3.34, including proficiency testing and experience requirements. In the absence of such compliance and in light of the potential for significant variations among state-accreditation regimes, the Commission would have no ready means of assuring that such providers have a minimum level of relevant knowledge or experience.

The Commission is proposing that the proficiency testing and minimum experience requirements apply to the provider or sponsor of the ethics training program, to any instructors or presenters employed by the provider of such ethics training, and to those persons who prepare ethics training videotapes or electronic presentations. Existing providers, instructors and preparers operating pursuant to specific Commission authorization or otherwise in compliance with Rule 3.34 as currently in effect would not be subject to these requirements. However, if an entity whose application to provide ethics training has previously been granted by the Commission seeks to add a new instructor or course preparer, such person would be subject to the proficiency testing and minimum relevant experience standards.

### 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 proposed herein will not affect SROs who wish to provide ethics training but would affect all others who seek to be included on a list of authorized ethics training providers, including entities accredited to conduct continuing education programs by state professional licensing authorities in the fields of law, finance, accounting or economics. The impact of this proposal on persons seeking to become providers of ethics training should be minimal. At this time, a one-time processing fee for the Series 3 Exam offered by the NFA is seventy-five dollars. This should not constitute an unduly burdensome entry cost for ethics training providers; the

same cost is incurred by all the attendees at ethics training as a cost of registration. Requiring a minimum level of experience also should not adversely impact small businesses as this requirement does not impose additional financial cost upon such entities.

Therefore, on behalf of the Commission, the Chairman hereby certifies, pursuant to 5 U.S.C. 605(b), that the rule amendments proposed herein will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comments from any persons or entities who believe that these proposed rule amendments will have a significant impact on their operations.

#### *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 the proposed rule and its associated information collection requirements to the Office of Management and Budget. While the amendments proposed 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 proposes to amend Part 3 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

<sup>12</sup> See also the 400 Series of the NFA Registration Rules, which sets forth the proficiency requirements for industry professionals and the alternatives to and exemptions from the Series 3 Exam requirements. Currently, floor traders and floor brokers are not required to pass the Series 3 Exam in order to become registered. Most floor traders and floor brokers receive orientation and ethics training from their respective exchanges.

**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.

**§ 3.34 [Amended]**

2. Section 3.34 as amended by a final rule published on December 13, 1995, is proposed to be amended by removing and reserving paragraph (b)(3)(ii) and revising the introductory text of paragraph (b)(3)(iii) to read as follows:  
**§ 3.34 Mandatory ethics training for registrants.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) [Reserved]

(iii) A person included on a list maintained by a registered futures association who has presented satisfactory evidence to the registered futures association that he has taken and passed the proficiency testing requirements established by a registered futures association for an ethics training provider, possesses a minimum of three years of relevant experience, and who certifies that:

\* \* \* \* \*

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

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95-30359 Filed 12-13-95; 8:45 am]

BILLING CODE 6351-01-P

Register notice, if adverse or critical comments were received by November 24, 1995, the effective date would be delayed and timely notice would be published in the Federal Register.

Therefore, due to receiving an adverse comment within the comment period, EPA is withdrawing the final rule and will address the comments received in a subsequent final rule based on the proposed rule also published on October 24, 1995. 60 FR 54465. EPA will not institute a second comment period on this document.

**DATES:** This withdrawal notice is effective December 14, 1995.

**FOR FURTHER INFORMATION CONTACT:** Montel Livingston, Office of Air (AT-082), EPA, Region 10, 1200 6th Avenue, Seattle, WA 98101, (206-553-0180).

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule located in the final rules section of the October 24, 1995 Federal Register, and in the short informational notice located in the proposed rule section of the October 24, 1995 Federal Register.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, and Volatile organic compounds.

Dated: December 7, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95-30509 Filed 12-13-95; 8:45 am]

BILLING CODE 6560-50-P

continue. It is expected that further proposals will be published for comment in the near future. This action was reviewed by the Office of Management and Budget under Executive Order 12866.

**DATES:** Comment Date: Comments on the proposed rule should be submitted in writing to the address below on or before February 12, 1996, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan Schneider, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 95-D039 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Schneider, (703) 602-0131.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This proposed rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement initiatives designed to facilitate awards to SDBs while taking account of the Supreme Court's decision in *Adarand Constructors, Inc. vs. Pena*, 63 U.S.L.W. 4523 (U.S. June 12, 1995).

**B. Regulatory Flexibility Act**

This proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and may be obtained from the address specified herein. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Regulatory Flexibility Act. Such comments must be submitted separately and cite DFARS Case 95-D039 in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (Pub. L. 104-13) applies because the proposed rule contains a reporting and recordkeeping requirement. The necessary request for approval of the information collection requirement has been submitted to the Office of

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[AK6-1-6587; FRL-5345-7]

**State Implementation Plan: Alaska; Withdrawal**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal.

**SUMMARY:** Due to an adverse comment, EPA is withdrawing the effective date for the approval of a moderate nonattainment area state implementation plan revision for Anchorage, Alaska, submitted by the Alaska Department of Environmental Conservation for the purpose of implementing an oxygenated gasoline program in the Municipality of Anchorage. The original action was published in the Federal Register on October 24, 1995, as a direct final rule. 60 FR 54435. As stated in the Federal

**DEPARTMENT OF DEFENSE**

**48 CFR Parts 215, 219, 236, 242, 252, and 253**

[DFARS Case 95-D039]

**Defense Federal Acquisition Regulation Supplement; Small Disadvantaged Business Concerns**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Department of Defense has suspended the sections of the Defense Acquisition Regulation Supplement (DFARS) that prescribe the set-aside of acquisitions for small disadvantaged businesses (SDBs). The Department of Defense is proposing to amend the DFARS to implement initiatives designed to limit the adverse impact of the suspension. This proposal is an initial response to the suspension. The efforts of a government-wide group to reform affirmative action programs