

**PART 416—SUPPLEMENTAL  
SECURITY INCOME FOR THE AGED,  
BLIND, AND DISABLED**

**Subpart N—[Amended]**

1. The authority citation for subpart N continues to read as follows:

**Authority:** Sec. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); 31 U.S.C. 3720A.

2. Section 416.1442 is amended by revising paragraph (g), to read as follows:

**§ 416.1442 Prehearing proceedings and decisions by attorney advisors.**

\* \* \* \* \*

(g) *Sunset provision.* The provisions of this section will no longer be effective on April 2, 2001.

[FR Doc. 99-25037 Filed 9-24-99; 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 is issuing regulation on the adoption of a fee sufficient for it to recover the full cost of its administrative processing of requests by program participants for an extension, change of category, or reinstatement of their program status. The Agency is also issuing regulation on the adoption of fees to recoup the cost of its administrative processing of requests for program designation and non-routine requests for the Form IAP-66 submitted by designated sponsors on an urgent or expedited basis.

**EFFECTIVE DATES:** This interim rule is effective January 1, 2000. The specified fee will be assessed for all extension, change of category, reinstatement, or program designation requests and non-routine requests for the Form IAP-66 post-marked after January 1, 2000. Written comments regarding this interim rule must be submitted on or before November 30, 1999.

**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:** Sally Lawrence, Branch Chief, Program Designation Branch, Exchange Visitor Program Services, 301 4th Street, SW,

Washington, DC 20547; telephone (202) 401-9800.

**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 pursuant to sponsorship by an Agency-designated sponsoring organization.

Program participants are admitted into the United States to pursue specific program objectives such as training, undergraduate and post-graduate study, and medical residency programs. In order to maintain valid program status and thereby valid non-immigrant status, it is often necessary for program participants to request an extension of their program, a change of category for continued program participation, or reinstatement to valid program status. An organization that wishes to conduct and oversee an exchange visitor program and thereby obtain administrative authority to sponsor a non-immigrant alien's entry into the United States for the purpose of participation in such exchange program must request a designation from the Agency to do so.

Based upon the statutory and administrative authorities set forth below, the Agency has determined that its review of requests for an extension of program, change of category participation, or reinstatement to program status confers a specific benefit to the requesting individual. In similar fashion, a request for Agency designation as an exchange visitor program sponsor confers a specific benefit upon the requesting organization. Accordingly, a fee sufficient to recoup the costs of conferring these specific benefits is appropriate.

**Legislative Authority**

The Departments 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 requests for extensions, change of category, reinstatement, or program designation 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)nable 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)rovide 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.(a))

In calculating the amount of the fee to be charged for the Agency's review of a request for extension, change of category, reinstatement, or program designation, the Agency will rely upon the guidance set forth in OMB Circular A-25. Agencies are directed to recoup the "full cost" 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) Direct 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 accounting 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 extension, change of category, reinstatement, or program designation requests is a lawful exercise of Agency authority, the amount of such fees must be calculated. In calculating the amount of these fees, the Agency is guided by the provisions of OMB Circular No. A-25, User Charges and the Federal Accounting Standards Advisory Board 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 its review of requests for extension, change of category, reinstatement, or program designation as performance of these functions are centralized in the Agency's Office of General Counsel, Program Designation Branch (Program Designation.)

The Program Designation Branch is headed by a branch chief who supervises seven program officers, two program assistants and two support staff. These eleven employees process some 786 requests for extensions, change of category, and reinstatement and 126 requests for program designation each year. This processing is broken down along subject matter lines with each officer responsible for specific areas of program participation with the program assistants providing necessary support services. In addition, the Program Designation 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 extension, change of category, reinstatement, and program designation requests, the Program Designation Branch unit is required to perform the following tasks:

Receive extension, change of category, reinstatement, and program designation requests, which includes the tasks of receiving, opening, sorting, 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 request data, which includes the tasks of entering data from requests into program systems, verifying data, and printing system data;

Manage records, which includes the tasks of creating files; connecting requested information and documents with request files; pulling, storing, and moving files; and archiving inactive files;

Adjudicate request, which includes the tasks of distributing workload; reviewing, examining, 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, logging, filing, faxing, and mailing;

Respond to inquiries, which includes the tasks of receiving and responding to inquiries on the status of an extension, change of category, reinstatement, or program designation request. These inquiries may be from applicants, legal representatives, or members of Congress and are received by both telephone and in writing.

The Agency has examined the number of man-hours devoted to the performance of these activities and has determined that 135% of one full time equivalent position at the program officer and 100% of one full time equivalent position at the program assistant level is allocable to the processing of extension, change of category, and reinstatement requests. This same analysis reveals that 70% of one full time equivalent position at the program officer and program assistant level is also allocable to the processing of program designation requests. Further, this analysis reveals that 127.5% of a full time equivalent position at the program staff assistant level is required to fill "expedited" or "urgent" requests for the Form IAP-66 submitted by designated sponsors. Through application of FASAB Federal financial standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government,

the Agency has identified \$146,336 in direct costs arising from salary and benefits and an additional \$9,180 in allocable indirect costs attributable to the processing of extension, change of category, and reinstatement requests. Based upon direct and indirect costs of \$155,516 and 786 extension, change of category, and reinstatement requests per year, the Agency has determined that the per unit cost of processing such requests is \$198 and adopts this amount as the fee to be collected for the future processing of extension, change of category, and reinstatement requests. The Agency has also identified that \$92,402 in direct costs from salary and benefits and \$5,760 in allocable indirect costs are allocable to its processing of program designation requests. Based upon direct and indirect costs of \$98,162 and 126 requests for program designation, the agency has determined that the per unit cost of processing a program designation request is \$779 and adopts this amount as the fee to be collected for future processing of program designation requests. Finally, the agency has examined the number of man-hours devoted to the processing of non-routine "expedited" or "urgent" requests for the Form IAP-66 and has determined that 127.5% of one full time equivalent position at the program staff assistant level is allocable to the processing of such requests. The Agency has determined that \$57,775 in direct costs from salary and benefits and \$4,950 in indirect costs are allocable to the processing of non-routine "expedited" or "urgent" requests for the Form IAP-66 submitted by designated sponsors. Based upon direct and indirect costs of \$62,725 and 1,461 such requests, the Agency has determined that the per unit cost of processing a non-routine request for the Form IAP-66 is \$43 and adopts this amount as the fee to be collected for future processing of non-routine requests for the Form IAP-66 submitted by designated sponsors. All fees are non-refundable.

#### 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 regarding this rule until November 30,

1999. 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: September 21, 1999.

**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).

#### Subpart H—Fees

2. Section 514.90 is revised to read as follows:

##### **§ 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 or 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  
Request for program extension—\$198  
Request for change of program category—\$198  
Request for reinstatement—\$198  
Request for program designation—\$779  
Request for non-routine handling of an IAP-66 Form request—\$43.

[FR Doc. 99-24960 Filed 9-24-99; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Parts 4 and 24

[T.D. ATF-418 Re: T.D. ATF-398, Notice No. 859 and Notice No. 869]

RIN 1512-AB71

#### Hard Cider; Postponement of Labeling Compliance Date (97-2523)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Temporary rule (Treasury decision).

**SUMMARY:** This temporary rule postpones the mandatory date for the labeling of hard cider. In the Proposed Rules section of this **Federal Register**, ATF is also issuing a notice of proposed rulemaking inviting comments on proposed changes to the label requirements for hard cider for a 60-day period following the publication of the notice.

**DATES:** *Effective date:* This document is effective retroactive to February 17, 1999.

*Compliance date:* Compliance with the hard cider labeling requirements in 27 CFR 4.21 and 24.257 is not mandatory until September 27, 2000.

**FOR FURTHER INFORMATION CONTACT:** Marjorie D. Ruhf, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; (202) 927-8230; or mdruhfh@atfhq.atf.treas.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 21, 1998, the Bureau of Alcohol, Tobacco and Firearms (ATF) issued a temporary rule to implement various sections of the Taxpayer Relief Act of 1997, Public Law 105-34 ("the Act"). Section 908 of the Act amended the Internal Revenue Code of 1986 (IRC) to create a new excise tax category for hard cider. The temporary rule, T.D. ATF-398 (63 FR 44779) included rules for labeling hard cider. On the same