

While the policy statement focuses on the principal language of the advertisement, the smokeless tobacco regulation looks to the predominant language of the publication in determining the language in which the Surgeon General's health warning must appear.

The Commission believes that, for advertisements in publications, the smokeless tobacco language is better calculated to ensure compliance with the original intent of the 1973 Enforcement Policy Statement—that disclosures be communicated effectively to the advertisement's target audience.

By amending the policy statement as proposed, the Commission would not be creating a new regulation. The policy statement amendment merely would clarify the original intent of the 1973 Enforcement Policy Statement—that all American consumers, regardless of the language they speak, have access to important information regarding the products they purchase.

List of Subjects in 16 CFR Part 14

Trade practices.

Accordingly, for the reasons set forth in the preamble, the Commission hereby amends Title 16, Part 14 of the Code of Federal Regulations as follows:

PART 14—ADMINISTRATIVE INTERPRETATIONS, GENERAL POLICY STATEMENTS, AND ENFORCEMENT POLICY STATEMENTS

1. The authority citation for part 14 continues to read as follows:

Authority: 15 U.S.C. 41–58

2. Section 14.9 is amended by revising paragraphs (a) and (b) to read as follows:

§ 14.9 Requirements concerning clear and conspicuous disclosures in foreign language advertising and sales materials.

(a) Where cease-and-desist orders as well as rules, guides and other statements require “clear and conspicuous” disclosure of certain information in an advertisement or sales material in a newspaper, magazine, periodical, or other publication that is not in English, the disclosure shall appear in the predominant language of the publication in which the advertisement or sales material appears. In the case of any other advertisement or sales material, the disclosure shall appear in the language of the target audience (ordinarily the language principally used in the advertisement or sales material).

(b) Any respondent who fails to comply with this requirement may be the subject of a civil penalty or other

law enforcement proceeding for violating the terms of a Commission cease-and-desist order or rule.

By direction of the Commission
Donald S. Clark,
Secretary.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 19, 24, 111, 113, 143, 162, 163, 178, and 181

(T.D. 98–56)

RIN 1515–AB77

Recordkeeping Requirements

AGENCY: Customs Service; Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to the document published in the **Federal Register** which set forth final amendments to the Customs Regulations to reflect changes to the Customs laws regarding recordkeeping and related requirements. The correction involves an incorrect citation within § 163.6 of the final regulatory texts.

EFFECTIVE DATE: This correction is effective July 16, 1998.

FOR FURTHER INFORMATION CONTACT: Francis W. Foote, Regulations Branch, Office of Regulations and Rulings (202–927–0163).

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1998, Customs published in the **Federal Register** (63 FR 32916) as T.D. 98–56 a final rule document setting forth final amendments to the Customs Regulations to reflect changes to the Customs laws regarding recordkeeping requirements, examination of records and witnesses, regulatory audit procedures, and judicial enforcement contained in the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057). The majority of those final regulatory texts are contained in new part 163 (19 CFR part 163) which reflects general recordkeeping requirements applicable to persons who engage in specified types of customs transactions.

Within new part 163, § 163.6 includes requirements concerning the production and examination of entry records and prescribes the monetary penalty assessment and additional actions that

Customs may take for a failure to comply with those requirements. Within § 163.6, paragraph (b)(2)(i) specifies the additional actions that Customs may take and paragraph (b)(2)(ii) sets forth an exception to the paragraph (b)(2)(i) general rule. However, the text of paragraph (b)(2)(ii), as published, improperly included a reference to paragraph “(b)(2)(ii)(B)” which should have read “(b)(2)(i)(B)”. This document corrects this typographical error.

Correction to the Final Regulations

§ 163.6 [Corrected]

On page 32948, in the third column, in § 163.6, in paragraph (b)(2)(ii), the reference “(b)(2)(ii)(B)” is corrected to read “(b)(2)(i)(B)”.

Dated: June 22, 1998.

Harold M. Singer,
Chief, Regulations Branch.

[FR Doc. 98–17060 Filed 6–25–98; 8:45 am]

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UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Interim final rule.

SUMMARY: The Agency adopts a fee sufficient for it to recover the full cost of its administrative processing of requests for waiver of the two-year return to the home country requirement set forth in Section 212(e) of the Immigration and Naturalization Act (8 U.S.C. 1182(e)).

DATES: This interim rule is effective June 26, 1998. The specified fee will be assessed for all waiver applications post-marked after July 27, 1998. Written comments must be submitted on or before July 27, 1998.

ADDRESSES: Written comments should be submitted to: Public Comment Clerk, Office of General Counsel, United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, Office of the General Counsel, 301 4th Street, SW., Washington, DC 20547; telephone, (202) 619–6531.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Fulbright-Hays Act of 1961 (Pub. L. 87–256) the Agency administers the Exchange Visitor Program by facilitating the entry of over

200,000 program participants each year. The Exchange Visitor Program is a component of the public diplomacy efforts of the United States Government and fosters mutual understanding and peaceful relations between the United States and other countries through educational and cultural exchange activities. Program participants enter the United States in nonimmigrant J-visa status. A statutory requirement has been imposed to ensure that certain program participants return to their home country and share with their countrymen the education, skills, and understanding of the United States acquired as a program participant.

Commonly referred to as the Section 212(e) return to the home country requirement, this statutory provision applies to a program participant who has entered the United States and received government funding to participate in an exchange activity, or who has pursued graduate medical education or training as a participant, or who has pursued study or training in a field of interest to his or her home government as evidenced by such field's inclusion on the identified "skills list" for that country. If subject to the provisions of Section 212(e), a program participant may not adjust his or her nonimmigrant status to that afforded under the provisions of 8 U.S.C. 1101 (h) or (l) or to legal permanent resident unless the participants has been either physically present in his or her home country for a period of two years following completion of his or her Exchange Visitor Program or has received a waiver of this requirement.

Based upon the statutory and administrative authorities set forth below, the Agency has determined that its review of and recommendation regarding requests for the waiver of the two year return to the home country requirement confers a specific benefit to the requesting individual. Accordingly, a fee sufficient to recoup the costs of conferring this specific benefit is appropriate.

Legislative Authority

The Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998 (Pub. L. 105-119) authorizes the Agency to collect fees related to its provision of Exchange Visitor Program services. Specifically, this appropriations statute authorizes the Agency to charge a fee and recycle such monies by providing " * * * That not to exceed \$6,000,000, to remain available until expended, may be credited to this appropriation from fees or other payments received from or in connection with English teaching,

library, motion pictures, and publication programs as authorized by section 810 of such Act of 1948 (22 U.S.C. 1475e) and, notwithstanding any other law, fees from educational advising and counseling, and exchange visitor program services * * *."

In adopting a fee for exchange visitor program services provided to the public, the Agency is also guided by the provisions of the Independent Offices Appropriations Act of 1952 (Pub. L. 82-137), 31 U.S.C. 9701. This statute permits an agency to prescribe regulations establishing the charge for a service or thing of value provided by the agency. Such regulations so adopted are subject to policies prescribed by the President. The statute directs that any charge adopted shall be (i) fair; and (ii) based on the costs to the Government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The Agency has determined that an application to the Agency for a waiver recommendation is a request for a service within the meaning of these statutes that confers a specific benefit upon an identifiable beneficiary. Further, the Agency also relies upon the decisions in *Auyda, Inc. v. Attorney General*, 661 F. Supp. 33 (1987); and *Engine Manufacturers Association v. E.P.A.*, 20 F.3d 1177 (1994) in adopting a fee for the review of such applications.

Finally, the Agency's adoption and implementation of a fee for review of waiver applications will be subject to the provisions of the Chief Financial Officers Act of 1990 (Pub. L. 101-576.) Section 205(a)(8) of this Act requires the Agency's Chief Financial Officer to "review, on a biennial basis, the fee, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value." (31 U.S.C. 902(a)(8))

Office of Management and Budget Circular No. A-25

Pursuant to Circular No. A-25, The Office of Management and Budget (OMB) has established the Federal policy governing fees assessed for Government services and for the sale or use of Government goods or resources. OMB Circular No. A-25 sets forth the general policy that a "user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public." To determine whether a "special benefit" has accrued, Circular No. A-25 offers the following guidance:

For example, a special benefit will be considered to accrue and a user charge will be imposed when a Government service: (a)(E) enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public (e.g., receiving a patent, insurance, or guarantee provision, or a license to carry on a specific activity or business or various kinds of public land use); or (b) (P)rovides business stability or contributes to public confidence in the business activity of the beneficiary (e.g., insuring deposits in commercial banks); or (c) (I)s performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public (e.g., receiving a passport, visa, airman's certificate, or a Customs inspection after regular duty hours.) (OMB Circular A-25, section 6.a.(1))

In calculating the amount of the fee to be charged for the Agency's review of an application for a Section 212(e) waiver and recommendation thereon, the Agency will rely upon the guidance set forth in OMB Circular A-25. Agencies are directed to recoup the "full costs" of providing a service or specific benefit. Full cost is defined as including all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of:

(a) Directed and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement. Retirement costs should include all (funded or unfunded) accrued costs not covered by employee contributions as specified in Circular No. A-11.

(b) Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment. If imputed rental costs are applied, they should include:

(i) Depreciation of structures and equipment, based on official Internal Revenue Service depreciation guidelines unless better estimates are available; and

(ii) An annual rate of return (equal to the average long-term Treasury bond rate) on land, structures, equipment and other capital resources used.

(c) The management and supervisory costs.

(d) The costs of enforcement, collection, research, establishment of standards, and regulation, including any required environmental statements.

(e) Full cost shall be determined or estimated from the best available records of the agency, and new cost account systems need not be established solely for this purpose.

(OMB Circular A-25 Section 6.d)

Circular A-25 further directs the federal agencies to adopt user charges by promulgating regulations, to ensure that proper internal control systems and

appropriate audit standards are in place, and to review user charges biennially to ensure adjustment of such charges to reflect unanticipated changes in costs or market values.

Fee Calculation

Having determined that imposition of a user fee for Agency review of waiver requests is a lawful exercise of Agency authority, the amount of such fee must be calculated. In calculating the amount of this fee, the Agency is guided by the provisions of OMB Circular No. A-25, User Charges and the Federal Accounting Standards Advisory Board Statement of Federal Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government. These standards direct that an agency identify and recoup the full cost of providing a benefit or service. Full cost is defined to mean both the direct and indirect costs of providing said service or benefit. The Agency's organizational structure facilitates the calculation of the full cost associated with review of waiver applications as performance of this function is centralized in the Agency's Office of General Counsel Waiver Review Branch (Waiver Branch).

The Waiver Branch is headed by a branch chief who supervises five waiver officers, four waiver assistants and two program assistants. These twelve employees process some 6,000 waiver applications each year. This processing is broken down along geographic lines with each officer responsible for specific countries with the waiver and program assistants providing necessary support services. In addition, the Waiver Branch receives general management oversight from the Agency's General Counsel and Deputy General Counsel and legal oversight and assistance from an Agency Assistant General Counsel.

In processing waiver applications, the Waiver Branch unit is required to perform the following tasks:

Receive waiver applications, which includes the tasks of receiving, opening, and screening applications;

Record fee, which includes, in cooperation with the Agency's Management Bureau, the task of receipting fees, reconciling registers, preparing and making deposits, and recording information into program and financial systems;

Input application data, which includes the tasks of entering data from applications into program systems, verifying data, and printing system data;

Manage records, which includes the tasks of creating files; connecting requested information and documents with application files; putting, storing,

and moving files; and archiving inactive files;

Adjudicate application, which includes the tasks of distributing workload; reviewing, examine, and adjudicating applications; making and recording adjudicative decisions; requesting and reviewing additional information as needed; and consulting with supervisors and legal counsel on non-routine adjudications;

Prepare outgoing correspondence, which includes the tasks of preparing decision letters, copying, and mailing;

Respond to inquiries, which includes the tasks of receiving and responding to inquiries on the status of a waiver application or the request for an advisory opinion regarding whether an alien is subject to the two year return to the home country requirement. These inquiries may be from applicants, legal representatives, or members of Congress and are received by both telephone and in writing.

As stated above, these identified tasks are performed on a full-time basis by the twelve members of the Waiver Branch with three additional Agency employees providing supervision and legal services on a less than full-time basis. Through application of FASAB Federal Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government, the Agency has identified \$632,872 in direct costs attributable to the performance of the tasks set forth above. Based upon direct and indirect costs of \$816,232, and 6,000 waiver application per year, the Agency has determined that the per unit cost of processing a waiver application is \$136 and adopts this amount as the fee to be collected for the future processing of waiver applications.

Public Comment

The Agency invites comments from the public on this interim final rule notwithstanding the fact that it is under no legal requirement to do so. The Designation of exchange visitor sponsors and the administration of the Exchange Visitor Program are deemed to be foreign affairs functions of the United States Government. The Administrative Procedures Act, 5 U.S.C. 553(a)(1)(1989) specifically exempts such functions from the rulemaking requirements of the Act.

The Agency will accept comments for thirty days following publication of this interim final rule. In accordance with 5 U.S.C. 605(b), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b)

of E.O. 12291, nor does it have federalism implications warranting the Preparation of a Federalism Assessment in accordance with E.O. 12612. This rule is not a major rule as defined by the Small Business Regulatory Enforcement Act of 1996 nor is it considered an economically significant regulatory action as defined by E.O. 12866. This rule does not impose any new reporting or record keeping requirements.

List of Subjects in 22 CFR Part 514

Cultural Exchange Programs.

Dated: June 18, 1998.

Les Jin,

General Counsel.

Accordingly, 22 CFR Part 514 is amended as follows:

PART 514—EXCHANGE VISITOR PROGRAM

1. The authority citation for part 514 continues to read as follows:

Authority: 8 U.S.C. 1101 (a)(15)(j), 1182, 1258; 22 U.S.C. 1431-1442, 2451-2460; Reorganization Plan No. 2 of 1977, 42 FR 62461, 3 CFR 1977 Comp. p. 200; E.O. 12048 43 FR 13361, 3 CFR, 1978 Comp. p. 168; USIA Delegation Order No. 85-5 (50 FR 27393).

2. Part 514 is amended by adding a new subpart H consisting of § 514.90 to read as follows:

Subpart H—Fees.

§ 514.90 Fees.

(a) *Remittances*. Fees prescribed within the framework of 31 U.S.C. 9701 shall be submitted as directed by the Agency and shall be in the amount prescribed by law or regulation. Remittances must be drawn on a bank or other institution located in the United States and be payable in United States currency and shall be made payable to the "United States Information Agency." A charge of \$25.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn. If an applicant is residing outside the United States at the time of application, remittance may be made by bank international money order of foreign draft drawn on an institution in the United States and payable to the United States Information Agency in United States currency.

(b) *Amounts of Fees*. The following fees are prescribed:

Request for waiver review and recommendation—\$136.

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