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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 103, and 242

[EOIR No. 114I; A.G. Order No. 2051–96]

RIN 1125–AA15

Fees for Motions To Reopen or Reconsider

AGENCY: Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule clarifies when and how fees must be paid when a motion to reopen or reconsider is filed concurrently with any application for relief under the immigration laws for which a fee is chargeable. This interim rule applies to motions to reopen or reconsider that are filed in all types of immigration proceedings, including those over which the Immigration and Naturalization Service (the ''Service'') and the Board of Immigration Appeals (the ''Board'') have appellate jurisdiction, respectively.

DATES: This interim rule is effective September 3, 1996. Written comments must be received on or before November 4, 1996.

ADDRESSES: Please submit written comments to Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, and Ernest B. Duarte, Branch Chief, Immigration and Naturalization Service, 425 I Street NW., Suite 3214, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470, or Ernest B. Duarte, Branch Chief, Immigration and Naturalization Service, 425 I Street NW., Suite 3214, Washington, DC 20536, telephone (202) 307–3587.

SUPPLEMENTARY INFORMATION: This interim rule amends 8 CFR parts 3, 103, and 242 by clarifying when the required fees must be paid when a motion to reopen or reconsider is filed concurrently with any application for relief under the immigration laws for which a fee is chargeable. This interim rule applies to motions to reopen or reconsider that are filed in all types of immigration proceedings, including those over which the Service and the Board of Immigration Appeals have appellate jurisdiction, respectively.

This interim rule is necessary to eliminate questions that have arisen regarding the payment of fees for applications for relief that require their own separate fees when filed concurrently with motions to reopen or reconsider. For example, if an individual files a motion to reopen his or her deportation case in order to apply for suspension of deportation, is the individual required to pay only one fee for the motion to reopen, or one fee for the motion, and a second fee for the application?

Prior to April 4, 1989, the provision at 8 CFR 103.7(b) regarding motions to reopen or reconsider contained a sentence that specified that ''[w]hen the motion to reopen or reconsider is made concurrently with any application under the immigration laws, the application will be considered an integral part of the motion and only for the fee for filing the motion or the fee for filing the application, whichever is greater, is payable.'' When this provision was amended in April 1989, *see* 54 FR 13515, this sentence was deleted without explanation. During the ensuing years, confusion mounted as to the meaning, if any, of this deletion from the regulation and its effect on the fee requirements. The Executive Office for Immigration Review (''EOIR'') and the Service are prepared to eliminate this confusion by amending the fee requirement for motions to reopen or reconsider as follows:

If a motion to reopen or reconsider is filed by an individual concurrently with any application for relief under the immigration laws for which a fee is chargeable (*e.g.*, an application for suspension of deportation, adjustment of status, or registry), the individual initially must pay only the fee required for the motion (currently, $110), unless a fee waiver has been granted pursuant to 8 CFR 103.7(c)(1). If the motion to reopen or reconsider is granted, the individual then will have to pay the fee set forth in 8 CFR 103.7(b) required for the underlying application for relief in order to complete the application. Fee remittance for the underlying application for relief should be made payable to the ''Immigration and Naturalization Service''. Unless a fee waiver has been granted pursuant to 8 CFR 103.7(c)(1), failure to pay the subsequent fee for the underlying application for relief will result in the denial of the application. If the motion to reopen or reconsider is denied, no further fee will be required because the underlying application for relief, in effect, will be moot. This procedure provides a fair and equitable fee structure for motions and their underlying applications by requiring payment of a fee for the underlying application only if the motion to reopen or reconsider is granted. This will prevent imposing undue financial burdens on those individuals filing such motions.

The implementation of this rule as an interim rule, with provisions for post-promulgation public comment, is based upon the ''good cause'' exceptions found at 5 U.S.C. 553 (b)(B) and (d)(3). The reasons and the necessity for immediate implementation of this interim rule without prior notice and comment are as follows: Immediate implementation of this rule will ensure that fees for motions to reopen or reconsider, and their underlying applications for relief, are acceptable in a consistent manner by all immigration courts and the Board. Immediate implementation of this rule also will eliminate any existing confusion with regard to the payment of such fees at the earliest possible time, while still affording the agencies the opportunity to solicit and consider all public comments that are timely submitted. Finally, this interim rule provides a benefit to individuals who wish to file motions to reopen or reconsider. Hence, immediate implementation will make this benefit available without any further delay, which would be contrary to the public interest.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule affects only individuals filing

motions to reopen or reconsider concurrently with applications for the relief from deportation. Therefore, this rule does not have a significant economic impact on a substantial number of small entities. The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly this rule has not been reviewed by the Office of Management and Budget. This rule has no federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612. The rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Lawyers, Organizations and functions (Government agencies), Reporting and recordkeeping requirements.

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 242

Administrative practice and procedure, Aliens.

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

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Subpart C—Rules of Procedure for Immigration Judge Proceedings

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

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1324b, 1362, 1362; 28 U.S.C. 509, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR 1949–1953 Comp., p. 1002.

2. In § 3.31, paragraph (b) is amended by revising the first sentence to read as follows:

§ 3.31 Filing documents and applications.

* * * * *

(b) Except as provided in 8 CFR 242.17(e), all documents or applications requiring the payment of a fee must be accompanied by a fee receipt from the Service or by an application for a waiver of fees pursuant to 8 CFR 3.24. * * *

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PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

3. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701, E.O. 12356, 47 FR 14874; 15557; 3 CFR, 1982, Comp., p. 166; 8 CFR part 2.

4. In § 103.7, paragraph (b)(1) is amended by revising the two entries for ''Motion'', respectively, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

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Motion. For filing a motion to reopen or reconsider any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals has appellate jurisdiction. No fee shall be charged for a motion to reopen or reconsider a decision on an application for relief for which no fee is chargeable. (The fee of $110 shall be charged whenever an appeal or motion is filed by or on behalf of two or more aliens and all such aliens are covered by one decision. When a motion to reopen or reconsider is made concurrently with any application for relief under the immigration laws for which a fee is chargeable, the fee of $110 will be charged when the motion is filed and, if the motion is granted, the requisite fee for filing the application for relief will be charged and must be paid within the time specified in order to complete the application.)—$110.

Motion. For filing a motion to reopen or reconsider any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction. No fee shall be charged for a motion to reopen or reconsider a decision on an application for relief for which no fee is chargeable. (The fee of $110 shall be charged whenever an appeal or motion is filed by on or behalf of two or more aliens and all such aliens are covered by one decision. When a motion to reopen or reconsider is made concurrently with any application for relief under the immigration laws for which a fee is chargeable, the fee of $110 will be charged when the motion is filed and, if the motion is granted, the requisite fee for filing the application for relief will be charged and must be paid within the time specified in order to complete the application.)—$110.

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PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

5. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252a, 1252b, 1524, 1362; 8 CFR , part 2.

6. In § 242.17, paragraph (e) is amended by adding two new sentences after the 4th sentence, to read as follows:

§ 242.17 Ancillary matters, applications.

* * * * *

(e) * * * When a motion to reopen or reconsider is made concurrently with an application for relief seeking one of the immigration benefits set forth in paragraphs (a) and (c) of this section, only the fee set forth in § 103.7(b)(1) of this chapter for the motion must accompany the motion and application for relief. If such a motion is granted, the appropriate fee for the application for relief, if any, set forth in 8 CFR 103.7(b)(1), must be paid within the time specified in order to complete the application.* * *

Dated: August 26, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–22335 Filed 8–30–96; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 95F–0160]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a mixture of peroxyacetic acid, acetic acid, hydrogen peroxide and 1-hydroxyethylidene-1,1-diphosphonic acid (HEDP) to reduce the microbial load in water used to wash certain fruits and vegetables. Elsewhere in this issue of the Federal Register, FDA is publishing a document that provides for the safe use of a mixture of peroxyacetic acid, acetic acid, and hydrogen peroxide