industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional Findings.* It is necessary in the public interest to make these interim amendments to the Upper Midwest order effective May 1, 2002. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing area.

The interim amendments to these orders are known to handlers. The final decision containing the proposed amendments to these orders was issued on February 8, 2002.

The changes that result from these interim amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these interim order amendments effective May 1, 2002. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after their publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this interim order amending the Upper Midwest order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended;

(3) The issuance of the interim order amending the Upper Midwest order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1030

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Upper Midwest marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended on an interim basis, as follows:

The authority citation for 7 CFR Part 1030 reads as follows:

Authority: 7 U.S.C. 601–674.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

1. Section 1030.7(g) is amended by revising the first sentence to read as follows:

§ 1030.7 Pool Plant.

* * * * *

(g) The applicable shipping percentages of paragraphs (c) and (f) of this section and § 1030.13(d)(2), and (d)(3) may be increased or decreased, for all or part of the marketing area, by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. * * *

* * * * *

2. Section 1030.13 is amended as follows:

(a) By revising the introductory text;

(b) Redesignating paragraph (d)(3) as paragraph (d)(4); and

(c) Adding a new paragraph (d)(3) and a new paragraph (e). The revision and additions read as follows:

§ 1030.13 Producer milk.

Except as provided for in paragraph (e) of this section, *Producer milk* means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

* * * * *

(d) * * *

(3) The quantity of milk diverted to nonpool plants by the operator of a pool plant described in § 1030.7(a) or (b) may not exceed 90 percent of the Grade A milk received from dairy farmers (except dairy farmers described in § 1030.12(b)) including milk diverted pursuant to § 1030.13; and

* * * * *

(e) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program imposed under the authority of a State government maintaining marketwide pooling of returns.

Dated: April 16, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–9785 Filed 4–19–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 236 and 241

[INS No. 2203–02]

RIN 1115–AG67

Release of Information Regarding Immigration and Naturalization Service Detainees in Non-Federal Facilities

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule governs the public disclosure by any state or local government entity or by any privately operated facility of the name or other information relating to any immigration detainee being housed or otherwise maintained or provided service on behalf of the Immigration and Naturalization Service (INS or Service). This rule will establish a uniform policy on the public release of information on Service detainees and ensure the Service's ability to support the law enforcement and national security needs of the United States.

DATES: *Effective date:* This rule is effective April 17, 2002.

Comment date: Written comments must be submitted on or before June 21, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW, Room 4034, Washington, DC, 20536. To ensure proper handling, please reference INS No. 2203–02 on your correspondence. Comments may also be submitted electronically to the Service at insregs@usdoj.gov. When submitting comments electronically, please include INS No. 2203–02 in the subject heading. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Dea Carpenter, Deputy General Counsel, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street NW, Room 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION:

This interim rule governs the release of the identity or other information relating to Service detainees by non-federal institutions. An alien may be detained pursuant to an administrative

order of arrest in connection with removal proceedings. Section 236(a) of the Immigration and Nationality Act (Act), 8 U.S.C. 1226(a), authorizes the Attorney General to detain aliens pending a determination of whether the alien should be removed from the United States. *See* 8 CFR 287.7. Section 241 of the Act, 8 U.S.C. 1231, authorizes the Attorney General to detain aliens ordered removed. The Service may detain such aliens in a Federal detention facility, or may arrange for the alien to be housed by a state or local government entity or by a privately operated detention facility (''non-Federal providers'') under contract with the Service or otherwise. However, even under such an arrangement, the detainee remains in the custody of, and subject to the authority and management of, the Service. Information relating to such detainees also remains subject to the authority and management of the Service.

This rule clarifies that non-Federal providers shall not release information relating to those detainees, and that requests for public disclosure of information relating to Service detainees, including Service detainees temporarily being held by non-Federal providers on behalf of the Service, will be directed to the Service. The rule bars release of such information by non-Federal providers in order to preserve a uniform policy on the release of such information. Accordingly, any disclosure of such records will be made by the Service and will be governed by the provisions of applicable Federal law, regulations, and Executive Orders. This rule does not address or alter in any way the Service's policies regarding its release of information concerning detainees; these policies remain unchanged.

This regulation is within the scope of the authority delegated to the Attorney General under the Act. Section 103(a)(1) of the Act, 8 U.S.C. 1103(a)(1), charges the Attorney General ''with the administration and enforcement'' of ''all * * * laws relating to the immigration and nationalization of aliens,'' and section 103(a)(3) of the Act, 8 U.S.C. 1103(a)(3), empowers him to ''establish such regulations * * * as he deems necessary for carrying out his authority.'' The Attorney General, in turn, has delegated broad authority to the Commissioner to implement the immigration laws, including the authority to issue implementing regulations. 8 CFR 2.1.

This rule, governing the release of information concerning the identity or other information relating to Service detainees housed in non-Federal facilities, is both necessary and proper to carrying out the Attorney General's detention authority under sections 236 and 241 of the Act, 8 U.S.C. 1226 and 1231; to ''control, direct[], and supervis[e]'' all of the ''files and records'' of the Service under section 103(a)(2) of the Act, 8 U.S.C. 1103(a)(2); and to arrange by contract with state and local governments ''for necessary clothing, medical care, necessary guard hire, and the housing, care, and security of persons detained by the Service pursuant to Federal law,'' 8 U.S.C. 1103(a)(9)(A)), as well as his authority under 18 U.S.C. 4002, 4013(a)(4).

The Supreme Court has recognized the primacy of Federal law in matters related to aliens and immigration. *Toll* v. *Moreno*, 458 U.S. 1, 10 (1980) (emphasizing the ''preeminent role of the Federal Government with respect to the regulation of aliens with our borders'' and noting the numerous constitutional sources of that authority); *DeCanas* v. *Bica*, 424 U.S. 351, 355 (1976) (''Power to regulate immigration is unquestionably exclusively a federal power.''); *Examining Bd. of Eng'rs, Architects & Surveyors* v. *Flores de Otero*, 426 U.S. 572, 605 (1976) (acknowledging ''the Federal Government's primary power and responsibility for the regulation of immigration''); *see* also *INS* v. *Aguirre-Aguirre*, 526 U.S. 422, 424, 425 (1999) (''judicial deference to the Executive Branch is especially appropriate in the immigration context''). In some instances, the release of information about a particular detainee or group of detainees could have a substantial adverse impact on security matters as well as the detainee's privacy. For example, specific aliens detained under administrative arrest warrants may possess significant foreign intelligence or counterintelligence information that is sought by the United States. The disclosure of those aliens' detention and the location of their detention could invite foreign intelligence activity contrary to the best interests of the United States. Similarly, the premature release of the identity or other information relating to those aliens could jeopardize sources and methods of the intelligence community. Release of information about a specific detainee or group of detainees could also have a substantial adverse impact on ongoing investigations being conducted by federal law enforcement agencies in conjunction with the Service. Even though an individual detainee may choose to disclose his own identity or some information about himself, the release by officials housing detainees of a list of detainees or other information about them could give a terrorist organization or other group a vital roadmap about the course and progress of an investigation. In certain instances, the detention of a specific alien could alert that alien's coconspirators to the extent of the federal investigation and the imminence of their own detention, thus provoking flight to avoid detention, prosecution and removal from the United States. Premature release of the identity of or information relating to a specific alien in detention could reasonably be expected to disclose the identity of a confidential source and techniques or procedures for law enforcement investigations or prosecution. See 5 U.S.C. 552(b)(7)(D), (E). Officials of the non-Federal providers may not possess information regarding the progress of Federal investigations and cannot make judgments about the risk of release of information relating to Service detainees.

This intelligence ''mosaic'' dilemma has been well recognized by the courts in concluding both that they are ill suited to second-guess the Executive Branch's determination and that seemingly innocuous production should not be made.

It requires little reflection to understand that the business of foreign intelligence gathering in this age of computer technology is more akin to the construction of a mosaic than it is to the management of a cloak and dagger affair. Thousands of pieces of seemingly innocuous information can be analyzed and fitted into place to reveal with startling clarity how the unseen whole must operate. As the Fourth Circuit Court of Appeals has observed:

The significance of one item of information may frequently depend upon knowledge of many other items of information. What may seem trivial to the uninformed, may appear of great moment to one who has a broad view of the scene and may put the questioned item of information in its proper context. The courts, of course are ill-equipped to become sufficiently steeped in foreign intelligence matters to serve effectively in the review of secrecy classifications in that area.

United States v. *Marchetti*, 466 F.2d 1309, 1318 (4th Cir.), cert. denied, 409 U.S. 1063 (1972).

Halkin v. *Helms*, 598 F.2d 1 (D.C. Cir. 1978). *See* also *e.g., Kasza* v. *Browner*, 133 F.3d 1159, 1166 (9th Cir. 1998) (quoting Halkin); *J. Roderick MacArthur Foundation* v. *Federal Bureau of Investigation*, 102 F.3d 600, 604 (D.C. Cir. 1996) (''As we have said before, ''intelligence gathering is akin to the

construction of a mosaic.'''' (citation omitted)).

In view of the primacy of Federal law in this area, it would make little sense for the release of potentially sensitive information concerning Service detainees to be subject to the vagaries of the laws of the various States within which those detainees are housed and maintained, by specific arrangement with the Service, for the United States. Application of State law in this area has the potential to threaten the Attorney General's mission. State law, unlike Federal law, may not be well adapted to the special national security, law enforcement, and privacy concerns implicated by the release of this type of information. This rule provides for a uniform Federal approach to ensure the consistent treatment of all Service detainees, including those being detained by non-Federal providers on behalf of the Service.

The rule also reflects the nature and origin of the information concerning the immigration detainees. When a non-Federal provider assumes responsibility for housing a detainee, it does so as an agent of the Federal government. The only reason that the non-Federal provider knows the detainees' names or other related information about them is because the Federal government has made such information available pursuant to that agency relationship. The non-Federal provider, as agent, should not release the principal's potentially sensitive information without its consent, particularly where doing so may be inconsistent with the principal's interests. Instead, the Service as principal should determine whether and under what circumstances such information should be released consistent with federal law.

This interim rule supersedes State or local law relating to the release of such information. *New York* v. *FERC*, __ U.S. __, 122 S.Ct. 1012 (March 4, 2002, No. 00–568); *Fidelity Federal Savings and Loan Assoc.* v. *De le Cuesta*, 458 U.S. 141, 153–54 (1982); *Louisiana Pub. Serv. Comm'n* v. *FCC*, 476 U.S. 355, 369 (1986); *Boyle* v. *United Technologies Corp.*, 487 U.S. 500, 504–507, 512 (1988).

This rule is similar to the existing regulations of the Federal Bureau of Prisons (''BOP''), 28 CFR 513.33—513.36, which provide that information regarding BOP inmates shall only be disclosed pursuant to Federal law. Section 513.34(b) of BOP's regulations specifically provides that ''Lists of Bureau inmates shall not be disclosed.'' See *Brady-Lunny* v. *Massey*, 185 F. Supp. 2d 928 (C.D. Ill. 2002). Although the BOP rule relating to contractors, 28 CFR 513.36(b), provides that the requirements relating to the privacy of inmate information are to be established and enforced by contract, this rule governing the disclosure of information pertaining to Service detainees specifically prohibits the non-Federal providers from disclosing such information themselves. Disclosure or release of the identity of Service detainees or other information relating to Service detainees information is solely the responsibility of the Service.

The rule specifically provides that it shall apply to all pending and future requests for disclosure of or proceedings concerning the release of the name, or related information, of detainees held on behalf of the Service, including requests that are the subject of proceedings or litigation as of the effective date of this rule. See *Smiley* v. *Citibank (South Dakota), N.A.*, 517 U.S. 735, 739–740 (1996); *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995); *United States* v. *Morton*, 467 U.S. 822, 835–836 n. 21 (1984); *United States* v. *Schooner Peggy*, 1 Cranch 103, 110, 2 L.Ed. 49 (1801).

This rule does not alter the ability of a detainee to seek legal counsel under 8 U.S.C. 1362. A detainee has the privilege of seeking legal counsel or representation by an accredited representative at no expense to the United States. This rule imposes no restrictions on the ability of Service detainees to identify themselves or to communicate with others. It only prevents non-Federal providers from making public disclosures of information pertaining to the Service detainees that the non-Federal provider is housing on behalf of the Service. Such requests for public disclosure of information pertaining to Service detainees should be directed to the Service.

Finally, this rule also changes Service regulations at Part 241, ''Apprehension and Detention of Aliens Ordered Removed,'' to make clear that the identity or other information relating to post-order detainees in non-federal institutions are governed by the same standards and principles as set forth in this rule.

Request for Comments

The Service is seeking public comments regarding this interim rule. The Service requests that parties interested in commenting on the provisions contained within this rule do so on or before June 21, 2002, as the Service will not extend the comment period.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based on the ''good cause'' exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The reason and necessity for the immediate promulgation of this rule are as follows: Service detainees are often housed, maintained, or provided with service by non-Federal providers. Disclosure of the identities or related information about certain detainees could reveal investigative methods, sources, and witnesses. The detainee could be subjected to intimidation or harm, thereby discouraging or preventing him or her from supplying valuable information or leads now or in the future. Disclosure of a detainee's identity or information related to the detainee could deter these individuals from cooperating with the Department of Justice now or after they are released from custody for fear of retaliation by terrorist organizations against them or their family members and associates. Disclosure could reveal important information about the direction, progress, focus and scope of investigations arising out of the attack on September 11, 2001, and thereby assist terrorist organizations in counteracting investigative efforts of the United States. Therefore, the actual identity of a detainee and information related to such a detainee must be managed by the Service.

In order to safeguard these important interests, the Service must maintain control of the release of information pertaining to the identity of or other information related to Service detainees, including information in the control of persons or entities acting on behalf of the Service. In light of the national emergency declared by the President on September 14, 2001, in Proclamation 7453, with respect to the terrorist attacks of September 11, 2001, and the continuing threat by terrorists to the security of the United States, and the need immediately to control identifying or other information pertaining to Service detainees, there is good cause under 5 U.S.C. 553(b) and (d) for dispensing with the requirements of prior notice and to make this rule effective upon April 17, 2002.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, 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 applies only to release of information about Service detainees being housed or maintained in a state or local government entity or a privately operated detention facility. It does not have any adverse impact on 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 804 of the Small Business Regulatory Enforcement Act of 1996. 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, Immigration and Naturalization Service, 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 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. This rule merely pertains to the public disclosure of information concerning Service detainees housed, maintained or otherwise served in state or local government or privately operated detention facilities under any contract or other agreement with the Service. In effect, the rule will relieve state or local government entities of responsibility for the public release of information relating to any immigration detainee being housed or otherwise maintained or provided service on behalf of the Service. Instead, the rule reserves that responsibility to the Service with regard to all Service detainees. 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, Civil Justice Reform

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

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 241

Administrative practice and procedure, Aliens, Immigration.

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

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

1. The authority citation for part 236 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

2. Section 236.6 is added to read as follows:

§ 236.6 Information regarding detainees.

No person, including any state or local government entity or any privately operated detention facility, that houses, maintains, provides services to, or otherwise holds any detainee on behalf of the Service (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the Service and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002.

PART 241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

3. The authority citation for part 241 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1223, 1224, 1225, 1226, 1227, 1231, 1251, 1253, 1255, 1330, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

4. Section 241.15 is added to read as follows:

§ 241.15 Information regarding detainees.

Disclosure of information relating to detainees shall be governed by the provisions of § 236.6 of this chapter.

Dated: April 17, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–9863 Filed 4–18–02; 2:59 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–80–AD, Amendment 39–12724; AD 2002–06–53]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, A321, A330, and A340 Series Airplanes Equipped With Certain Thales Avionics Digital Distance and Radio Magnetic Indicators (DDRMIs)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2002–06–53 that was sent previously to all known U.S. owners and operators of Airbus Model A319, A320, A321, A330, and A340 series airplanes equipped with certain Thales Avionics Digital Distance and Radio Magnetic Indicators (DDRMIs) by individual notices. This