

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES
Food and Drug Administration**

21 CFR Part 131

**Stabilizers and Emulsifiers in Lowfat
Milk and Skim Milk**

CFR Correction

In title 21 of the Code of Federal Regulations, parts 100 to 169, revised as of April 1, 1996, make the following corrections:

1. On page 278, in § 131.135, the effective date was inadvertently removed. The omitted text should read as follows:

Effective Date Note: Paragraph (e)(1)(iv) of § 131.135 was revised at 45 FR 81737, Dec. 12, 1980, effective for compliance July 1, 1983. The effective date for compliance was stayed until further notice at 47 FR 11271, Mar. 16, 1982. Paragraph (e)(1)(iv) published at 42 FR 14360, Mar. 15, 1977, and set forth below is currently effective.

§ 131.135 Lowfat milk.

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(e) * * *

(1) * * *

(iv) The phrase "protein fortified" or "fortified with protein" if the food contains not less than 10 percent milk derived nonfat solids.

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2. On page 282, in § 131.143, the effective date was inadvertently removed. The omitted text should read as follows:

Effective Date Note: Paragraph (e)(1)(iii) of § 131.143 was revised at 45 FR 81737, Dec. 12, 1980, effective date for compliance July 1, 1983. The effective date for compliance was stayed until further notice at 47 FR 11271, Mar. 16, 1982. Paragraph (e)(1)(iii) published at 42 FR 14360, Mar. 15, 1977, and set forth below is currently effective.

§ 131.143 Skim milk.

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(e) * * *

(1) * * *

(iii) The phrase "protein fortified" or "fortified with protein" if the food contains not less than 10 percent milk derived nonfat solids.

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

28 CFR Part 0

[INS No. 1791-96; AG Order No. 2055-96]

RIN 1115-AE50

**Agreements Promising Non-
Deportation or Other Immigration
Benefits**

AGENCY: Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule requires Federal prosecutors, law enforcement agencies, and other officials to obtain written consent from the Immigration and Naturalization Service (Service) when entering into a plea agreement, cooperation agreement, or similar agreement promising an alien favorable treatment by the Service. This rule ensures that favorable treatment under the immigration laws is extended only after a full consideration of its effect on overall immigration enforcement, alleviates confusion over the authority to enforce the immigration laws, and prevents the Service from being bound by agreements undertaken without its knowledge and approval. The rule codifies a long-standing position of the Department of Justice.

DATES: This interim rule is effective October 15, 1996. Written comments must be submitted on or before November 12, 1996.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 "I" Street NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1791-96 on all correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Brad Glassman, Office of the General Counsel, Immigration and Naturalization Service, 425 "I" Street NW., Room 6100, Washington, DC 20536, telephone (202) 514-2895.

SUPPLEMENTARY INFORMATION: Considerable uncertainty has arisen as to whether plea agreements, cooperation agreements, and other agreements undertaken by agencies other than the Immigration and Naturalization Service (Service) may bind the Service in the exercise of its authority under the immigration laws. The Supreme Court has held that "anyone entering into an

agreement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority." *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 384 (1947). Accordingly, the Eleventh Circuit has held that "officials at the INS may initiate deportation proceedings against a particular defendant without considering whether (a) * * * U.S. Attorney has promised the defendant non-deportation as part of a plea agreement." *San Pedro v. United States*, 79 F.3d 1065, 1071 (11th Cir. 1996).

However, two United States Courts of Appeals have taken a different view, relying on common law agency principles to enforce a plea agreement and a cooperation agreement against the Service. *Margalli-Olvera v. INS*, 43 F.3d 345 (8th Cir. 1994) (plea agreement); *Thomas v. INS*, 35 F.3d 1332 (9th Cir. 1994) (cooperation agreement). This rule will clarify which components within the Department of Justice have authority to bind the Department in matters concerning the immigration laws. The consent requirement ensures that favorable treatment under the immigration laws is extended only after a full consideration of its effect on overall immigration enforcement, preserves the authority of the Service to enforce the immigration laws, and prevents the Service from being bound by agreements undertaken without its knowledge and approval. *Cf. Thomas*, 35 F.3d at 1341 ("If the Attorney General wished to limit the incidental authority of United States Attorneys [to bind the Service without its consent], she could easily do so with a section in the Code of Federal Regulations * * *"). This rule codifies a long-standing position of the Department of Justice.

The Attorney General's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the exception found at 5 U.S.C. 553(b)(3)(A) for "rulers of agency organization, procedure, or practice." The Attorney General certifies, in accordance with 5 U.S.C. 605(b) (1995), 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 "significant regulatory action" within the meaning of E.O. 12866, section 3(f), and accordingly has not been reviewed by the Office of Management and Budget. This rule is not considered to have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.