

alternative empirical data, and did not address the number of small advisers that would be affected.<sup>104</sup>

**VI. Statutory Authority**

The Commission is adopting amendments to rule 205-3 pursuant to the authority set forth in section 205(e) of the Investment Advisers Act of 1940 [15 U.S.C. 80b-5(e)].

**List of Subjects in 17 CFR Part 275**

Reporting and recordkeeping requirements, Securities.

**Text of Rules**

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

**PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940**

■ 1. The general authority citation for Part 275 continues to read as follows:

**Authority:** 15 U.S.C. 80b-2(a)(11)(G), 80b-2(a)(11)(H), 80b-2(a)(17), 80b-3, 80b-4, 80b-4a, 80b-6(4), 80b-6a, 80b-11, unless otherwise noted.

\* \* \* \* \*

■ 2. Section 275.205-3 is amended by:

- a. Revising paragraph (c);
- b. Revising paragraphs (d)(1)(i) and (ii); and
- c. Adding paragraph (e).

The revisions and addition read as follows:

**§ 275.205-3 Exemption from the compensation prohibition of section 205(a)(1) for investment advisers.**

\* \* \* \* \*

(c) *Transition rules*—(1) *Registered investment advisers.* If a registered investment adviser entered into a contract and satisfied the conditions of this section that were in effect when the contract was entered into, the adviser will be considered to satisfy the conditions of this section; *Provided, however,* that if a natural person or company who was not a party to the contract becomes a party (including an equity owner of a private investment company advised by the adviser), the conditions of this section in effect at that time will apply with regard to that person or company.

(2) *Registered investment advisers that were previously not registered.* If an investment adviser was not required to register with the Commission pursuant to section 203 of the Act (15 U.S.C. 80b-3) and was not registered, section 205(a)(1) of the Act will not apply to an advisory contract entered into when the

adviser was not required to register and was not registered, or to an account of an equity owner of a private investment company advised by the adviser if the account was established when the adviser was not required to register and was not registered; *Provided, however,* that section 205(a)(1) of the Act will apply with regard to a natural person or company who was not a party to the contract and becomes a party (including an equity owner of a private investment company advised by the adviser) when the adviser is required to register.

(3) *Certain transfers of interests.* Solely for purposes of paragraphs (c)(1) and (c)(2) of this section, a transfer of an equity ownership interest in a private investment company by gift or bequest, or pursuant to an agreement related to a legal separation or divorce, will not cause the transferee to “become a party” to the contract and will not cause section 205(a)(1) of the Act to apply to such transferee.

(d) \* \* \*

(1) \* \* \*

(i) A natural person who, or a company that, immediately after entering into the contract has at least \$1,000,000 under the management of the investment adviser;

(ii) A natural person who, or a company that, the investment adviser entering into the contract (and any person acting on his behalf) reasonably believes, immediately prior to entering into the contract, either:

(A) Has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than \$2,000,000. For purposes of calculating a natural person’s net worth:

(1) The person’s primary residence must not be included as an asset;

(2) Indebtedness secured by the person’s primary residence, up to the estimated fair market value of the primary residence at the time the investment advisory contract is entered into may not be included as a liability (except that if the amount of such indebtedness outstanding at the time of calculation exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess must be included as a liability); and

(3) Indebtedness that is secured by the person’s primary residence in excess of the estimated fair market value of the residence must be included as a liability; or

(B) Is a qualified purchaser as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a-

2(a)(51)(A)) at the time the contract is entered into; or

\* \* \* \* \*

(e) *Inflation adjustments.* Pursuant to section 205(e) of the Act, the dollar amounts specified in paragraphs (d)(1)(i) and (d)(1)(ii)(A) of this section shall be adjusted by order of the Commission, on or about May 1, 2016 and issued approximately every five years thereafter. The adjusted dollar amounts established in such orders shall be computed by:

(1) Dividing the year-end value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), as published by the United States Department of Commerce, for the calendar year preceding the calendar year in which the order is being issued, by the year-end value of such index (or successor) for the calendar year 1997;

(2) For the dollar amount in paragraph (d)(1)(i) of this section, multiplying \$750,000 times the quotient obtained in paragraph (e)(1) of this section and rounding the product to the nearest multiple of \$100,000; and

(3) For the dollar amount in paragraph (d)(1)(ii)(A) of this section, multiplying \$1,500,000 times the quotient obtained in paragraph (e)(1) of this section and rounding the product to the nearest multiple of \$100,000.

Dated: February 15, 2012.

By the Commission,

**Elizabeth M. Murphy,**

*Secretary.*

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**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Customs and Border Protection**

**DEPARTMENT OF THE TREASURY**

**19 CFR Parts 10 and 163**

[CBP Dec. 12-02; USCBP-2011-0030]

RIN 1515-AD75

**Duty-Free Treatment of Certain Visual and Auditory Materials**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, without change, the proposed amendments to the U.S. Customs and Border Protection (CBP) regulations to permit an applicant to file the

<sup>104</sup> *Id.*

documentation required for duty-free treatment of certain visual and auditory materials of an educational, scientific, or cultural character under subheading 9817.00.40, Harmonized Tariff Schedule of the United States (HTSUS), at any time prior to the liquidation of the entry. This change allots more time for the importer to provide the necessary certification documentation to CBP and serves to align the filing of required certification documentation with a change in CBP policy that extended the liquidation cycle for entries in the ordinary course of business from 90 days to 314 days after the date of entry.

**DATES:** *Effective date:* March 23, 2012.

**FOR FURTHER INFORMATION CONTACT:** Robert Dinerstein, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade, (202) 325-0132.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 19, 2011, U.S. Customs and Border Protection (CBP) published in the **Federal Register** (76 FR 51914) a proposal to amend title 19 of the Code of Federal Regulations (19 CFR) regarding the filing of documentation for duty-free treatment of certain visual and auditory materials of an educational, scientific, or cultural character under subheading 9817.00.40, HTSUS. Specifically, CBP proposed amendments to the regulations to provide for the suspension of the liquidation cycle for entries in the ordinary course of business from 90 days to 314 days after the date of entry, or until the required documentation is submitted, whichever occurs first. This proposal also proposed to make a non-substantive change to the listing in the Appendix to Part 163 to reflect the State Department rather than the abolished U.S. Information Agency (USIA).

CBP solicited comments from the public on the proposed rulemaking; however, CBP received no comments in response to its solicitation in 76 FR 51914.

**Conclusion**

In light of the fact that no comments were submitted in response to CBP's solicitation of public comment, CBP has determined to adopt as a final rule the proposed amendments in the Notice of Proposed Rulemaking published in the **Federal Register** (76 FR 51914) on August 19, 2011.

**The Regulatory Flexibility Act and Executive Order 12866**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires Federal

agencies to examine the impact a rule will have on small entities. A small entity may be: a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business under the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people). Because these amendments provide more time for an importer to obtain the State Department certificate, CBP certifies under 5 U.S.C. 605(b) that the amendments will not have a significant economic impact on a substantial number of small entities. Further, these amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

**Paperwork Reduction Act**

As there are no new collections of information in this document, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

**Signing Authority**

This rulemaking is being issued in accordance with 19 CFR 0.1(a)(1), pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain CBP revenue functions.

**List of Subjects**

*19 CFR Part 10*

Customs duties and inspection, Entry, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

*19 CFR Part 163*

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements, Trade agreements.

**Amendments to the CBP Regulations**

For the reasons set forth above, parts 10 and 163 of title 19 of the Code of Federal Regulations (19 CFR parts 10 and 163) are amended as set forth below.

**PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.**

■ 1. The general authority citation for part 10 continues to read and a specific authority is added for § 10.121 as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the

United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

\* \* \* \* \*

Section 10.121 also issued under 19 U.S.C. 2501.

\* \* \* \* \*

■ 2. Section 10.121(b) is revised to read as follows:

**§ 10.121 Visual or auditory materials of an educational, scientific, or cultural character.**

\* \* \* \* \*

(b) Articles entered under subheading 9817.00.40, HTSUS, will be released from CBP custody prior to submission of the document required in paragraph (a) of this section only upon the deposit of estimated duties with the port director. Liquidation of an entry which has been released under this procedure will be suspended for a period of 314 days from the date of entry or until the required document is submitted, whichever comes first. In the event that documentation is not submitted before liquidation, the merchandise will be classified and liquidated in the ordinary course, without regard to subheading 9817.00.40, HTSUS.

**PART 163—RECORDKEEPING**

■ 3. The authority citation for part 163 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

\* \* \* \* \*

**Appendix to Part 163—[Amended]**

■ 4. Section IV is amended by removing the listing "§ 10.121 Certificate from USIA for visual/auditory materials" and adding in its place the listing "§ 10.121 Certificate from the U.S. Department of State for visual/auditory materials".

**David V. Aguilar,**

*Acting Commissioner, U.S. Customs and Border Protection.*

Approved: February 16, 2012.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

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