

# Proposed Rules

Federal Register

Vol. 62, No. 178

Monday, September 15, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service and Executive Office for Immigration Review

#### 8 CFR Parts 3 and 236

[INS No. 1855-97; AG ORDER No. 2114-97]

RIN 1115-AE88

#### Procedures for the Detention and Release of Criminal Aliens by the Immigration and Naturalization Service and for Custody Redeterminations by the Executive Office for Immigration Review

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to amend the regulations of the Immigration and Naturalization Service (Service) and the Executive Office for Immigration Review (EOIR) by establishing a regulatory framework for the detention of criminal aliens pursuant to the Transition Period Custody Rules (TPCR) set forth in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). This rule is necessary to provide uniform guidance to Service officers and immigration judges regarding application of the TPCR.

**DATES:** Written comments must be submitted on or before October 15, 1997.

**ADDRESSES:** Please submit written comments, including an original and two copies, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 "I" Street NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1855-97 on all correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Brad Glassman, Office of the General Counsel, Immigration and Naturalization Service, 425 "I" Street NW., Room 6100, Washington DC 20536, telephone (202) 305-0846.

#### SUPPLEMENTARY INFORMATION:

##### Background

On October 9, 1996, the Commissioner of the Immigration and Naturalization Service notified Congress that the Service lacks the detention space and personnel necessary to comply with the mandatory detention provisions of section 440(c) of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214, and section 236(c) of the Immigration and Nationality Act (Act), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, section 303(a), 110 Stat. 3009. By operation of law, see IIRIRA section 303(b)(2), the notification results in the temporary replacement of these mandatory detention provisions with the Transition Period Custody Rules set forth in IIRIRA section 303(b)(3). The TPCR provide for the detention, *inter alia*, of specified classes of criminal aliens, and allow some of these aliens to be considered for release in the exercise of the Attorney General's discretion. This proposed rule establishes uniform rules and standards to implement the release provisions of the TPCR for criminal aliens.

The TPCR apply, *inter alia*, to specifically enumerated classes of criminal aliens in deportation proceedings (i.e., where the alien is deportable and proceedings commenced before April 1, 1997), and in removal proceedings (i.e., where the alien is either deportable or inadmissible, and proceedings commenced on or after April 1, 1997). The TPCR do not apply in exclusion proceedings (i.e., where the alien is inadmissible and proceedings commenced before April 1, 1997) because the TPCR replace mandatory detention provisions applicable to deportation and removal proceedings, see IIRIRA section 303(b)(2), but do not replace the analogous provision applicable to exclusion proceedings, section 236(e) of the INA (as designated prior to April 1, 1997).

The TPCR apply differently with respect to aliens in removal proceedings

than they do with respect to aliens in deportation proceedings. The TPCR replace revised section 236(c) of the Immigration and Nationality Act (Act), which governs the detention of specified classes of aliens during removal proceedings. The TPCR do not, however, replace the revised section 241 of the Act, which governs detention after a final order of removal. As a result, the TPCR apply only during removal proceedings; the revised section 241 of the Act governs detention after a final order of removal.

By contrast, the TPCR apply both during deportation proceedings and after a final order of deportation (tracking the coverage of section 440(c) of AEDPA). It is expected, however, that few, if any, criminal aliens with a final order of deportation will be released in the exercise of discretion, because it will be exceptionally difficult for such an alien to demonstrate the absence of a flight risk by clear and convincing evidence as required to be considered for release in the exercise of discretion. In a report issued in March 1996, the Office of the Inspector General of the United States Department of Justice found that 89 percent of non-detained aliens with final orders of deportation failed to surrender for deportation when ordered to do so by the Service (Report #I-96-03). Finally, as in the past, no custody determination or redetermination need be undertaken by the Service if actual deportation or removal is imminent.

The TPCR apply to the following classes of aliens in deportation proceedings (or subject to a final order of deportation): aliens convicted of aggravated felonies, under the definition of "aggravated felony" as amended by IIRIRA; aliens deportable for having committed any offense covered in section 241(a)(2)(A)(ii) (multiple crimes involving moral turpitude), (A)(iii) (aggravated felonies), (B) (certain controlled substance offenses), (C) (certain firearms offenses), or (D) (certain other crimes) of the Act, as designated prior to April 1, 1997. In removal proceedings, the TPCR will apply to these same categories of aliens, and also to aliens inadmissible under section 212(a)(2) or 212(a)(3)(B) of the Act. Again, the TPCR do not apply to aliens in exclusion proceedings.

Aliens not subject to the TPCR will fall within the general detention

authority applicable to aliens in deportation, exclusion, or removal proceedings. Section 242(a)(1) of the Act (as designated prior to April 1, 1997) continues to govern the detention of deportable aliens not falling within the coverage of the TPCR. Sections 212(d)(5) (as amended by Pub. L. 104-208) and 235(b) (as designated prior to April 1, 1997) of the Act continue to govern the detention and parole of non-aggravated felons in exclusion proceedings. (Section 236(e) of the Act, as designated prior to April 1, 1997, continues to govern the detention of aggravated felons in exclusion proceedings.) Sections 235(b)(2) and 236(a) of the Act govern the detention of aliens in removal proceedings who are not subject to the TPCR. The TPCR do not affect the detention of aliens placed into expedited removal proceedings under section 235(b)(1) of the Act (as in effect on April 1, 1997).

Only two classes of criminal aliens subject to the TPCR may be considered for release from custody. The first class of releasable criminal aliens consists of those who have been "lawfully admitted." The second class consists of those who cannot be removed from the United States because the designated country of deportation or removal will not accept their return.

As to the first class, the term "lawfully admitted" will have a slightly different meaning in removal proceedings than in deportation proceedings. Without exception, any alien in deportation proceedings or subject to a final order of deportation whose last entry into the United States was lawful is "lawfully admitted" for purposes of the TPCR. An alien in deportation proceedings or subject to a final order of deportation whose last entry was unlawful will not be considered "lawfully admitted" for purposes of the TPCR (except that an alien in deportation proceedings who remains in status as a permanent resident, conditional permanent resident, or temporary resident shall be considered "lawfully admitted" despite an unlawful last entry). In contrast, "lawful admission" for aliens in removal proceedings will be determined according to the definition of "admission" in section 101(a)(13) of the Act (as amended by Pub. L. No. 104-208). Pursuant to the statutory definition, an alien who last entered the United States upon inspection and authorization by an immigration officer will be considered "lawfully admitted."

As to the second class of criminals who may be considered for release under the TPCR, i.e., those whose designated country of deportation or

removal will not accept their return, release authority will rest with the Service district director (or other appropriate INS officer), the official best situated to review and assess unremovability. The Service has developed successful procedures for review and, where appropriate, release of aliens within this small subclass of detainees. The Service's determination of unremovability will be final, and custody determinations pursuant to section 303(b)(3)(B)(ii) of IIRIRA will not be subject to redetermination by EOIR.

The statute provides that, in order to be considered for release in the exercise of discretion, criminal aliens subject to the TPCR who fall within either of the two releasable classes must demonstrate that they will not pose a danger to the safety of other persons or of property, and will likely appear for any scheduled proceeding, including immigration hearings or other appearances required by the Service or EOIR. Following precedent decisions of the Board of Immigration Appeals (Board) interpreting similar language, the inquiry into danger to persons and property is separate from and precedes the inquiry into flight risk. If the alien cannot demonstrate the absence of danger to persons or property, the inquiry ends. Only upon such a showing may the alien further demonstrate the absence of flight risk in order to be considered for release in the exercise of discretion.

The proposed rule establishes uniform rules and standards for the exercise of the discretion conferred by the statute upon the Attorney General. The overarching concern reflected in the proposed rule is that aliens posing a danger to persons or property remain in custody until removed from the United States. A second concern arises from the high percentage of aliens released from Service custody who abscond from lawful processes and become fugitives. In general, Congress has expressed in IIRIRA a clear intention that criminal aliens be detained, subject only to very limited exceptions.

The proposed rule accommodates these concerns by creating three classes of criminal aliens subject to the TPCR. The first class consists of criminals judged by the Attorney General to present, by reason of their prior conviction or conduct, a danger to the community or a flight risk so great as to warrant a *per se* rule of non-release. Aliens in this class include, for example, those who have been convicted of murder, rape, or sexual abuse of a minor, and those who have escaped or attempted to escape from the

lawful custody of a prison, government agency, or officer.

The second class consists of criminal aliens whose prior convictions or conduct are sufficiently serious to present a strong detention interest. Aliens in this class would include, for example, those who have been convicted of controlled substance trafficking or lawful firearm possession, or who have failed to appear for a criminal trial or for removal. In such cases, detention will generally be required, but two classes of lawfully admitted aliens will be afforded an opportunity to present countervailing evidence and be considered for release: (1) aliens lawfully admitted for permanent residence; and (2) lawfully admitted aliens who have remained free of convictions, immigration violations, and the like for an uninterrupted period of ten years prior to the institution of proceedings (not including any periods of incarceration or detention). However, lawfully admitted aliens from both classes who are eligible to present countervailing evidence must still establish by clear and convincing evidence that they pose no danger to the safety of persons or of property and that they are likely to appear for any scheduled proceeding. As discussed above, the meaning of "lawfully admitted" will differ for aliens in deportation proceedings and for those in removal proceedings.

The third class consists of criminal aliens who have been convicted of lesser serious offenses, such as crimes of theft with an aggregate sentence of less than three years, and simple possession of a controlled substance. In such cases, lawfully admitted aliens will be subject to the TPCR's baseline criteria alone, and may be considered for release upon demonstrating, by clear and convincing evidence, a lack of dangerousness and an absence flight risk. Aliens in the third class may still be found to present extremely serious indicia of flight risk or danger to the safety of persons or of property, and it is expected that even in this class only unusually compelling cases will warrant release in the exercise of discretion. Again, the meaning of "lawfully admitted" will differ for aliens in deportation proceedings and for those in removal proceedings.

The proposed rule sets forth the governing standards both for the Service and for EOIR. With some exceptions, the provisions are parallel, and, as in the past, the procedural regulations in § 3.19 operate pursuant to the substantive regulations (here, in part 236) implementing the detention and release authority conferred in the statute. The

immigration judges will generally continue to exercise custody redetermination jurisdiction over deportable aliens and aliens who enter without inspection (subject to the exceptions and within the limits established in the TPCR and in this proposed rule). Aliens arriving at ports-of-entry and other "arriving aliens" (including aliens paroled pursuant to section 212(d)(5) of the Act) will remain subject solely to the parole authority of the Service.

The proposed rule also contains provisions for a stay of an immigration judge's order redetermining custody conditions when the Service appeals the custody decision to the Board. The rule provides for an automatic stay where the alien is subject to the TPCR, section 236(c) of the Act, or former 242(a)(2) of the Act (as amended by AEDPA), and the district director has set a bond of \$10,000 or more (or has denied bond outright). The stay remains in effect until the Board renders a decision on the merits of the custody appeal.

In all other cases, the rule allows the Service to file an appeal of the custody decision with the Board, and an emergency stay request in connection with the appeal. The Board will then have discretion to grant or deny the stay request. These provisions provide an added measure of assurance that persons believed to present a danger to the community or a risk of flight are not released.

### 30-Day Comment Period

This rule is being proposed with a 30-day notice and comment period due to the urgent need for regulatory guidance to Service officers and immigration judges regarding application of the TPCR.

### 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 because it affects individual aliens, not small entities.

### 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 regulation has been submitted to the Office of Management and Budget for review.

### Executive Order 12612

The regulation adopted herein 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 Executive Order 12612, it is determined that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment.

### Executive Order 12988

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

### List of Subjects

#### 8 CFR Part 3

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

#### 8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be 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. 1103, 1226, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950, 3 CFR, 1949-1953 Comp., p. 1002, sec. 303(b)(3) of Pub. L. 104-208.

2. In § 3.19, paragraphs (h) and (i) are added to read as follows:

#### § 3.19 Custody/Bond.

\* \* \* \* \*

(h)(1)(i) While the Transition Period Custody Rules (TPCR) set forth in section 303(b)(3) of Public Law 104-208 remain in effect, an immigration judge may not redetermine conditions of custody imposed by the Service with respect to the following classes of aliens:

(A) Aliens in exclusion proceedings;  
(B) Arriving aliens in removal proceedings, including persons paroled after arrival pursuant to section 212(d)(5) of the Act;

(C) Aliens described in section 237(a)(4) of the Act;

(D) Aliens subject to section 303(b)(3)(A) of Public Law 104-208 who are not "lawfully admitted" (as defined in § 236.1(c)(3) of this chapter); or

(E) Aliens designated in § 236.1(c) of this chapter as ineligible to be considered for release.

(ii) Nothing in this paragraph shall be construed as prohibiting an alien from seeking a redetermination of custody conditions by the Service in accordance with part 235 or 236 of this chapter. In addition, with respect to paragraphs (h)(1)(i) (C), (D), and (E) of this section, nothing in this paragraph shall be construed as prohibiting an alien from seeking a determination by an immigration judge that the alien is not properly included within those paragraphs.

(2)(i) Upon expiration of the Transition Period Custody Rules set forth in section 303(b)(3) of Public Law 104-208, an immigration judge may not redetermine conditions of custody imposed by the Service with respect to the following classes of aliens:

(A) Aliens in exclusion proceedings;

(B) Arriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act;

(C) Aliens described in section 237(a)(4) of the Act;

(D) Aliens in removal proceedings subject to section 236(c)(1) of the Act (as in effect after expiration of the Transition Period Custody Rules); and

(E) Aliens in deportation proceedings subject to section 242(a)(2) of the Act (as in effect prior to April 1, 1997, and as amended by section 440(c) of Public Law 104-132.

(ii) Nothing in this paragraph shall be construed as prohibiting an alien from

seeking a redetermination of custody conditions by the Service in accordance with part 235 or 236 of this chapter. In addition, with respect to paragraphs (h)(2)(i) (C), (D), and (E) of this section, nothing in this paragraph shall be construed as prohibiting an alien from seeking a determination by an immigration judge that the alien is not properly included within those paragraphs

(3) Except as otherwise provided in paragraph (h)(1) of this section, an alien subject to section 303(b)(3)(A) of Public Law 104-208 may apply to the Immigration Court, in a manner consistent with paragraphs (c)(1) through (c)(3) of this section, for a redetermination of custody conditions set by the Service. Such an alien must first demonstrate, by clear and convincing evidence, that release would not pose a danger to other persons or to property. If an alien meets this burden, the alien must further demonstrate, by clear and convincing evidence, that the alien is likely to appear for any scheduled proceeding or interview.

(4) *Unremovable aliens.* A determination of a district director (or other official designated by the Commissioner) regarding the exercise of authority under section 303(b)(3)(B)(ii) of Public Law 104-208 (concerning release of aliens who cannot be removed because the designated country of removal will not accept their return) is final, and shall not be subject to redetermination by an immigration judge.

(i) *Stay of custody order pending Service appeal.* (1) *General emergency stay authority.* The Board of Immigration Appeals (Board) has the authority to stay the order of an immigration judge redetermining the conditions of custody of an alien when the Service appeals the custody decision. The Service is entitled to seek an emergency stay from the Board in connection with such an appeal at any time.

(2) *Automatic stay in certain cases.* If an alien is subject to section 242(a)(2) of the Act (as in effect prior to April 1, 1997, and as amended by section 440(c) of Public Law 104-132), section 303(b)(3)(A) of Public Law 104-208, or section 236(c)(1) of the Act (as designated on April 1, 1997), and the district director has denied the alien's request for release 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 Form EOIR-43 with the Immigration Court on the day the order is issued, and shall remain in abeyance pending decision of the

appeal by the Board of Immigration Appeals. The stay shall lapse upon failure of the Service to file a timely notice of appeal in accordance with § 3.38.

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

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

**Authority:** 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1362; sec. 303(b) of Pub. L. No. 104-208; 8 CFR part 2.

4. Section 236.1 is amended by:
- a. Revising paragraph (c)(1);
  - b. Redesignating paragraphs (c)(2) through (c)(5), as paragraphs (c)(8) through (c)(11) respectively; and by
  - c. Adding new paragraphs (c)(2) through (c)(7), to read as follows:

##### **§ 236.1 Apprehension, custody, and detention.**

\* \* \* \* \*

(c) \* \* \*

(1) (i) After the expiration of the Transition Period Custody Rules (TPCR) set forth in section 303(b)(3) of Public Law 104-208, no alien described in section 236(c)(1) of the Act may be released from custody during removal proceedings except pursuant to section 236(c)(2) of the Act.

(ii) Paragraphs (c)(2) through (c)(8) of this section shall govern custody determinations for aliens subject to the TPCR while they remain in effect. For purposes of this section, an alien "subject to the TPCR" is an alien described in section 303(b)(3)(A) of Public Law 104-208 who is in deportation proceedings, subject to a final order of deportation, or in removal proceedings. The TPCR do not apply to aliens in exclusion proceedings under former section 236 of the Act, aliens in expedited removal proceedings under section 235(b)(1) of the Act, or aliens subject to a final order of removal.

(2) *Aliens not lawfully admitted.* Subject to paragraph (c)(6) of this section, but notwithstanding any other provision within this section, an alien subject to the TPCR who is not lawfully admitted is not eligible to be considered for release from custody.

(i) An alien in deportation proceedings or subject to a final order of deportation is "lawfully admitted" for purposes of this section if the alien's last entry into the United States was lawful. An alien in deportation proceedings or subject to a final order of deportation whose last entry was unlawful will not be considered "lawfully admitted" for purposes of this

section, unless the alien remains in status as an alien lawfully admitted for permanent residence, conditionally admitted for permanent residence, or lawfully admitted for temporary residence.

(ii) An alien in removal proceedings is "lawfully admitted" for purposes of this section if the alien has been "admitted" within the terms of section 101(a)(13) of the act (as in effect on April 1, 1997).

(3) *Criminal aliens eligible to be considered for release.* Except as provided in this section, or otherwise provided by law, an alien subject to the TPCR may be considered for release from custody if lawfully admitted. Such an alien must first demonstrate, by clear and convincing evidence, that release would not pose a danger to the safety of other persons or of property. If an alien meets this burden, the alien must further demonstrate, by clear and convincing evidence, that the alien is likely to appear for any scheduled proceeding (including any appearance required by the Service or EOIR) in order to be considered for release in the exercise of discretion.

(4) *Criminal aliens ineligible to be considered for release except in certain special circumstances.* An alien subject to section 303(b)(3)(A) (ii) or (iii) of Pub. L. No. 104-208 is ineligible to be considered for release if the alien:

(i) Is described in section 241(a)(2)(C) of the Act (as in effect prior to April 1, 1997), or has been convicted of a crime described in section 101(a)(43) (B), (E)(ii), or (F) of the Act (as in effect on April 1, 1997);

(ii) Has been convicted of a crime described in section 101(a)(43)(G) of the Act (as in effect on April 1, 1997) or a crime or crimes involving moral turpitude related to property, and sentenced therefor (including in the aggregate) to at least 3 year's imprisonment;

(iii) Has failed to appear for an immigration proceeding without reasonable cause or has been subject to a bench warrant or similar legal process (unless quashed, withdrawn, or canceled as improvidently issued);

(iv) Has been convicted of a crime described in section 101(a)(43) (Q) or (T) of the Act (as in effect on April 1, 1997);

(v) Has been convicted in a criminal proceeding of a violation of section 273, 274, 274C, 276, or 277 of the Act, or has admitted the factual elements of such a violation;

(vi) Has overstayed a period granted for voluntary departure; or

(vii) Has failed to surrender or report for removal pursuant to an order of exclusion, deportation, or removal,

unless the alien was lawfully admitted and either remains in status as a permanent resident or has not, since the commencement of proceedings or within the 10 years prior thereto, been convicted of a crime, failed to comply with an order to surrender or a period of voluntary departure, or been subject to a bench warrant or similar legal process (unless quashed, withdrawn, or canceled as improvidently issued). An alien eligible to be considered for release under this paragraph must meet the burdens described in paragraph (c)(3) of this section in order to be released from custody in the exercise of discretion.

(5) *Criminal aliens ineligible to be considered for release.* A criminal alien subject to section 303(b)(3)(A) (ii) or (iii) of Pub. L. No. 104-208 is ineligible to be considered for release if the alien:

(i) Is described in section 237(a)(2)(D) (i) or (ii) (as in effect on April 1, 1997), or has been convicted of a crime described in section 101(a)(43) (A), (C), (E)(i), (H), (I), (K)(iii), or (L) of the Act (as in effect on April 1, 1997);

(ii) Is described in section 237(a)(2)(A)(iv) of the Act;

(iii) Has escaped or attempted to escape from the lawful custody of a local, state, or Federal prison, agency, or officer within the United States; or

(iv) Does not wish to pursue, or is statutorily ineligible for, any form of relief from exclusion, deportation, or removal under this chapter or the Act.

(6) If the district director determines that an Alien subject to section 303(b)(3)(A) (ii) or (iii) of Pub. L. 104-208 cannot be removed from the United States because the designated country of removal of deportation will not accept the alien's return, the district director may, in the exercise of discretion, release the alien from custody upon such terms and conditions as the district director may prescribe, without regard to paragraphs (c)(2) through (c)(5) of this section. Under no circumstances, however, shall the district director release from custody an alien whose release would pose a danger to persons or to property, or who is unlikely to appear for any scheduled proceeding (including any appearance required by the Service or EOIR). The district director's custody decision shall not be subject to redetermination by an immigration judge.

(7) *Construction.* A reference in this section to a provision in section 241 of the Act as in effect prior to April 1, 1997, shall be deemed to include a reference to the corresponding provision in section 237 of the Act as in effect on April 1, 1997. A reference in this section to a "crime" shall be considered to

include a reference to a conspiracy or attempt to commit such a crime. In calculating the 10-year period specified in paragraph (c)(4) of this section, no period during which the alien was detained or incarcerated shall count toward the total. Nothing in this part shall be construed as prohibiting an alien from seeking reconsideration of the Service's determination that the alien is within a category barred from release under this part.

\* \* \* \* \*

Dated: September 5, 1997.

**Janet Reno,**

*Attorney General.*

[FR Doc. 97-24411 Filed 9-11-97; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 97-NM-198-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Dassault Model Falcon 2000 Series Airplanes**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Model Falcon 2000 series airplanes. This proposal would require a revision to the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to limit the allowed loads in the baggage compartment aft of the center baggage net. The proposed AD also would require replacement of the center baggage net in the baggage compartment with a net having reinforced straps, which would terminate the requirement for the AFM revision. This proposal is prompted by a report indicating that the center baggage net cannot sustain design loads in the event of an accident. The actions specified by the proposed AD are intended to prevent injury to passengers, as a result of inadequate breaking strength of the baggage net, in the event of an accident.

**DATES:** Comments must be received by October 10, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 97-NM-

198-AD, 1601 Lind Avenue SW, Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tom Groves, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1503; fax (425) 227-1149.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-NM-198-AD." The postcard will be date stamped and returned to the commenter.

##### **Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 97-NM-198-AD, 1601 Lind Avenue SW, Renton, Washington 98055-4056.