

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.<sup>19</sup> 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.<sup>20</sup>

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.<sup>21</sup> 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.<sup>22</sup>

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.<sup>23</sup> 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

<sup>19</sup> 58 FR 19575, 19586-19587.

<sup>20</sup> 59 FR 37446, 37448.

<sup>21</sup> 58 FR 19575, 19586-19587.

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

<sup>23</sup> 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.