(3) *Current Non-problem Classification*—Those loans that are current and are in compliance with all loan conditions and B&I regulations but do not meet all the criteria for a Seasoned Loan classification. All loans not classified as Seasoned or Current Non-problem will be reported on the quarterly status report with documentation of the details of the reason(s) for the assigned classification.

* * * * *

Dated: March 28, 1995.

Michael V. Dunn,

Acting Under Secretary, Rural Economic and Community Development.

[FR Doc. 95–12154 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–32–U

DEPARTMENT OF JUSTICE

8 CFR Part 3

[EOIR No. 103F; AG Order No. 1966–95]

RIN 1125–AA03

Executive Office for Immigration Review; Stipulated Requests for Deportation or Exclusion Orders, Telephonic, Video Electronic Media Hearings

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends 8 CFR 3.25 by codifying an Immigration Judge's discretion to enter an order of deportation or exclusion without a hearing if satisfied that the alien voluntarily entered into a plea-negotiated or otherwise stipulated request for an order of deportation or exclusion. It further codifies the practice of Immigration Judges conducting telephonic hearings in deportation, exclusion, or recission cases, and codifies the authority of the Immigration Judge to hold video electronic media hearings.

The proposed rule also clarifies the language in § 3.25(a) to conform with *in absentia* hearing provisions under the Immigration and Nationality Act (the ''Act''), 8 U.S.C. 1252, 1252b.

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041 (703) 305–0470.

SUPPLEMENTARY INFORMATION: The Department of Justice published a proposed rule on May 13, 1994 (59 FR 24976). The proposed rule sought to amend § 3.25 of title 8, CFR, to require an Immigration Judge to enter an order of deportation or exclusion on the written record, without an in-person hearing, based upon the stipulated written request of the respondent/applicant and the government under certain specified circumstances. The requirement to enter orders of deportation or exclusion based on the written record would arise only in instances where the Immigration Judge determined that the charging document set forth a valid basis for deportability or excludability; the stipulated request for an order of deportation or exclusion was voluntarily entered into by the respondent/applicant; and the respondent/applicant specifically waived relief from deportation or exclusion as well as the described hearing rights.

The rule also proposed to establish the authority of the Immigration Judge to hold telephonic hearings and video electronic media hearings. Additionally, the proposed rule made minor technical changes in paragraph (a) to conform with the *in absentia* provisions of 8 U.S.C. 1252.

The Executive Office for Immigration Review (''EOIR'' or ''the Agency'') received eighteen comments concerning the proposed rule. The comments addressed the waiver of presence of the parties, the requirement that an Immigration Judge enter stipulated orders of deportation and exclusion under certain circumstances, and an Immigration Judge's discretion to conduct telephonic and video electronic media hearings.

1. Section 3.25(a) Waiver of Presence of the Parties

The Agency received one comment objecting to the proposed rule's provision allowing the Immigration Judge to waive the presence of an alien who is a child where a parent or legal guardian is present. The commenter argued that the rule would provide children with less due process protection than it provides adults.

This rule is for the convenience of the parties. For example, if parents and their infant child are in deportation proceedings, this rule allows the Immigration Judge to waive the presence of the infant. Such a waiver allows parents to place the child in childcare during the hearing. The waiver allows the parents and the Immigration Judge to concentrate on the substantive issues. For pragmatic reasons, the Agency has decided to retain this rule.

2. Section 3.25(b) Stipulated Request for Deportation or Exclusion Orders

Numerous commenters expressed due process concerns with the proposed rule's provision requiring an Immigration Judge to enter an order of deportation or exclusion if, based on the written record, the Judge determines that a represented respondent/applicant voluntarily entered into a stipulated request for an order of deportation or exclusion. Conversely, other commenters expressed approval of the requirement and suggested that the Agency expand the requirement to include motions for changes of venue and some forms of relief. Commenters also expressed concern that the rule requiring that a respondent/applicant make no application for relief unjustly limits the options of the respondent/applicant.

The rule has been modified to respond to the commenters' due process concerns. The final rule does not require an Immigration Judge to enter an order of deportation or exclusion based on the parties' written stipulation. stead, the rule explicitly recognizes a Judge's discretion to enter an order of deportation or exclusion based on the parties' written stipulation. The Immigration Judge's discretion to enter an order by written stipulation in the absence of the parties is limited to cases in which the applicant or respondent is represented at the time of the stipulation and where the stipulation is signed on behalf of the government and by both the applicant or respondent and his or her attorney or other representative qualified under part 292 of this chapter. At this juncture, the Agency declines to modify the scope of the stipulation procedure, and so the final rule does not address venue and has not changed with respect to application for relief.

Commenters stated that the proposed rule did not give sufficient emphasis to the requirement that only represented respondents/applicants may enter into stipulation requests. In response, the word ''represented'' has been inserted before each reference to respondent/applicant in the final version of § 3.25(b).

Commenters stated that the proposed rule did not give sufficient emphasis to the requirement that the respondent/applicant fully understand the ramifications of a stipulation. In ascertaining the extent of understanding, one commenter suggested that the Immigration Judge should focus specifically on the respondent/applicant's English language skills. The words ''voluntarily,

knowingly and intelligently'' have been added to ensure maximum protection for aliens entering into stipulations. Because language skills are subsumed in the voluntarily, knowingly and intelligently formula, the Agency considers it unnecessary for the rule to specifically address language skills.

One commenter, although supporting the rule's concept, expressed a technical concern with the elimination of ''hearings'' when the requirements for a stipulated deportation or exclusion are met. According to the comment, there is a statutory mandate that Immigration Judge conduct ''hearings''. In response to this comment, the final rule now states that the Immigration Judge may ''conduct hearings in the absence of the parties.''

A few commenters stated, in essence, that the requirement that the respondent/applicant introduce written statements as an exhibit to the record of proceedings was superfluous. The commenters suggested deletion of this requirement. Because of the potential value of a complete record, the Agency rejects this suggestion.

One commenter suggested that the rule should explicitly permit revocation of stipulated deportations and exclusions. Because the Code of Federal Regulations already provides mechanisms for motions to reopen, motions to reconsider, and notices of appeal, e.g., 8 CFR 103.5, 208.19, 242.21, 242.22, and 3.3, a revocation provision would be redundant and potentially confusing.

The rule implements the statutory requirement of expeditious deportation of criminal aliens under 8 U.S.C. 1252(i), 1252a(d), while protecting the rights of the parties. The rule contemplates employing stipulated deportations to expedite departures of aliens convicted of offenses rendering them immediately deportable or excludable. Stipulated deportations also allow the prompt departure of imprisoned criminal aliens who have no apparent avenue of relief from deportation or exclusion and who wish to avoid immigration-related detention after having completed their criminal sentences. If used more widely by litigants and criminal prosecutors, the procedure could alleviate overcrowded federal, state, and local detention facilities and eliminate the need to calendar such uncontested cases on crowded Immigration Court dockets.

The procedure is not limited to cases arising in the criminal context and can be used in other appropriate settings. The practice codified by the final rule already exists in some jurisdictions. The final rule promotes judicial efficiency in uncontested cases and resolves the commenters' due process concerns.

3. Section 3.25(c) Telephonic or Video Electronic Media Hearing

Commenters raised both statutory and practical concerns with this section of the proposed rule. The statutory concerns revolved around the proper construction of the phrase ''before a special inquiry officer'' as used in 8 U.S.C. 1252(b). According to some comments, the word ''before'' must be construed to mean that an alien is entitled to appear physically before an Immigration Judge. Commenters made no distinction between telephonic and video electronic media hearings. These comments relied on *Purba* v. *INS*, 884 F.2d 516, 517–18 (9th Cir. 1989) (holding that ''section 242a(b) [of the Act] requires that the hearing be conducted with the hearing participants in the physical presence of the IJ [Immigration Judge]'' and that ''telephonic hearings by an IJ, absent consent of the parties, simply are not authorized by the statute''). The Ninth Circuit decision in *Purba* informs the issue of whether telephonic hearings are appropriate. However, *Purba* disposes of the issue in the Ninth Circuit only. Notably, the Eleventh Circuit also has addressed the issue of whether the statutory language of the Act allows for telephonic hearings at the Immigration Judge's discretion or whether the statutory language requires parties' consent. *Bigby* v. *INS*, 21 F.3d 1059 (11th Cir. 1994).

The Eleventh Circuit expressly cited to and disagreed with the holding in *Purba*, finding instead that an Immigration Judge has the discretion to hold a hearing by telephonic means and that party consent is unnecessary, at least where credibility determinations are not at issue. *Bigby*, 21 F.3d at 1062–64. *See also U.S.* v. *McCalla*, 821 F. Supp. 363, 369 n. 11 (E.D.Pa. 1993) (''Assuming that the defendant in this case did not consent to holding the hearing by telephone, this is of no moment * * * [the defendant] has demonstrated no prejudice resulting from the use of the telephone such that he would have been entitled to relief from deportation on appeal.'')

Commenters relied exclusively on the Ninth Circuit decision and, as of the date of their comments, apparently were unaware of the Eleventh Circuit's recent decision. Numerous commenters conceded that the telephonic hearings currently conducted are procedurally effective and convenient, citing as examples, detained aliens and attorneys who practice some distance from the Immigration Court. However, commenters asserted that telephonic and video electronic media hearings, as contemplated by the proposed rule, would result in deprivations of respondents' due process rights. The commenters argued that, in some instances, this rule would deprive respondents of the opportunity to present and inspect evidence and the right to cross-examine adverse witnesses. They also stated that telephonic and video electronic media hearings would impair the Immigration Judge's ability to assess credibility. furthermore, commenters maintained that telephonic and video electronic media hearings would handicap the communication between non-English speaking respondents and their interpreters and would handicap respondents' representation by counsel. In addition, commenters noted that this rule would lead to disparate treatment in the various circuits. Given these perceived harms, the commenters suggested that the Agency either withdraw the telephonic/video electronic media hearing provision or modify it to be consistent with *Purba* by requiring party consent.

In response to the commenters' due process concerns, the Agency has modified the rule's telephonic hearing provision. The final rule requires that parties consent to telephonic procedures which are full evidentiary hearings on the merits. Consequently, the parties will have an opportunity to elect an in-person hearing at a critical juncture.

The final rule, however, distinguishes between telephonic and video electronic media hearings. The final rule does not require that parties consent to video electronic media hearings of any kind. Video electronic media hearings are completely within the discretion of the Immigration Judge. The sophistication of modern video electronic media coupled with the prudent use of Immigration Judge discretion should be sufficient to preserve the integrity of the procedure and the due process rights of the parties.

The final rule, furthermore, retains the proposed rule's provision recognizing the Immigration judge's discretion to conduct hearings telephonically and by video electionic media when such proceedings are not contested, full evidentiary merit hearings. Judicial discretion will ensure that telephonic and video electronic media hearings will be conducted only as appropriate.

Althought his rule probably will result in disparate treatment among the circuits, this situation is neither unusual nor prohibited in our federal system. The Immigration Judges in the

geographical confines of the Ninth Circuit currently follow *Purba* and will continue to follow the law of that circuit.

Commenters also raised practical concerns with telephonic and video electronic media hearings. Given the nature of immigration proceedings, they correctly note that parties are often unable to communicate proficiently in the English language. These comments posit that telephonic and video electronic media hearings would further impair communication. The caliber of today's technology, the requirement for party consent in critical telephonic merit hearings, the prudent use of Immigration Judge discretion, and the availability of procedural vehicles for review of Immigration Judge decisions sufficiently safeguard non-English speakers from potential prejudice.

The final rule codifies some of the current practices of Immigration Judges holding telephonic hearings at their discretion and extends these practices to video electronic media hearings. The final rule also codifies a limitation on Immigration Judge discretion to conduct certain telephonic hearings. The final rule allows implementation of modern technology in order to increase procedural efficiency while protecting parties' due process rights. The rule assists the Agency in carrying out the country's immigration policy in an equitable and productive manner.

The final rule also makes minor technical changes in paragraph 9a) to conform with the *in absentia* provisions of 8 U.S.C. 1252.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse 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, § 3(f), 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 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects in 8 CFR Part 3

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

Accordingly, 8 CFR part 3 is amended as set forth below:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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, 1362; 28 U.S.C. 509, 510, 1746; Section 2, Reorganization Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

2. Section 3.25 is revised to read as follows:

§ 3.25 Waiver of presence of the parties.

(a) *Good cause shown.* The Immigration Judge may, for good cause, waive the presence of a respondent/applicant at the hearing when the alien is represented or when the alien is a minor child at least one of whose parents or whose legal guardian is present. In addition, *in absentia* hearings may be held pursuant to sections 1252(b) and 1252b(c) of title 8, United States Code with or without representation.

(b) *Stipulated request for order; waiver of hearing.* Notwithstanding any other provision of this chapter, upon the written request of the respondent/applicant and upon concurrence of the government, the Immigration Judge may conduct hearings in the absence of the parties and enter an order of deportation or exclusion on the written record if the Immigration Judge determines, upon a review of the charging document, stipulation document, and supporting documents, if any, that a represented respondent/applicant voluntarily, knowingly, and intelligently entered into a stipulated request for an order of deportation or exclusion. The stipulation document shall include:

(1) An admission that all factual allegations contained in the charging document are true and correct as written;

(2) A concession of deportability or excludability as charged;

(3) A statement that the respondent/applicant makes no application for relief from deportation or exclusion, including, but not limited to, voluntary departure, asylum, adjustment of status, registry, de novo review of a termination of conditional resident status, de novo review of a denial or revocation of temporary protected status, relief under 8 U.S.C. 1182(c), suspension of deportation, or any other possible relief under the Act;

(4) A designation of a country for deportation under 8 U.S.C. 1253(a);

(5) A concession to the introduction of the written statements of the respondent/applicant as an exhibit to the record or proceedings;

(6) A statement that the attorney/representative has explained the consequences of the stipulated request to the respondent/applicant and that the respondent/applicant enters the request voluntarily, knowingly and intelligently;

(7) A statement that the respondent/applicant will accept a written order for his or her deportation or exclusion as a final disposition of the proceedings; and

(8) A waiver of appeal of the written order of deportation or exclusion.

The stipulated request and required waivers shall be signed on behalf of the government and by both the respondent/applicant and his or her attorney or other representative qualified under part 292 of this chapter. The attorney or other representative shall file a Notice of Appearance in accordance with § 3.16(b) of this part.

(c) *Telephonic or video electronic media hearing.* An Immigration Judge may conduct hearings via video electronic media or by telephonic media in any proceeding under 8 U.S.C. 1226, 1252, or 1256, except that contested full evidentiary hearings on the merits may be conducted by telephonic media only with the consent of the alien.

Dated: May 8, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–12080 Filed 5–16–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 85

[Docket No. 94–064–2]

Official Pseudorabies Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the pseudorabies regulations by adding the glycoprotein I enzyme-linked immunosorbent assay approved differential test to the list of official pseudorabies tests. This rule will allow, under certain conditions, the glycoprotein I enzyme-linked immunosorbent assay approved differential test to be used as an official pseudorabies test to qualify certain pseudorabies vaccinated swine for interstate movement to destinations other than slaughter or a quarantined herd or quarantined feedlot. Adding the glycoprotein I enzyme-linked immunosorbent assay approved differential test to the list of official