

General Counsel, at the above address or telephone: (703) 518-6540; or Linda Groth, Program Officer, Division of Supervision, Office of Examination and Insurance, at the above address or telephone: (703) 518-6360.

By the National Credit Union Administration Board on April 15, 1997.

Becky Baker,

Secretary of the Board.

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FEDERAL TRADE COMMISSION

16 CFR PART 254

Request For Comments Concerning Guides For Private Vocational Schools

AGENCY: Federal Trade Commission.

ACTION: Supplemental request for public comments.

SUMMARY: The Federal Trade Commission ("Commission") is requesting public comments on a proposal to amend its Guides for Private Vocational Schools to add a provision addressing deceptive express or implied claims of job placement success.

DATES: Written comments will be accepted until June 23, 1997.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H-159, Sixth Street and Pennsylvania Ave., NW., Washington, DC 20580. Comments about the Guides for Private Vocational Schools should be identified as "16 CFR Part 254—Comment."

FOR FURTHER INFORMATION CONTACT: Joseph J. Koman, Jr., (202) 326-3014, or Walter Gross III, (202) 326-3319, Federal Trade Commission, Bureau of Consumer Protection, Sixth Street and Pennsylvania Ave., NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

As part of the Commission's systematic review of all of its rules and guides to assess their continued need and usefulness, the Guides for Private Vocational Schools were scheduled for review in 1996 (61 FR 1538 (Jan. 22, 1996)). These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. On April 3, 1996, the Commission published a notice in the **Federal Register** requesting public

comments on the Vocational Schools Guides (61 FR 14685). The comment period, originally scheduled to end on May 3, 1996, was subsequently extended to July 1, 1996 (61 FR 19869 (May 3, 1996)). Nine comments were filed in response to the notice. The comments indicate that there is support in all sectors (including other government agencies, consumer groups and the vocational schools industry) for retaining the Guides, although some industry commenters recommended repealing them.

II. Description of the Guides

The Guides were originally issued in May, 1972, and became effective August 4, 1972. They are intended to advise proprietary businesses offering vocational training courses, either on the school's premises or through correspondence, how to avoid unfair or deceptive advertising and promotional claims when recruiting students. Specifically, the Guides address claims that are descriptive of the school, such as potentially deceptive trade or business names, and claims about accreditation, content of curricula, teachers' qualifications, teaching methods, affiliations with other private or public institutions, and approval by other agencies or institutions. The Guides also address misleading representations regarding financial assistance, program costs, and savings. Schools are cautioned to avoid using the help-wanted sections of newspaper classified advertising for lead generation or misleading prospective students about such matters as opportunities for employment while undergoing training. Finally, the Guides address appropriate disclosures as to the nature of courses or training programs available, misleading pictorial representations, and sales and debt collection practices.

These Guides, like other industry guides issued by the Commission, "are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements." 16 CFR 1.5. Conduct inconsistent with the Guides may result in corrective action by the Commission under applicable statutory provisions.

III. The Review of the Guides

Based upon the comments received in this review, as well as its own independent assessment of the need for these Guides, the Commission has determined to retain the Guides for Private Vocational Schools. The Commission recognizes that there is some overlap between its Guides and regulations of the Department of

Education. Because the Department of Education administers student loan and grant money for vocational training, it plays the primary role in addressing abuses in this industry. There is a concurrent role for the Commission, however, in monitoring and addressing deceptive promotional practices.¹ State licensing agencies also regulate vocational training. Increasingly, however, vocational schools are owned by national or regional chains; thus, maintaining a federal enforcement presence remains important.

The Commission proposes certain modifications to its Guides for Private Vocational Schools. Some of these changes are an effort to streamline the Guides and eliminate redundancy, while others are substantive.

In particular, the Commission solicits written public comments regarding its proposal to amend the Guides to add a provision addressing misrepresentations about a school's placement success following training. Currently, the Guides address claims about placement assistance offered to graduates of a school. They do not, however, address false or deceptive claims about the availability of employment after graduation from a course of training or the success that a school's graduates have realized in obtaining employment related to the training. The Commission believes that such claims are important to prospective students of vocational training and are likely to become even more important in the future.

At the same time, in order to streamline the Guides, the Commission has preliminarily determined to delete certain provisions that do not offer specific guidance concerning vocational schools and merely duplicate other provisions of law. These include Guide provisions that address deceptive pricing (§§ 254.8(a) and (b)); use of the word "free" (§ 254.8(c)); deceptive debt collection practices (§ 254.9(a)); and assignment of contracts deceptively obtained (§ 254.9(b)). For example the Fair Debt Collection Practices Act, 15 U.S.C. 1692, and the Commission's Trade Regulation Rule pertaining to the Preservation of Consumers' Claims and Defense (the "Holder-in-Due-Course Rule"), 16 CFR 433, have superseded the provisions in the Vocational Schools Guides that pertain to those areas.

In order to further streamline the Guides, the Commission also has

¹ It is the Commission's understanding that the Department of Education must use its investigative and enforcement resources to address practices primarily occurring after a student has signed up for training, rather than advertising and promotional practices that take place during recruitment of students.

preliminarily determined to delete section 254.10, "Affirmative disclosures prior to enrollment." Subsections (a) through (d) of this section address school policy concerning attendance, lateness, and make-up work; additional costs a student might incur; the school's physical facilities and equipment; and placement assistance offered by the school. To the extent they are needed, discussion of these issues can be folded into prior sections of the Guides dealing with misrepresentations and deceptive practices, possibly as examples of suggested disclosures that might prevent deception. Finally, section 254.10(e) of the Guides advises affirmative disclosure of any "material facts [other than those specifically addressed in subsections (a)-(d) of this section] concerning the school and the program of instruction or course which are reasonably likely to affect the decision of the student to enroll therein." Such a general admonishment adds little to the more specific advice set out in the remainder of the Guides. This provision merely amounts to a statement of the law concerning failure to disclose material facts and therefore appears unnecessary.

IV. Request for Comment

The Commission solicits public comments on the following questions:

1. *Should the Guides be amended to add the following provision to § 254.4?* (e) An industry member, in promoting any course of training in its advertising, promotional materials or in any other manner, should not misrepresent, directly or by implication, whether through the use of text, images, endorsements,* or other means, the availability of employment after graduation from a course of training, or the success that the member's graduates have realized in obtaining such employment.

***Note:** The Commission's Guides Concerning Use of Endorsements and Testimonials in Advertising (part 255 of this chapter) provide further guidance in this area.

2. Are there currently problems in the vocational schools industry with use of the kinds of claims addressed in the proposed addition to the Guides? If yes, please describe.

3. Are there other issues, relevant to a prospective student's decision to enroll in a vocational school or course of training, that are not already covered by the Guides but should be addressed? Please explain.

Authority: 15 U.S.C. 41-58.

List of Subjects in 16 CFR Part 254

Advertising, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 24, 111, 143, 162, and 163

RIN 1515-AB77

Recordkeeping Requirements

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations by adding a new part which will cover recordkeeping requirements and reflect legislative changes to the Customs laws regarding recordkeeping, examination of books and witnesses, regulatory audit procedures and judicial enforcement. These statutory amendments are contained in the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act. The new provisions are being incorporated into the new part with the existing recordkeeping requirements (presently in Part 162) which remain effective, although they are being updated to permit the use of new technology and alternative methods for record maintenance. The proposed amendment also contains provisions establishing a voluntary recordkeeping compliance program.

DATES: Comments must be submitted on or before June 23, 1997.

ADDRESSES: Written comments on the proposed regulation (preferably in triplicate) must be submitted to the U.S. Customs Service, ATTN: Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, D.C. 20229, and may be inspected at the Regulations Branch, 1099 14th Street, NW, Suite 4000, Washington, D.C.

Copies of the Recordkeeping Compliance Handbook are available from the public access Customs Electronic Bulletin Board (703)-440-6155 or by requests addressed or faxed to the following: U.S. Customs Service, Regulatory Audit Division, Miami Branch 909 S.E. First Street, Suite 710, Miami, FL 33131, Attention: Recordkeeping Compliance Program, Fax: (305)-536-7442).

Written comments on the Recordkeeping Compliance Handbook may be sent by facsimile or mail to the following address: U.S. Customs Service, Regulatory Audit Division, Atlanta Branch 1691 Phoenix Boulevard, Suite 250A, College Park, GA 30349, Attention: Recordkeeping Compliance Program, Fax: (770)-994-2270).

FOR FURTHER INFORMATION CONTACT: For questions relating to recordkeeping in general, and the voluntary Recordkeeping Compliance Program, call Stan Hodziewich, Regulatory Audit Division, Washington, D.C. at (202)-927-0999) or Howard Spencer, Regulatory Audit Division, Atlanta Branch at (770)-994-2273, Ext. 158).

For questions relating to the Appendix ((a)(1)(A) list), its underlying documents and other entry records/information call Rychelle Ingram, Office of Trade Compliance 202-927-1131.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, the President signed Public Law 103-182, the North American Free Trade Agreement Implementation Act (NAFTA Implementation Act)(107 Stat. 2057). Title VI of this Act, known as the Customs Modernization Act (the Mod Act), amended certain Customs laws. Sections 614, 615, and 616 of the Mod Act amended §§ 508, 509, and 510 of the Tariff Act of 1930, as amended (19 U.S.C. 1508, 1509, and 1510) which pertain to recordkeeping requirements established for importers and others. Title II of the NAFTA Implementation Act, entitled "Customs Provisions", also amended §§ 508 and 509 of the Tariff Act of 1930, as amended, to include recordkeeping requirements for exportations to Canada and Mexico.

Part 162 of the Customs Regulations which addresses records, recordkeeping and its associated requirements also covers unrelated subjects. Because of the enhanced importance of recordkeeping, Customs believes that a new part devoted solely to this subject is appropriate. Accordingly, Customs is proposing to create a new Part 163 regarding recordkeeping.

Recordkeeping Requirements

Before its amendment by the Mod Act, § 508 of the Tariff Act of 1930 (19 U.S.C. 1508) limited recordkeeping requirements to any owner, importer, consignee, or agent thereof who imported, or knowingly caused to be imported any merchandise into the Customs territory of the United States. Section 614 of the Mod Act amended