

U.S.C. chapter 35), AMS obtained emergency approval for a new information collection request under OMB No. 0581-NEW for Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida, Marketing Order No. 905. The emergency request was necessary because insufficient time was available to follow normal clearance procedures. This information collection will be merged with the forms currently approved for use under OMB No. 0581-0189 "Generic OMB Fruit Crops."

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

Further, the committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in committee deliberations. Like all committee meetings, the May 22, 2002, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Also, the committee has a number of appointed subcommittees to review certain issues and make recommendations to the committee. A subcommittee met May 21, 2002, and discussed the tree run issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views.

An interim final rule concerning this action was published in the **Federal Register** on October 7, 2002. Copies of the rule were mailed by the committee's staff to all committee members and citrus handlers. In addition, the rule was made available through the Internet by the Office of the **Federal Register** and USDA. That rule provided for a 60-day comment period which ended December 6, 2002. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (67 FR 62313, October 7, 2002) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 905

Oranges, Grapefruit, Tangerines, Tangelos, Marketing agreements, Reporting and recordkeeping requirements.

#### PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 905 which was published at 67 FR 62313 on October 7, 2002, is adopted as a final rule without change.

Dated: January 23, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

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#### 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:** Final rule.

**SUMMARY:** This final rule governs the public disclosure by any state or local government entity or by any privately operated facility of the name and 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 establishes a uniform policy on the public release of information on Service detainees and ensures the Service's ability to support the law enforcement and national security needs of the United States.

**DATES:** This rule is effective on January 29, 2003.

**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:** The Commissioner of the Immigration and Naturalization Service ("Service") published this rule as an interim rule

with request for comments on April 22, 2002. 67 FR 19508. In the 60-day comment period, the Service received only four comments.

The comments received may be described as follows: One commenter contended that the rule violates non-citizens' constitutional rights, the public's right to know under the First Amendment, the States' rights under the Tenth Amendment and the Guarantee Clause of Article IV of the Constitution. This comment also argued that the manner of promulgation of the interim rule violated the Administrative Procedure Act (APA), and that consent to the rule by a non-federal institution could not validate the rule. A second commenter asserted that the rule violates the First Amendment and the Due Process Clause of the Fifth Amendment to the Constitution; that the rule derogates treaty obligations of the United States under international law; that, in enacting the interim rule, the Service failed to comply with the notice and comment provisions of the APA; that the rule violates the Tenth Amendment; and that the rule exceeds the scope of delegated authority under the Immigration and Nationality Act ("Act"). The third comment also took the position that the rule exceeds the authority delegated under the Act. The fourth comment urged that the rule is impractical and affects the ability of third persons to communicate with detainees. All of the commenters were of the view that the rule reflects undesirable public policy.

Rather than respond to each comment individually, the Service believes that it is more functional to respond to the concerns raised, organized by subject matter. The Service has considered the comments and responds as follows:

1. The commenters' suggestion that the rule exceeds the Attorney General's authority under federal law is without merit. Federal control over matters regarding aliens and immigration is plenary and exclusive. "Control over immigration and naturalization is entrusted exclusively to the Federal Government, and a State has no power to interfere." *Nyquist v. Mauclet*, 432 U.S. 1, 10 (1977); see also, e.g., *Mathews v. Diaz*, 426 U.S. 67, 81 (1976) ("[T]he responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government."). Under federal law, the Attorney General is explicitly charged with the administration and enforcement of the Nation's immigration laws. 8 U.S.C. 1103(a)(1) ("[t]he Attorney General shall be charged with the administration and

enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens"); see *INS v. Aguirre-Aguirre*, 526 U.S. 415, 424 (1999). Pursuant to those responsibilities, the Attorney General possesses broad and express authority to promulgate appropriate immigration regulations. See 8 U.S.C. 1103(a)(3) (the Attorney General "shall establish such regulations; \* \* \* issue such instructions; and perform such other acts as he deems necessary for carrying out his authority under the provisions of this chapter."). In addition, the Attorney General has explicit statutory authority to detain aliens in connection with removal proceedings, 8 U.S.C. 1226(a), 1231, and to enter into agreements with State and local governments for the housing of aliens detained under provisions of the immigration laws. 8 U.S.C. 1103(a)(9)(A). The Attorney General has delegated substantial immigration responsibilities to the Commissioner of the INS. See 8 U.S.C. 1103(c); 8 CFR 2.1.

These provisions plainly authorize the Attorney General or the Commissioner to set the terms of alien detention contracts and to provide by regulation that persons housing INS detainees on behalf of the federal government shall not publicly disclose the names and other information regarding those detainees, particularly where such disclosure would threaten harm to vital national interests. The regulation is further supported by the plenary federal authority with respect to matters of national security. See, e.g., *Haig v. Agee*, 453 U.S. 280, 307 (1981) ("It is obvious and unarguable that no governmental interest is more compelling than the security of the nation") (citation omitted); *Murphy v. Waterfront Comm'n of N.Y. Harbor*, 378 U.S. 52, 76 n.16 (1964) (noting "the paramount federal authority in safeguarding national security") (citation and internal quotation marks omitted). The rule is necessary because, as the New Jersey appellate court, in reviewing the legality and effect of interim rule, pointed out, "The counties are not privy to the character and extent of federal investigations in progress nor, apparently, do they possess any independently acquired information regarding the role of the INS detainees in those investigations." *ACLU v. County of Hudson*, 799 A.2d 629, 643 (N.J. Super. App. Div.), certification denied, 803 A.2d 1162 (N.J. 2002).

Moreover, to the extent that the rule implicates contracts between the federal government and state, local or private entities, to house federal detainees, those contracts are governed by federal

law. The "rights of the United States under its contracts are governed exclusively by federal law," *Boyle v. United Technologies Corp.*, 487 U.S. 500, 504 (1988). With respect to contracts to house INS detainees, the regulation confirms what should always have been evident: that federal contractors with the INS may not use the information obtained in housing federal detainees to impair the federal government's enforcement of the immigration and criminal laws.

Further, the issue is not whether a non-federal entity consents to the regulation. Any non-federal entity providing housing for federal detainees may take steps to terminate its relationship with the Service if it so chooses. The rule simply relieves the non-federal entity of responsibility for releasing or withholding information regarding the detainees, and places that responsibility with the federal government subject to standards established by federal law.

The validity of the interim rule has recently been confirmed by the Superior Court of New Jersey, Appellate Division, in *ACLU v. County of Hudson*, 799 A.2d 629, 643 (N.J. Super. App. Div.), certification denied, 803 A.2d 1162 (N.J. 2002). In that decision, the court relied on the interim rule to reverse the judgment of a lower court requiring disclosure of information by county officials. The New Jersey court confirmed that "the regulation falls within the authority delegated to the Commissioner by Congress through the Attorney General." *Id.*, at 649; see also, at 650. The court found that it need "not assess the strength of the government's argument that national security interests create a generalized authority within the government to promulgate 8 CFR 236.6 or any other measures limiting the rights of individuals, for we view the government's argument based upon the delegation of authority under the INA to provide a sufficiently authoritative independent basis of support for the Commissioner's action." *Id.*, at 650.

2. Some of the commenters asserted that the interim rule was improperly promulgated under the Administrative Procedure Act (APA). As the Service explained in promulgating the interim rule, implementation of the rule as an interim rule, with provisions for post-promulgation public comments, was properly based on the APA's "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). 67 FR at 19510.

The statement accompanying the promulgation of the interim rule easily satisfied the requirements of 5 U.S.C. 553(b)(B) and (d)(3). The "good cause" exceptions may be used in "emergency

situations," *Util. Solid Waste Activities Group v. EPA*, 236 F.3d 749, 754 (D.C. Cir. 2001), and the circumstances surrounding promulgation of the interim rule easily met that criterion. Public disclosure of the information at issue would have endangered national security and undermined crucial federal law enforcement interests. Immediate promulgation of a rule to clarify federal law and ensure the protection of those national interests was vital. In those circumstances, the government was not required to await completion of a notice-and-comment period to take immediate action.

With the adoption of this final rule, it is the final rule, and not the interim rule, that is operative. Even if a court were to find that the interim rule was improperly adopted, the court would look to this final rule in determining the rule's legal efficacy.

3. The commenters' constitutional challenges lack force. First, the Tenth Amendment is not implicated. The rule against commandeering applies only when the federal government requires state legislatures to enact regulatory schemes, *New York v. United States*, 505 U.S. 144, 168-69, 173 (1992), or "conscripts" state officials to execute a federal program, *Printz v. United States*, 521 U.S. 898, 935 (1997). The rule has no application where the federal government requires a state *not* to release information pursuant to a framework, such as this rule, that applies equally to both state and private actors. Thus, in *Reno v. Condon*, 528 U.S. 141 (2000), the Supreme Court unanimously rejected a Tenth Amendment challenge to a federal law that prohibited states from disclosing a driver's personal information, such as a person's name and address.

The Supreme Court has also made clear that the "anti-commandeering" principle places no constraint on the federal government's ability to impose conditions on the receipt of federal funds. See *New York*, 505 U.S. at 168-69, 173. Pursuant to explicit congressional authority, the federal government has expended and is expending substantial funds in connection with the housing of immigration detainees by non-federal entities. The conditions attached to the receipt of those funds—funds which recipients are free to accept or reject as they please—do not implicate the Tenth Amendment. See *id.*

Second, the commenters' invocation of the Guarantee Clause of Article IV of the Constitution also fails. The Guarantee Clause provides that "[t]he United States shall guarantee to every State in this Union a Republican Form

of Government.” U.S. Const., Art. IV, § 4. That constitutional provision is not implicated here.

Third, the commenters’ Due Process concerns are unfounded. Under federal law, INS detainees in removal proceedings are entitled to invoke a panoply of applicable administrative and judicial procedures. *See, e.g.*, 8 U.S.C. 1226–31; 8 CFR 240.10. The rule in no way abrogates any of those rights. Moreover, administrative removal proceedings are “intended to provide a streamlined determination of eligibility to remain in this country, nothing more.” *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984). Thus, due process requirements in this context are reduced, and hearings need not comply with “the forms of judicial procedure.” *Yamataya v. Fisher*, 189 U.S. 86, 97 (1903); *see also, e.g., United States v. Verdugo-Urquidez*, 494 U.S. 259, 271–273 (1990) (due process “accord[s] differing protection to aliens than to citizens”); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (political branches may adopt rules for aliens “‘that would be unacceptable if applied to citizens’” (citation omitted)); *Landon v. Plasencia*, 459 U.S. 21, 34 (1982) (“it must weigh heavily in the [due process] balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature”). The disclosure rule here invades no due process rights.

Fourth, the rule does not infringe upon any public First Amendment rights. Rather, the rule ensures that any disclosure of information pertaining to federal detainees will be governed by the federal Freedom of Information Act (FOIA), 5 U.S.C. 552. The FOIA provides generally for disclosure of records by federal agencies, but contains exceptions that Congress believed crucial to the effective functioning of the national government. *See, e.g.*, 5 U.S.C. 552(b)(1), (7)(A), (C), (E), (F). The rule here ensures that federal interests will be protected by channeling information requests through the FOIA. In addition, the rule guarantees that information regarding federal detainees will be released under a uniform federal scheme rather than the varying laws of fifty states. It is this Act of Congress and this implementing rule that are controlling, not the Constitutional bar to impairment of freedom of speech. “The Constitution itself is neither a Freedom of Information Act nor an Official Secrets Act.” *Houchins v. KQED, Inc.*, 438 U.S. 1, 12 (1978) (quoting Stewart, “Or of the Press,” 26 *Hastings L.J.* 631, 636 (1975)). By channeling requests for information through the FOIA, which contains a privacy exception, the rule

also protects detainees’ privacy. Just as the government has a substantial interest in protecting legitimate national security, intelligence and law enforcement functions under the FOIA, detainees may have a substantial privacy interest in their names and the personal information connected with their status as detainees. 5 U.S.C. 552(b)(1), (6), (7)(A), (C), (E). For example, individuals who were originally detained because of their possible connection to terrorism, have an overwhelming interest in not being connected with such activity. And particularly with respect to those individuals cooperating with the government’s law enforcement investigations, there are powerful reasons why such persons would wish to conceal their identities and whereabouts. Indeed, other INS regulations expressly shield from disclosure information pertaining to or contained in an asylum application. *See* 8 CFR 208.6(a). Contrary to some of the commenters’ suggestions, the fact that certain detainees may wish to publicly identify themselves, which they are free to do, in no way undermines this assessment.

4. The contention that the rule violates international law is similarly without basis. Federal law explicitly addresses the issue of access to consular officials. The Vienna Convention requires that a detained individual be advised of his or her right to contact his or her country’s consul, and consular notification upon request of the detainee. *See* Vienna Convention on Consular Relations, 21 U.S.T. 77, T.I.A.S. No. 6820, Art. 36(1)(b). However, an alien detainee may not wish to have his nation’s representatives advised of his detention and may wish to apply for refugee status or asylum. Consular notification is mandatory only if the bilateral consular convention specifically requires notifying consular officials of all arrests or detentions. *See* 8 CFR 236.1(e) (listing countries covered by such bilateral conventions).

5. Finally, all of the comments argue that the rule reflects unwarranted public policy choices. The Service disagrees. In this post-September 11, 2001, era of heightened national security concerns, it is necessary that information regarding aliens detained in the United States be released with great care. As explained in connection with promulgation of the interim rule, the inappropriate release of information concerning detained aliens can provide hostile interests with intelligence harmful to the national security and law enforcement interests of the United States. In upholding the regulation, the

Appellate Division of the New Jersey Superior Court expressly accept[ed] the government’s characterization of the interests affected as important, *i.e.*, facilitation of law enforcement operations, the protection of detainees, and promotion of national security.” *ACLU v. County of Hudson, supra*, 799 A.2d at 652; *see also id.*, at 649 (“With regard to the government’s national security argument, there can be no question that the government of the United States has a compelling interest in securing the safety of the nation’s citizens against terrorist attack”). The Service continues to believe that the rule is fully warranted and adopts the analysis and legal authority in the supplementary information to the interim rule as support for the adoption of this final rule. 67 FR at 19501–19510.

The commenters’ contention that the rule is impractical has not proven to be true. The FOIA has a long history of success in providing for proper public access to information while also protecting appropriate public safety, national security, and individual privacy interests. The Service is fully capable of carrying out this mandate in the context of federal immigration detainees housed in non-federal facilities, and the commenters have supplied no evidence to the contrary.

Accordingly, the Service is adopting the interim rule as a final rule without amendment.

#### 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 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, the interim rule amending 8 CFR parts 236 and 241 which was published at 67 FR 19508 on April 22, 2002, is adopted as a final rule without change.

Dated: January 23, 2003.

**Michael J. Garcia,**

*Acting Commissioner, Immigration and Naturalization Service.*

[FR Doc. 03-1958 Filed 1-28-03; 8:45 am]

**BILLING CODE 4410-10-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2002-NM-307-AD; Amendment 39-13025; AD 2003-03-01]

RIN 2120-AA64

**Airworthiness Directives; Boeing Model 737-600, -700, -700C, -800, and -900 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 737-600, -700, -700C, -800, and -900 series airplanes. This action requires reviewing the airplane maintenance records to determine whether an engine has been removed from the airplane since the airplane was manufactured. For airplanes on which an engine has been removed, this action requires an inspection of the aft engine mount to determine if the center link assembly is correctly installed, and follow-on actions if necessary. This action also prohibits installation of an engine unless the aft engine mount is inspected and the center link assembly is found to be installed correctly. This action is necessary to prevent increased structural loads on the aft engine mount, which could result in failure of the aft engine mount and consequent separation of the engine from the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective February 13, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 13, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 31, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-307-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002-NM-307-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Sue Lucier, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2186; fax (425) 227-1181.

**SUPPLEMENTARY INFORMATION:** The FAA has received reports indicating that operators found that the center link assembly for the aft engine mount was reversed on several Model 737-700 series airplanes and one Model 737-800 series airplane. Investigation revealed that the center link assembly had been reversed during re-assembly after overhaul of the airplane engine. Because of the nearly symmetrical design of this assembly, it is susceptible to being reversed during installation. Reversal of the center link assembly increases the structural load on the aft engine mount. This condition, if not corrected, could result in failure of the aft engine mount and consequent separation of the engine from the airplane.

The design of the center link assembly for the aft engine mount is common to