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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1007

Milk in the Southeast Marketing Area

CFR Correction

In Title 7 of the Code of Federal Regulations, parts 1000 to 1199, revised as of January 1, 2001, in § 1007.7, paragraph (c) is revised to read as follows:

§ 1007.7 Pool plant.

* * * * *

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted from the plant, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

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[FR Doc. 01–55533 Filed 10–31–01; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 3

[INS No. 2172–01; AG Order No. 2528–2001]

RIN 1115–AG41

Executive Office for Immigration Review; Review of Custody Determinations

AGENCY: Immigration and Naturalization Service, Justice; and Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the regulations of the Executive Office for Immigration Review (EOIR), by expanding the existing regulatory provision for a temporary automatic stay of an immigration judge's decision to order an alien's release in any case in which a district director has ordered that the alien be held without bond or has set a bond of $10,000 or more, to maintain the status quo while the Immigration and Naturalization Service seeks expedited review of the custody order by the Board of Immigration Appeals (Board) or by the Attorney General.

DATES: *Effective date:* This interim rule is effective October 29, 2001.

Comment date: Written comments must be submitted on or before December 31, 2001.

ADDRESSES: Please submit written comments to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2172–01 on your correspondence. The public may also submit comments electronically to the Service at insregs@usdoj.gov. When submitting comments electronically, please make sure that you include INS No. 2172–01 in the subject field. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: For matters relating to the Executive Office for Immigration Review: Chuck Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Falls Church, VA 22041, telephone (703) 305–0470 (not a toll-free call). For matters relating to the Immigration and Naturalization Service: Daniel S. Brown, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 6100, Washington, DC 20536, telephone (202) 514–2895 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 236 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1226, authorizes the Attorney General to determine whether to hold an alien in custody while proceedings are pending to determine whether an alien is to be removed from the United States. As a general principle, whether to detain an alien or to release the alien on bond or other appropriate conditions is a matter entrusted to the Attorney General's discretion. Under section 236(c) of the Act, however, certain aliens are subject to mandatory detention during the course of proceedings to determine their removal. These generally include individuals who are inadmissible or deportable due to the commission of specified crimes or due to having engaged in terrorist activity.

More than a century ago, the Supreme Court upheld detention as a necessary aspect of the exclusion or expulsion of aliens. *Wong Wing* v. *United States*, 163 U.S. 228, 235 (1896); *see also Carlson* v. *Landon*, 342 U.S. 524, 538 (1952) (''Detention is necessarily a part of this deportation procedure. Otherwise aliens arrested for deportation would have opportunities to hurt the United States during the pendency of deportation proceedings.''). An alien's interest in being at liberty during the course of immigration proceedings is ''narrow'' and ''circumscribed by considerations of the national interest.'' *Doherty* v. *Thornburgh*, 943 F.2d 204, 208, 208, 209 (2d Cir. 1991). ''An alien's freedom from detention is only a variation on the alien's claim of an interest in entering the country.'' *Clark* v. *Smith*, 967 F.2d 1329, 1332 (9th Cir. 1992).

Section 236 of the Act confers discretion upon the Attorney General to determine the custody of aliens who are in proceedings as long as they are not subject to the mandatory detention provisions of section 236(c) of the Act. The detention of aliens during the pendency of the immigration proceedings serves two essential purposes: ensuring removal by preventing the alien from fleeing, and protecting the public from potential harm.

Under the regulations, the Immigration and Naturalization Service (Service) makes the initial custody decision in each case—that is, whether to keep the alien in detention pending completion of the removal proceedings, or whether to release the alien on bond or other appropriate conditions. The alien, however, may ask an immigration judge to review the custody decision,

subject to specified exceptions in § 3.19(h). The immigration judge may then reduce the required bond amount, release the alien on his or her own recognizance, or make such other custody decision as the immigration judge finds warranted. The Board then has jurisdiction to hear an appeal (whether by the alien or by the Service) from the immigration judge's decision.

Stays Pending Appeals of Custody Determinations

This rule revises the existing provisions in § 3.19(i). That rule currently provides for an automatic stay in certain cases where the Service has denied release of an alien during the pendency of removal proceedings or has set a bond in excess of $10,000, an immigration judge orders an alien released, and the Service promptly files a Form EOIR–43, Notice of Intent to Appeal Custody Redetermination, with the Immigration Court. If the Service then files a timely appeal, the stay will continue pending the disposition of the appeal by the Board. *See Matter of Joseph*, Int. Dec. 3387 (1999).

Under the existing rule, since the expiration of the Transition Period Custody Rules, this automatic stay applies only to cases involving aliens subject to mandatory detention. This interim rule extends the existing scope of the automatic stay provisions in § 3.19(i) to authorize the Service, in its discretion, to invoke the automatic stay in other cases in which the Service has denied release of an alien during the pendency of the removal proceedings or has set a bond of $10,000 or more.

This change will allow the Service to maintain the status quo while it seeks review by the Board, and thereby avoid the necessity for a case-by-case determination of whether a stay should be granted in particular cases in which the Service had previously determined that the alien should be kept in detention and no conditions of release would be appropriate. This stay is a limited measure and is limited in time—it only applies where the Service determines that it is necessary to invoke the special stay procedure pending appeal, and the stay only remains in place until the Board has had the opportunity to consider the matter.

However, in order to ensure that any custody appeal proceedings are conducted on an expeditious basis, this rule also amends § 3.19(i) to add a new limitation that the automatic stay will continue, pending the decision by the Board on appeal, only if the Service files its appeal within ten business days of the immigration judge's order. Under the current rules, once the Service has invoked the automatic stay provision, it has the usual 30 days to file an appeal to the Board. As a matter of practice, the Service does not take that long and makes a prompt decision on whether or not to appeal a custody decision that is subject to an automatic stay. This change in the rule will better reflect the need for an expedited decision in the case of a custody appeal that is subject to an automatic stay.

In addition to the existing provisions for an automatic stay of an immigration judge's custody decision in § 3.19(i), pending an appeal to the Board, this rule also provides an automatic five-day stay of the Board's decision, where the Board dismisses the Service's appeal of an immigration judge's custody decision. This provision will allow the Commissioner a meaningful opportunity to review the Board's decision and to decide whether to certify the case to the Attorney General pursuant to § 3.1(h). Where the Commissioner certifies a custody decision of the Board to the Attorney General within that five-day period, the automatic stay will continue pending the Attorney General's review of the custody issues.

This change in § 3.19 makes explicit, in the context of bond appeals, the general principle that a ''decision of the Board is not final while pending review before the Attorney General on certification.'' *Matter of Farias*, 21 I&N Dec. 269, 282 (BIA 1996; A.G. 1997). This provision for an automatic stay will avoid the necessity of having to decide whether to order a stay on extremely short notice with only the most summary presentation of the issues.

The rule also makes a slight modification to the existing rule by providing that the Form EOIR–43 must be filed within one business day of the decision of the immigration judge. This is intended to afford the Service an opportunity to file the Form EOIR–43 in those cases where the immigration judge's custody decision is issued after normal business hours.

Effective Date of This Interim Rule

The Department's immediate implementation of this interim rule, with provision for post-promulgation public comment, is based upon findings of good cause pursuant to 5 U.S.C. 553(b)(3)(B) and (d).

The immediate implementation of this interim rule without prior public comment is necessary to prevent the release of aliens who may pose a threat to national security and to provide a clear set of procedural rules of administrative procedure with respect to determining the custody conditions and bond status for aliens during the pendency of removal proceedings. The existing rules permit the Service to appeal a decision ordering the release of an alien, but in many cases the rules do not provide for a stay of the release decision during the time that the Service would be pursuing an appeal. Thus, an alien who has received a custody redetermination by an immigration judge is eligible for release under the terms of that order unless and until a stay of that order is granted by the Board.

The time that elapses from the custody redetermination to the granting of a stay by the Board may be significant. The time it takes to draft a notice of appeal and motion for emergency stay and file these documents with the Board is often up to twenty-four hours, as the Service attorney handling the case may have to complete his or her duties in court that day before securing the necessary supervisory approval to file the motion for stay. The Service attorney then must draft the filings and transmit them to the Board in Falls Church, Virginia. The Board then must review the record and adjudicate the motion. The Board does not have a complete record upon which to base a ruling, because that record remains with the immigration court. As a matter of practice, the Board will not grant a stay without communicating with the alien or opposing counsel, so as to ascertain the alien's position regarding the necessity of the stay. Thus, under current procedures, there is a significant window of time wherein the alien may be released while the Service prepares its filings to the Board and while the Board adjudicates the motion. Also, the crucial determination by the Board is made without the benefit of a full record of proceedings and the Board instead relies upon the submissions of the parties.

Another significant problem that is remedied by this provision concerns custody determinations that arise on the west coast. Due to the time difference between the east and west coast, an alien may be ordered released after the Board has closed for the day. When this occurs, the Service is effectively barred from filing a stay request and this significantly increases the period during which the alien may be released.

During this window of time, the Service may be required to release an alien that it believes is a threat to national security or the public safety without even having the opportunity to present its case to the Board. The automatic stay provision allows the Service attorney to maintain the alien's custody status via immediate filing of

the Form EOIR–43. This rule extends the scope of the existing automatic stay provision to cover all cases in which the Service has denied release of an alien pending the completion of removal proceedings or has set a bond of $10,000 or more, and in which the Service specifically invokes the automatic stay in order to seek an expedited appeal. The purpose of the automatic stay is to allow the Service to maintain the status quo during such time as is necessary for the Service to take a prompt appeal to the Board, and the stay only remains in place until the Board has had an opportunity to consider the matter. This rule similarly provides a five-day period after a decision by the Board to allow sufficient time for the Commissioner to determine whether to certify a decision of the Board to the Attorney General for review. These provisions for a temporary automatic stay will avoid the necessity of the Service having to seek stays on a case by case basis and the Board or the Attorney General having to decide whether to order a stay on extremely short notice with only the most summary presentation of the issues.

Finally, the current investigation in connection with recent terrorist activities has resulted in the detention of a large number of individuals. This may overwhelm the capacity of the Service to take the steps necessary to secure stays of custody redeterminations in timely fashion. The automatic stay provision will address this problem and prevent the Service and the Board from being overwhelmed with stay requests.

For these reasons, the Attorney General has determined that there is good cause to publish this interim rule and to make it effective upon filing for public inspection at the Office of the Federal Register, because the delays inherent in the regular notice-and-comment process would be ''impracticable, unnecessary and contrary to the public interest.''

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule extends the scope of the existing automatic stay provision to cover cases in which the Service has denied release of an alien pending the completion of removal proceedings or has set a bond of $10,000 or more, in order to allow the Service to maintain the status quo while it pursues an expedited appeal of an order to release the alien from custody. This rule does not affect small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (government agencies).

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

2. Section 3.19 is amended by revising paragraph (i)(2), to read as follows:

§ 3.19 Custody/bond.

* * * * *

(i) * * *

(1) * * *

(2) *Automatic stay in certain cases.* In any case in which the district director has determined that an alien should not be released or has set a bond of $10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon the Service's filing of a Notice of Service Intent to Appeal Custody Redetermination (Form EOIR–43) with the immigration court within one business day of the issuance of the order, and shall remain in abeyance pending decision of the appeal by the Board of Immigration Appeals. The stay shall lapse if the Service fails to file a notice of appeal with the Board in accordance with § 3.38 within ten business days of the issuance of the order of the immigration judge. If the Board authorizes release (on bond or otherwise), that order shall be automatically stayed for five business days. If, within that five-day period, the Commissioner certifies the Board's custody order to the Attorney General pursuant to § 3.1(h)(1) of this chapter, the Board's order shall continue to be stayed pending the decision of the Attorney General.

Dated: October 26, 2001.

John Ashcroft,

Attorney General.

[FR Doc. 01–27447 Filed 10–29–01; 1:51 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317, 319, and 381

[Docket No. 01–016DF]

Use of Transglutaminase Enzyme and Pork Collagen as Binders in Certain Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its meat inspection regulations to permit the use of pork collagen and transglutaminase enzyme (TG enzyme), in limited amounts, as binders in certain standardized meat food products. FSIS also is amending its poultry products inspection regulations to permit the use of TG enzyme, in limited amounts, as a binder in certain standardized poultry products. Additionally, FSIS is amending the meat and poultry inspection regulations to require that, when TG enzyme is used to fabricate or reform cuts of meat or poultry, the resulting product bear labeling to indicate that it has been formed from pieces of whole muscle meat, or that it has been reformed from a single cut. FSIS is proceeding with this direct final rule in response to petitions submitted to the Agency by Ajinomoto, U.S.A., Inc. and AMPC, Corp.

DATES: This rule will be effective December 31, 2001 unless FSIS receives written adverse comments within the scope of this rulemaking or written notice of intent to submit adverse comments within the scope of this rulemaking on or before November 30, 2001. If FSIS receives adverse comments, a timely withdrawal will be published in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments within the scope of this rulemaking to: FSIS Docket Clerk, Docket #01–016DF, Room 102, Cotton Annex, 300 C Street, SW., Washington, DC 20250–3700. Reference materials cited in this document and any comments received will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0279

SUPPLEMENTARY INFORMATION:

Background

Ajinomoto and AMPC Petitions

On May 5, 1999, Hogan and Hartson, L.L.P. filed a petition with FSIS on behalf of its client, Ajinomoto, USA, Inc. (Ajinomoto), requesting that the Agency amend its regulations to allow the use of TG enzyme, at usage levels of up to 65 ppm of product formulation, to improve texture and cooking yields in various standardized meat and poultry products. Ajinomoto also requested that FSIS permit TG enzyme to be used as a protein cross-linking agent, at usage levels of up to 65 ppm, to fabricate or reform cuts of meat. When TG enzyme is used to fabricate or reform cuts of meat, Ajinomoto requested that the resulting product be distinguished from its non-fabricated counterpart through terms such as ''formed'' or ''reformed'' as part of the product name (*e.g.* ''formed beef tenderloin''), as opposed to a statement that declares the presence of the enzyme as part of the product name (*e.g.* ''beef tenderloin formed with water and transglutaminase enzyme'').

TG enzyme is derived from a non-toxigenic and non-pathogenic strain of *Streptoverticillium mobaraense* and functions by catalyzing the formation of a covalent bond between the glutamine and lysine side residues of proteins. There are no current allowances in the FSIS regulations or those of the Food and Drug Administration (FDA) for the use of TG enzyme as a binder or protein cross-linking agent in standardized meat or poultry products.

In a previous petition submitted in June 1997, Ajinomoto requested that FSIS permit the use of TG enzyme in both standardized and non-standardized meat and poultry products. In support of the petition, Ajinomoto submitted data to support the generally recognized as safe (GRAS) status of TG enzyme for use as a cross-linking agent in meat and poultry products at levels of up to 65 ppm. As part of its review of the petition, FSIS asked FDA to evaluate the data submitted by Ajinomoto on the safety of TG enzyme for this proposed use. In January 1998, FDA sent a letter to FSIS that said that, although it has not made a determination regarding the GRAS status of any use of this enzyme, FDA would not challenge, at this time, Ajinomoto's conclusion that TG enzyme is safe under the proposed conditions of use.

Based on the findings of FDA's evaluation, described above, and the technical data provided by Ajinomoto, FSIS concluded that TG enzyme was suitable for use in non-standardized meat and poultry products, and in meat and poultry products that have been formulated to reduce sodium or fat content. Thus, the Agency permits the use of TG enzyme, at levels of up to 65 ppm, in such products, provided that the products are identified by a truthful descriptive designation, such as ''low fat pork sausage, water and TG enzyme product.''

Although FSIS determined that TG enzyme was suitable for use in non-standardized meat and poultry products, and in meat and poultry products that have been formulated to reduce sodium or fat content, in its review of the 1997 petition, the Agency also found that Ajinomoto submitted insufficient data on the suitability of the use of TG enzyme in standardized meat and poultry products. FSIS informed Ajinomoto that in order to permit the use of TG enzyme in standardized products, the Agency must pursue rulemaking to amend the regulatory standards of identity. FSIS suggested that Ajinomoto submit a petition to request that the Agency amend the individual meat and poultry product standards to provide for the use of TG enzyme. The Agency also informed Ajinomoto that such a petition must include technical data to establish the suitability of TG enzyme for use in standardized meat and poultry products. In response, Ajinomoto submitted the May 5, 1999, petition, to which this rulemaking responds.

In support of its most recent petition, Ajinomoto submitted numerous published studies on the efficacy of TG enzyme in cross-linking muscle proteins. FSIS determined that the data demonstrate that TG enzyme is effective in improving texture by increasing elasticity and improving cooking yields in standardized meat sausage products, standardized restructured meat products, standardized ''roast beef parboiled and steam roasted'' meat products, and standardized poultry rolls. The Agency also determined that TG enzyme is effective in binding pieces of whole muscle meat to fabricate or reform cuts of meat. FSIS concluded that the data demonstrate efficacy at 65 ppm. However, FSIS found that the petition contained insufficient data to support the use of TG enzyme in