Office of Detention and Removal Operations
U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536

U.S. Immigration and Customs Enforcement

SEP 1 4 2004

MEMORANDUM FOR: All Field Office Directors

FROM: Victor X. Cerda
Acting Director

SUBJECT: Expedited Removal Guidance

BACKGROUND

The Department of Homeland Security (DHS) Undersecretary for Border and Transportation Security recently announced plans to expand control of the United States borders through increased use of immigration laws to combat illegal entry between the ports-of-entry. This will be accomplished, in part, by immediately expanding the use of expedited removal (ER) processing from the ports-of-entry to locations along the United States border. The expanded authority was announced in the attached Federal Register Notice (FR). See 69 FR 48877-01 (August 11, 2004).

LAREDO AND TUCSON BORDER SECTORS FIRST

ER has traditionally been employed at official ports-of-entry and has not been applied on the land borders to aliens seeking to illegally enter the United States between ports-of-entry. DHS will now apply its ER authority to certain locations along both northern and southern land borders between ports-of-entry. Border Patrol agents will be trained to exercise this authority. Border Patrol plans to initially implement this expansion of ER between the ports-of-entry in the Laredo and Tucson border sectors.

PRIMARY FOCUS

As the extension of ER is meant as a border-enforcement tool, it will be limited to illegal aliens who have spent less than 14 days in the United States after evading inspection, and who are apprehended within 100 miles of a U. S. international land border. The primary focus of this expansion of ER is directed at "third country nationals" who are not citizens of Mexico or Canada, and who have nominal equities in and ties to the United States. DHS will retain operational discretion to place citizens of Mexico or Canada into ER proceedings, but only expects to apply it to those Mexican and Canadian citizen/nationals with histories of criminal or repeated immigration violations, such as recidivists, alien smugglers, guides, drivers, etc.

ER EXCEPTIONS

ER will not be applied to unaccompanied juveniles, citizens and nationals of Cuba and El Salvador, and aliens who are members of the Class Action Settlement in American Baptist Churches v. Thornburg, (ABC), which settled the claims of a specific class of Salvadorans and Guatemalans regarding the handling of asylum claims.

CREDIBLE FEAR REFERRALS TO CITIZENSHIP AND IMMIGRATION SERVICES

The expansion of ER does not eliminate existing protections for individuals seeking asylum. When an alien is placed in ER, Customs and Border Protection (CBP) Border Patrol Agents must inquire whether the alien has any reason to fear harm if returned to his or her country, and will refer any alien who expresses an intention to apply for asylum, or a fear of persecution or torture, or a fear of return to his or her home country to a Citizenship and Immigration Services (CIS) Asylum Officer for a "credible fear" interview. Before remanding those aliens who have been referred to a CIS Asylum Officer for a credible fear interview to Detention and Removal Operations (DRO), CBP Border Agents are responsible for providing local CIS Asylum Offices (either by fax or electronically) with a copy of the following paperwork:

Form I-860, *Notice and Order of Expedited Removal*

Form I-867A, *Record of Sworn Statement and Proceedings under § 235(b)(1) of the Immigration and Nationality Act (INA)*

Form I-867B, *Jurat for Record of Sworn Statement and Proceedings under INA § 235(b)(1)*

M-444, *Information About Credible Fear Interview*

List of Free Legal; Services Providers

Detention of Border Patrol ER cases is under INA § 235; therefore, Form I-286, *Notice of Custody Determination*, and a Warrant of Arrest are not issued for these cases, even when a case is referred to an Immigration Judge (IJ) after a credible fear finding.

CUSTODY

Aliens placed in ER will be processed in the Enforcement Case Tracking System, (ENFORCE), by CBP Border Patrol Agents and will normally be detained and removed by DRO as soon as possible, consistent with the legal process. In order to properly manage bed space, Field Office Directors are to maximize removal efforts, recommend alternate detention sites (if necessary), and continue to review non-mandatory detention cases pursuant to existing guidelines.

At the time of custody referral, Field Office Directors must ensure that all cases have been properly processed and that all requisite forms have been completed by CBP Border Patrol Agents and

included in the alien file (A-file). Pursuant to the July 20, 2004 Memorandum from Undersecretary for Border and Transportation Security relating to Costs Associated with the Care and Custody of Aliens, DRO will take physical custody of the alien after CBP has completed all of the required paperwork.

To the extent possible, CBP Border Patrol Agents will update the Deportable Alien Control System (DACS) and the Central Index System (CIS) prior to an alien being transferred to DRO custody. However, the final responsibility for this critical task lies with the Field Office Directors. Please ensure the proper updating of DACS in a timely manner.

PAROLE POLICY

Aliens placed in ER will be detained under INA § 235, not INA § 236. Any release of these aliens will be considered under parole authority of INA § 212(d)(5). Unless an alien is found to have a credible fear, parole is authorized only on a case-by-case basis if required to meet a medical emergency or a legitimate law enforcement objective. See 8 CFR 235.3(b)(2)(iii) and 8 CFR 235.3(b)(4)(ii).

If an alien is found to have a credible fear and referred for section 240 removal proceedings, detention authority will continue to be under INA § 235, and DRO policy is that parole should be granted under 8 § CFR § 212.5(b) only in exceptional cases of medical emergency or where continued detention would cause unusual hardship. Juveniles are a special class and must continue to be treated in accordance with the Flores v. Reno settlement and other special laws applicable to juveniles.

Once credible fear is found, each case must be individually reviewed under these custody criteria, and each file must be documented that the review took place. If the alien or the alien's counsel has independently submitted a parole request, the review should take into account any information submitted as part of the request.

If an alien is transferred to another field office pending conclusion, the receiving Field Office Director shall make custody and parole determinations in accordance with the above policy. As per the above, custody will be maintained absent any new medical emergency, law enforcement objective, or circumstance of unusual hardship if credible fear has been found.

If an IJ grants asylum or withholding of removal, Field Office Directors will apply existing policy in determining whether the alien will be continued in detention or released on parole.

WEEKLY/MONTHLY REPORTS

Field Office Directors will be responsible for the development of weekly and, later, monthly ER tracking reports. The Phoenix and San Antonio Field Offices will be directly impacted by the initial expansion of authority and will bear the greatest reporting burden. However, all field offices

receiving ER cases from this expanded authority will adhere to reporting requirements. Reports will contain the information listed below:

1. The number of aliens (broken down by nationality and numbers) who:

- did not request credible fear interviews and are awaiting removal;
- are awaiting credible fear interviews;
- have received credible fear interviews and continue in detention awaiting proceedings; and
- have received credible fear interviews and have been paroled based on exceptional circumstances.

2. The average length of stay for aliens (broken down by nationality and numbers) in ER. Include those having credible fear, and who are placed in regular proceedings. Include how much of the detention time is due solely to travel document requests and break down this group by nationality and numbers.

3. The number of aliens (broken down by nationality and numbers) granted relief, to include asylum and withholding of removal.

Headquarters DRO will develop a metric to measure if the number of removals is increasing due to ER.

COMMUNICATION AND FLEXIBILITY

It cannot be emphasized enough that the success of this initiative is dependent upon communication and flexibility on the part of all DRO, CBP and CIS components. Accurate and timely data collection and reporting will permit DHS to continuously evaluate the effect of this pilot. Please keep Headquarters DRO informed of any issues and of the progress related to expanded ER.

Attachments

(OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 10, 2004.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202-395-6974.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Draft Guidance for Industry on Pharmacogenomic Data Submissions (OMB Control Numbers 0910-0014, 0910-0001, and 0910-0338)–Extension

The guidance provides recommendations to sponsors submitting or holding investigational new drugs (INDs), new drug applications (NDAs), or biologic licensing applications (BLAs) on what pharmacogenomic data should be submitted to the agency during the drug development process. Sponsors holding and applicants submitting INDs, NDAs, or BLAs are subject to FDA requirements in parts 312, 314, and 601 (21 CFR 312, 314, and 601) for submitting to the agency data relevant to drug safety and efficacy (§§ 312.22, 312.23, 312.31, 312.33, 314.50, 314.81, 601.2, and 601.12).

Description of Respondents: Sponsors submitting or holding INDs, NDAs, or BLAs for human drugs and biologies.

Burden Estimate: The guidance interprets FDA regulations for IND, NDA, or BLA submissions, clarifying when the regulations require pharmacogenomics data to be submitted and when the submission of such data is voluntary. The pharmacogenomic data submissions described in the guidance that are required to be submitted to an IND, NDA, BLA, or annual report are covered by the information collection requirements under parts 312, 314, and 601 and are approved by OMB under control numbers 0910–0014 (part 312—INDs; approved until January 1, 2006); 0910-0001 (part 314—NDAs and annual reports; approved until March 31, 2005); and 0910-0338 (approved until August 31, 2005).

The guidance distinguishes between pharmacogenomic tests that may be considered valid biomarkers appropriate for regulatory decision making, and other, less well developed exploratory tests. The submission of exploratory pharmacogenomic data is not required under the regulations, although the agency encourages the voluntary submission of such data.

The guidance describes the voluntary genomic data submission (VGDS) that can be used for such a voluntary submission. The guidance does not recommend a specific format for the VGDS, except that such a voluntary submission be designated as a VGDS. The data submitted in a VGDS and the level of detail should be sufficient for FDA to be able to interpret the information and independently analyze the data, verify results, and explore possible genotype-phenotype correlations across studies. FDA does not want the VGDS to be overly burdensome and time-consuming for the sponsor.

FDA has estimated the burden of preparing a voluntary submission described in the guidance that should be designated as a VGDS. Based on FDA's familiarity with sponsors' interest in submitting pharmacogenomic data during the drug development process, FDA estimates that approximately 20 sponsors will submit approximately 80 VGDSs and that, on average, each VGDS will take approximately 10 hours to prepare and submit to FDA.

In the **Federal Register** of November 4, 2003 (68 FR 62461), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received on the information collection estimates.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

	Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Voluntary genomic data submissions	20	4	80	10	800

[1] There are no capital costs or operating and maintenance costs associated with this collection.

Dated: August 5, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04-18360 Filed 8-6-04; 12:04 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Designating Aliens For Expedited Removal

AGENCY: Bureau of Customs and Border Protection, DHS.

ACTION: Notice.

SUMMARY: This notice authorizes the Department of Homeland Security to place in expedited removal proceedings any or all members of the following class of aliens: Aliens determined to be inadmissible under sections 212(a)(6)(C) or (7) of the Immigration and Nationality Act who are present in the U.S. without having been admitted or paroled following inspection by an immigration officer at a designated port-of-entry, who are encountered by an immigration officer within 100 air miles of the U.S. international land border, and who have not established to the satisfaction of an immigration officer that they have been physically present in the U.S. continuously for the fourteen-day (14-day) period immediately prior to the date of encounter. DHS believes that exercising its statutory authority to place these individuals in expedited removal proceedings will enhance national security and public safety by facilitating prompt immigration determinations, enabling DHS to deal more effectively with the large volume of persons seeking illegal entry, and ensure removal from the country of those not granted relief, while at the same time protecting the rights of the individuals affected.

DATES: This notice is effective on August 11, 2004.

ADDRESSES: Please submit written comments to: Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. *See* SUPPLEMENTARY INFORMATION section for more details on submission of comments.

FOR FURTHER INFORMATION CONTACT: Dana E. Graydon, Acting Associate Chief, Office of Border Patrol, U.S. Customs and Border Protection,1300 Pennsylvania Ave., NW., Suite 6.5-E, Washington, DC 20229, *dana.graydon@dhs.gov*, 202-344-3153.

SUPPLEMENTARY INFORMATION: Please submit written comments, original and two copies, to the address listed above on or before after October 12, 2004. Submitted comments may be inspected at the Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., Washington, DC, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

Section 302 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104-208, Div. C, 110 Stat. 3009-546, amended section 235(b) of the Immigration and Nationality Act ("Act"). 8 U.S.C. 1225(b), to authorize the Attorney General (now the Secretary of Homeland Security as designated under the Homeland Security Act of 2002) to remove, without a hearing before an immigration judge, aliens arriving in the U.S. who are inadmissible under sections 212(a)(6)(C) or 212(a)(7) of the Act, 8 U.S.C. 1182(a)(6)(C) and 1182(a)(7). Under section 235(b)(1) of the Act, 8 U.S.C. 1225(b)(1), expedited removal proceedings may be applied to two categories of aliens. First, section 235(b)(1)(A)(i) of the Act, 8 U.S.C. 1225(b)(1)(A)(i), permits expedited removal proceedings for aliens who are "arriving in the United States." "Arriving aliens" are defined by regulation to mean "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international waters and brought into the United States by any means whether or not to a designated port-of-entry." (8 CFR 1.1(q)). Cuban citizens who arrive at U.S. ports-of-entry by aircraft are exempted from this first category of aliens subject to expedited removal under section 235(b)(1)(F) of the Act, 8 U.S.C. 1225(b)(1)(F). Second, section 235(b)(1)(A)(iii) of the Act, 8 U.S.C. 1225(b)(1)(A)(iii), permits the Attorney General (now the Secretary of Homeland Security), in his or her sole and unreviewable discretion, to designate certain other aliens to whom the expedited removal provisions may be applied. Section 235(b)(1)(A)(iii), 8 U.S.C. 1225(b)(1)(A)(iii), authorizes the Secretary to apply (by designation) expedited removal proceedings to aliens who arrive in, attempt to enter, or have entered the U.S. without having been admitted or paroled following inspection by an immigration officer at a designated port-of-entry, and who have not established to the satisfaction of the immigration officer that they have been physically present in the U.S. continuously for the two-year period immediately prior to the date of determination of inadmissibility.

By statute, an alien present in the U.S. who has not been admitted shall be deemed for purposes of the Act to be an applicant for admission. 8 U.S.C. 1225(a), section 235(a)(1) of the Act. Once alienage has been established, an alien applicant for admission has the burden of establishing that he or she is clearly and beyond doubt entitled to be admitted and is not inadmissible under section 212 of this Act. Aliens who have not been admitted or paroled and who are subject to expedited removal under this designation have the burden of proof to show affirmatively that they are not inadmissible and have maintained the required continuous physical presence in the U.S. Any absence from the U.S. shall serve to break the period of continuous physical presence. 8 CFR 235.3(b)(1)(ii).

Pursuant to 8 CFR 235.3(b)(1)(ii) (62 FR 10312, 10355, March 6, 1997), the Attorney General provided that her designation authority would be exercised by the Commissioner of the former Immigration and Naturalization Service (INS). Pursuant to sections 102(a), 441, 1512(d) and 1517 of the Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2310, 6 U.S.C. 112, 251, 552(d). 557, and 8 CFR 2.1, the authority of the Attorney General and the Commissioner of the INS in accordance with 8 U.S.C. 235(b)(1)(A)(iii) and 8 CFR 235.3(b)(1)(ii), respectively, was transferred to the Secretary of Homeland Security, and references to the Attorney General or the Commissioner in the statute and regulations are deemed to refer to the Secretary.

DHS has a pressing need to improve the security and safety of the nation's land borders, and expanding expedited removal between ports of entry will provide DHS officers with a valuable tool to meet that objective. Presently DHS officers cannot apply expedited removal procedures to the nearly 1 million aliens who are apprehended each year in close proximity to the borders after illegal entry. It is not logistically possible for DHS to initiate formal removal proceedings against all such aliens. This is primarily a problem along the southern border, and thus the majority of such aliens are Mexican nationals, who are "voluntarily" returned to Mexico without any formal removal order. Based upon anecdotal evidence, many of those who are returned to Mexico seek to reenter the U.S. illegally, often within 24 hours of being voluntarily returned (it is not uncommon for DHS officers to apprehend the same individual many times over a span of several months). On the southern land border with Mexico, those aliens who are apprehended who are not Mexican nationals cannot be returned to Mexico. Currently, non-Mexican nationals who are inadmissible may be voluntarily returned to their country of citizenship or nationality via aircraft, or placed in formal removal proceedings under section 240 of the Act. Because DHS lacks the resources to detain all third-country nationals (aliens who are neither nationals of Mexico nor Canada) who have been apprehended after illegally crossing into the U.S. from both the northern and southern land borders, many of these aliens are released in the U.S. each year with a notice to appear for removal proceedings. Many of these aliens subsequently fail to appear for their removal proceedings, and then disappear in the U.S.

Without limiting its ability to exercise its discretion in the event of a national emergency, other unforeseen events, or a change in circumstances, DHS plans under this designation as a matter of prosecutorial discretion to apply expedited removal only to (1) third-country nationals and (2) to Mexican and Canadian nationals with histories of criminal or immigration violations, such as smugglers or aliens who have made numerous illegal entries. We recognize that certain aliens, including unaccompanied minors, members of the Class Action Settlement in *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) (which settled the claims of a class of Salvadorans and Guatemalans regarding handling of asylum claims), and aliens who may be eligible for cancellation of removal under section 240A of the Act,

for example, may possess equities that weigh against the use of expedited removal proceedings. Accordingly, in appropriate circumstances and as an exercise of prosecutorial discretion, officers will be able to permit certain aliens described in this notice to return voluntarily, withdraw their application for admission, or to be placed into regular removal proceedings under section 240 of the Act in lieu of expedited removal proceedings.

In the interests or focusing enforcement resources upon unlawful entries that have a close spatial and temporal nexus to the border, this notice dues not implement the full nationwide expedited removal authority available to DHS pursuant to section 235 of the Act, 8 U.S.C. 1225. Nor does this notice limit DHS from implementing the full nationwide enforcement authority of the statute through publication of a subsequent **Federal Register** notice. The statute provides DHS with the authority to apply expedited removal to aliens who cannot establish that they have maintained a physical presence in the U.S. continuously for the two-year period immediately prior to the date of determination of inadmissibility. The statute also does not limit geographically the application of expedited removal. At this time, DHS has elected to assert and implement only that portion of the authority granted by the statute that bears close temporal and spatial proximity to illegal entries at or near the border. Accordingly, this notice applies only to aliens encountered within 14 days of entry without inspection and within 100 air miles of any U.S. international land border.

It is anticipated under this designation that expedited removal will be employed against those aliens who are apprehended immediately proximate to the land border and have negligible ties or equities in the U.S. Nevertheless, this designation extends to a 100-mile operational range because many aliens will arrive in vehicles that speedily depart the border area, and because other recent arrivals will find their way to near-border locales seeking transportation to other locations within the interior of the U.S. The 100-mile range already has been established by regulation as a reasonable distance from the external boundary of the U.S. for the purpose of preventing the illegal entry of aliens into the U.S. See section 287(a)(3) of the Act: 8 CFR 287.1 (a)(2) and (c).

The use of expedited removal orders, which prohibit reentry for a period of 5 years, will deter unlawful entry, and make it possible to pursue future criminal prosecution against those aliens who continue to enter the U.S. in violation of law. It will also accelerate the processing of inadmissible aliens because it generally does not require an appearance before an immigration judge, except in certain circumstances. Deterring future entries and accelerating removals will enhance DHS's ability to oversee the border, and to focus its resources on threats to public safety and to national security. DHS also believes that the use of expedited removal will likely interfere with human trafficking and alien smuggling operations, which are growing in sophistication, and which induce aliens from all over the world to cross the country's borders. Alien smuggling organizations have been responsible for numerous violent crimes, including homicide, hostage-taking, and crimes involving sexual exploitation. DHS expects that the expansion of expedited removal under this notice will ultimately reduce the number of aliens who risk injury or death attempting to enter the U.S. through difficult mountainous and desert terrain, as well as decrease property crimes in border areas.

All aliens placed into expedited removal as a result of this designation will have the same rights to a credible fear screening by an asylum officer, and the right to review of an adverse credible fear determination by an immigration judge, that are provided to arriving aliens who are currently placed into expedited removal after being denied admission at a port of entry. Any alien who falls within this designation, who is placed in expedited removal proceedings, and who indicates an intention to apply for asylum or who asserts a fear of persecution or torture will be interviewed by an asylum officer who will determine whether the alien has a credible fear as defined in section 235(b)(1)(B)(v) of the Act, 8 U.S.C. 1225(b)(1)(B)(v). If that standard is met, the alien will be referred to an immigration judge for a removal proceeding under section 240 of the Act, sections 235(b)(1)(A)(ii) and (B) of the Act, 8 U.S.C. 1225(b)(1)(A)(ii) and (B); 8 CFR 235.3(b)(4), The Forms I-867A and I-867B currently used by officers who process aliens under the expedited removal program provide to all aliens in expedited removal proceedings information concerning the credible fear interview, in accordance with the statutory requirement at section 235(b)(1)(B)(iv) of the Act, 8 U.S.C. 1225(b)(1)(B)(iv). The forms require that the officer inquire whether the alien has any reason to fear harm if returned to his or her country. Officers authorized to administer the expedited removal program will be trained to be alert for any verbal or non-verbal indications that the alien may be afraid to return to his or her homeland.

Similarly, all aliens placed into expedited removal as a result of this designation, who claim lawful permanent resident, refugee, asylee status, or U.S. citizenship will receive the same procedures, including the right to review of any adverse expedited removal order by an immigration judge, that are provided to arriving aliens making similar status claims who are currently placed in expedited removal at ports of entry under 8 CFR 235.3(b). DHS, with limited exceptions, plans to detain aliens who are placed in expedited removal under this designation. Section 235(b)(1)(B)(iii)(IV) of the Act, 8 U.S.C. 1225(b)(1)(B)(iii)(IV), and 8 CFR 235.3(b)(2)(iii) direct that any alien who is placed in expedited removal proceedings shall be detained pending a final determination of credible fear and, if found not to have such a fear, such alien shall be detained until removed. Parole of such alien under 8 CFR 235.3(b)(2)(iii) may be permitted only when the Secretary determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective. Section 235(b)(1)(B)(ii) of the Act, 8 U.S.C. 1225(b)(1)(B)(ii), directs that if a credible fear has been established, the alien shall be detained for further consideration of the protection claim or claims. Under Department of Justice regulations, immigration judge review of custody determinations is permitted only for bond and custody determinations pursuant to section 236 of the Act, 8 U.S.C. 1226, 8 CFR 1236, and 8 CFR 1003.19(a). Aliens subject to expedited removal procedures under section 235 of the Act (including those aliens who are referred after a positive credible fear determination to an immigration judge for proceedings under section 240 of the Act) are not eligible for bond, and therefore are not eligible for a bond redetermination before an immigration judge. Parole of aliens determined to have a credible fear may be considered in accordance with section 212(d)(5) of the Act, 8 U.S.C. 1182(d)(5), and 8 CFR 212.5.

The expedited removal authority implemented in this Notice will not be employed against Cuban citizens because removals to Cuba cannot presently be assured and for other U.S. policy reasons.

The Department has determined that good cause exists under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B) and (d)(3), to exempt this notice from the notice and comment requirements under the APA. Delaying the implementation of this notice to allow public notice and comment would be impracticable, unnecessary and contrary to the public interest.

Congress explicitly authorized the Secretary of Homeland Security to designate categories of aliens to whom expedited removal proceedings may be applied, and made clear that "[s]uch designation shall be in the sole and unreviewable discretion of the Secretary and may be modified at any time." Section 235(b)(1)(A)(iii)(1) of the Act, 8 U.S.C. 1225(b)(1)(A)(iii)(I). The large volume of illegal entries, and attempted illegal entries, and the attendant risks to national security presented by these illegal entries, necessitates that DHS expand the expedited removal program as provided in this designation. DHS is confident that the experience gained through implementation of the expedited removal program at ports of entry will enable DHS to expand the program in a manner that is both effective and humane.

There is an urgent need to enhance DHS's ability to improve the safety and security of the nation's land borders, as well as the need to deter foreign nationals from undertaking dangerous border crossings, and thereby prevent the needless deaths and crimes associated with human trafficking and alien smuggling operations. The expansion of expedited removal will increase the deterrence of illegal entries by ensuring that apprehension quickly leads to removal. This is especially critical because of the environmental dangers faced by aliens illegally entering the U.S. across desert or mountainous areas. In the Arizona desert alone, since the initiation of the Arizona Border Control Initiative (ABC) in March of 2004, the Border Patrol has rescued hundreds of aliens in distress and has unfortunately discovered over 40 aliens who have died in the attempt to enter the U.S.

This designation is necessary to remove quickly from the U.S. aliens who are encountered shortly after illegally entering the U.S. across the land borders. The ability to detain aliens while admissibility and identity is determined and protection claims are adjudicated, as well as to quickly remove aliens without protection claims or claims to lawful status, is a necessity for national security and public safety. As a critical element of a number of DHS initiatives to enhance security along the border, the expansion of expedited removal will increase national security, diminish the number of illegal entries, and impair the ability of smuggling organizations to operate. Accordingly, for the foregoing reasons, the Department has determined that public notice and comment prior to promulgation of this notice would be impracticable, unnecessary and contrary to the public interest as those terms are used under the APA.

Although the Department believes for the foregoing reasons that pre-promulgation notice and comment procedures are not statutorily mandated in this case, DHS is interested in receiving comments from the public on all aspects of the expedited removal program, but especially on the effectiveness of the program, problems envisioned by the commenters, and suggestions on how to address those problems. DHS believes that by maintaining a dialogue with interested parties, DHS can ensure that the program is even more effective in combating and deterring illegal entry, while at the same time protecting the rights of the individuals affected.

The expansion of expedited removal under this notice will also support the Arizona Border Control Initiative (ABC), a program designed to secure and protect the Arizona border. Working with other Federal, State, local and tribal entities, DHS has placed significant personnel and technical assets on the border to decrease the deaths of illegal immigrants in the desert; and to lower the rate of violent crime related to illegal border traffic in Southern Arizona. The ABC began operations in March 2004. For the reasons stated above, the ABC's success will rely in part upon the ability of DHS officers to place inadmissible aliens apprehended shortly after illegal entry into expedited removal.

Every year, illegal aliens from many different countries continue to enter the U.S. illegally across the nation's land borders. It is critical for public safety and national security that these aliens are not released into the U.S. without adequate verification of their identities and backgrounds.

Notice of Designation of Aliens Subject to Expedited Removal Proceedings

Pursuant to section 235(b)(1)(A)(iii) of the Immigration and Nationality Act ("Act") and 8 CFR 235.3(b)(1)(ii), I order as follows:

(1) Except as provided in paragraph (5), the Department of Homeland Security, through its component bureaus, may place in expedited removal proceedings any or all members of the following class of aliens: Aliens who are inadmissible under sections 212(a)(6)(C) or (7) of the Act, who are physically present in the U.S. without having been admitted or paroled following inspection by an immigration officer at a designated port-of-entry, who are encountered by an immigration officer within 100 air miles of any U.S. international land border, and who have not established to the satisfaction of an immigration officer that they have been physically present in the U.S. continuously for the 14-day period immediately prior to the date of encounter. Each alien subject to this notice bears the affirmative burden to show to the satisfaction of an immigration officer that the alien has been present in the U.S. continuously for the relevant 14-day period. This notice does not apply to aliens who arrive at U.S. ports-of-entry, as these aliens are already subject to expedited removal. This notice will be given effect only with respect to apprehensions made within the CBP Border Patrol sectors of (Laredo, McAllen, Del Rio, Marfa, El Paso, Tucson, Yuma, El Centre San Diego, Blame, Spokane, Havre, Grand Forks, Detroit, Buffalo, Swanton, and Houlton).

(2) Any alien who falls within this designation who indicates an intention to apply for asylum or who asserts a fear of persecution or torture will be interviewed by an asylum officer to determine whether the alien has a credible fear as defined in section 235(b)(1)(B)(v) of the Act, 8 U.S.C. 1225(b)(1)(B)(v). If that standard is met, the alien will be referred to an immigration judge for proceedings under section 240 of the Act, 8 U.S.C. 1229a.

(3) Any alien who is placed in expedited removal proceedings under this designation who claims lawful permanent resident, refugee, asylee status, or U.S. citizenship will be processed in accordance with the procedures provided in 8 CFR 235.3(b) and 8 CFR 1235.3(b).

(4) Any alien who is placed in expedited removal proceedings under this designation will be detained pursuant to section 235(b) of the Act, 8 U.S.C. 1225(b), with certain exceptions, until removed. However, aliens determined to have a credible fear may be considered by DHS for parole in accordance with section 212(d)(5) of the Act and 8 CFR 212.5. Aliens detained pursuant to the expedited removal provisions under section 235 of the Act (including those aliens who are referred after a positive credible fear determination to an immigration judge for proceedings under

section 240 of the Act) are not eligible for a bond, and therefore are not eligible for a bond redetermination before an immigration judge.

(5) This notice applies to aliens described in paragraph (1) who are encountered within the U.S. beginning August 11, 2004.

(6) The expedited removal proceedings contemplated by this notice will not be initiated against Cuban citizens or nationals.

Dated: August 3, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04-18469 Filed 8-10-04; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4903-N-63]

Notice of Proposed Information Collection: Comment Request; Contract and Subcontract Activity

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for in view, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for approval of a revision to the currently approved information collection, which enables HUD to monitor and evaluate Minority Business Enterprise (MBE) activities against the total program activity and the designated MBE goals. Reports are submitted annually to Congress. This information collection combines two previously approved collections, OMB control numbers 2577-0088 and 2502-0355. OMB control number 2535-pending will now be used for this collection.

DATES: *Comments due:* October 12, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708-2374. This is not a toll-free number. Copies of available documents may be obtained from Mr. Eddins and at HUD's Web site at *http://www5.hud.gov:6300l/po/i/icbts/collectionsearch.cfm.*

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Information Technology Specialist, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L_Deitzer@HUD.gov,* telephone (202) 708-2374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Contract and Subcontract Activity.

OMB Control Number, if applicable: 2535–pending.

Description of the need for the information and proposed use: Information will enable HUD to monitor and evaluate Minority Business Enterprise (MBE) activities against the total program activity and the designated MBE goals. Reports are submitted annually to Congress. This information collection combines two previously approved collections, OMB control numbers 2577-0088 and 2502-0355. OMB control number 2535-pending will now be used for this collection.

Agency form numbers, if applicable: HUD 2516.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total numbers of hours needed to prepare the information collection is 5,000, number of respondents is 5,000, frequency of response is "annually," and the hours per response is 1 hour.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 4, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04-18301 Filed 8-10-04; 8:45 am]

BILLING CODE 4210-72-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4907-N-26]

Notice of Proposed Information Collection: Comment Request; Automated Clearing House (ACH) Program Application—Title I Insurance Charge Payments System

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 12, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Lester J. West, Director, Financial Operations Center, Department of Housing and Urban Development, 52 Corporate Circle, Albany, NY 12203, telephone (518) 464-4200 x4206 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

Expedited Removal Policy
Office of Border Patrol

BACKGROUND:

Authorized by section 235(b) of the Immigration and Nationality Act (INA), the Expedited Removal (ER) process authorizes immigration officers, under certain circumstances, to formally remove certain aliens from the U.S. without requiring that they be provided a hearing before an immigration judge. Aliens subject to ER must have illegally entered into the U.S. by engaging in fraud or misrepresentation (e.g., falsely claiming to be U.S. citizens or misrepresenting a material fact) or arrived with fraudulent, improper, or no documents (e.g., visas or passports).

When an immigration officer places an alien in ER proceedings, the alien is detained and returned to his or her country of origin as soon as circumstances will allow. An Expedited Removal order results in a 5-year bar to re-entry and a second or subsequent removal results in the alien being barred for 20 years. An aggravated felon is permanently barred.

PURPOSE OF EXPANDING ER:

The Department of Homeland Security (DHS), through U.S. Customs and Border Protection (CBP), has the critical task of overseeing the borders of the United States. While ER has been employed against inadmissible arriving aliens at designated ports of entry (POE) in the United States for years, it has not been applied to aliens who have illegally entered the U.S. along our land borders between the ports of entry.

Through the publication of Federal Register Notice 1651ZA01, which will be published on August 12, 2004, DHS is expanding ER authority to apply to illegal entries between the ports of entry on both northern and southern land borders. Expanding ER between ports of entry will provide CBP Border Patrol Agents with a valuable tool to help establish greater control over our borders.

ER will have a deterrent effect on unlawful entry, and make it possible to pursue future criminal prosecution against those aliens who continue to enter the U.S. in violation of law. It will also accelerate the processing of inadmissible aliens because it generally does not require an appearance before an immigration judge, except in certain circumstances (e.g., credible fear cases, Lawful Permanent Residents, parole, refugees). Deterring future entries and accelerating removals will enhance CBP's ability to oversee the border, and to focus its resources on threats to public safety and to national security.

POLICY GUIDANCE:

Expedited Removal Policy
Office of Border Patrol

Aliens subject to ER

A Federal Register (FR) Notice that will be published on August 12, 2004, expands the provisions of ER to undocumented aliens entering the United States illegally across a land border between the POEs. The Border Patrol's authority to use ER is effective immediately upon publication of the Notice. The Notice allows placement in ER proceedings any or all members of the following class of aliens:

- Aliens determined to be inadmissible under INA Sections 212(a)(6)(C) or (7) who are present in the U.S. without having been admitted or paroled by an CBP Officer at a designated POE;

- Aliens who are encountered by a Border Patrol Agent within 100 air miles of the U.S. international land border;

- Aliens who have not established to the satisfaction of the Agent that they have been physically present in the United States continuously for the 14-day period immediately prior to the date of encounter.

ER will be primarily directed to nationals of countries other than Mexico and Canada (third country nationals) and to certain Mexican and Canadian nationals with criminal histories or repeated immigration violations, such as recidivists, alien smugglers, guides, drivers, etc. CBP will retain operational discretion to place citizens of Mexico or Canada into ER proceedings.

Other provisions for processing illegal aliens apprehended in the United States, such as removal proceedings under INA Section 240, reinstatement of removal orders under INA Section 241(a)(5), administrative removal of aggravated felons under INA Section 238, and stipulated removal procedures, will continue to apply where applicable per existing law and policy.

Aliens not subject to ER

ER will **not** be applied to unaccompanied juveniles, citizens and nationals of Cuba and El Salvador, and aliens who are members of the Class Action Settlement in *American Baptist Churches v. Thornburgh, (ABC)*, which settled the claims of a specific class of Salvadorans and Guatemalans regarding handling of asylum claims.

- **Unaccompanied juveniles:** Unaccompanied juveniles will not be processed for ER. An accompanied juvenile can only be processed for ER if the accompanying adult is also processed for ER. However, nothing precludes an accompanied juvenile from being granted a voluntary return even if the adult is processed for an ER. Maintaining family unity is critical.

- **Citizens and nationals of Cuba:** ER proceedings will not be initiated against Cuban citizens or nationals, as removals to Cuba cannot presently be assured.

- **Citizens and nationals of El Salvador:** Due to court rulings issued in *Orantes-Hernandez v. Meese*, 685 F. Supp 1488 (CD. Cal 1988), ER proceedings will not be initiated against citizens or nationals of El Salvador. *Orantes* grants Salvadorans the right to counsel, the right to apply for asylum, a hearing before an immigration judge and written instructions that they are not to be moved from the jurisdiction where they were apprehended for a period of 7-days.

- **Certain citizens and nationals of El Salvador and Guatemala:** ER proceedings will not be applied to certain citizens and nationals of El Salvador and Guatemala, including unaccompanied minors, who are members of the Class Action Settlement in *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) (*ABC*), which settled the claims of a class of El Salvadorians and Guatemalans regarding handling of asylum claims, and aliens who may be eligible for cancellation of removal under section 240A of the Act.
    - ABC-eligible class members may not be removed until they have had an opportunity to obtain the benefits of the *ABC* settlement. Potential eligibility for *ABC* membership should be determined at initial processing.
    - *ABC* class members can be identified solely on the basis of nationality and first date of entry; therefore agents who apprehend these aliens should determine their first date of entry.
    - Guatemalans who first entered the United States on or before October 1, 1990, and Salvadorans who first entered the United States on or before September 19, 1990, are eligible for ABC class membership.
    - Any El Salvadorian or Guatemalan apprehended "at entry" on or after December 19, 1990 (which was the date of the settlement agreement) is ineligible for *ABC* class membership.
    - When agents apprehend Guatemalans and Salvadorans who have entered the United States before these dates, they should contact their local U.S. Citizenship and Immigration Services (CIS) Asylum Offices for further direction.
        - If the aliens are apprehended "upon entry" (at the international border), the Asylum Officer will need the details (included in the I-213) to determine whether to issue ineligibility letters.

In all cases, the use of ER is discretionary. If an Agent encounters an alien who appears to be eligible both for ER but may also be eligible for some other form of relief from removal (such as cancellation of removal under section 240A of the INA), the Agent shall give preference to allowing the alien to pursue the alternative form of relief (i.e. by placing the alien in regular 240 proceedings

rather than ER) absent exigent circumstances. Additionally, there may be other cases where the use of ER may not be appropriate and Agents should exercise their discretion when deciding whether to place an individual into ER, such as where persons appear to have mental health issues or diminished mental capacity.

TRAINING REQUIREMENTS:

No Border Patrol Agent will be authorized to process an alien for ER, until the agent and approving supervisors have attended a comprehensive 8-hour course of instruction on ER. The training curriculum uses the Train-the-Trainer (TTT) concept. After completing the TTT session, trainers will return to their respective stations to train other agents and supervisors on ER. Agents authorized to process aliens for ER program will be trained to be alert for any verbal or non-verbal indications that the alien may be afraid to return to his or her homeland.

EXPEDITED REMOVAL PROCESS:

Completing an ER case requires consistency, thoroughness, and attention to detail. Agents must create accurate and complete records of all ER cases, and most of all, exercise extreme caution to ensure a proper decision in every instance in order to minimize attempts at litigation and possibly even further legislation curtailing the Border Patrol's authority in such cases. By regulation, the review of the ER processing paperwork must be completed by the processing Agent's second line supervisor

Credible Fear Interview

When a person is placed in ER, Border Patrol Agents will determine whether the person has a fear of persecution if returned home. If an alien indicates a fear of persecution or an intention to apply for asylum, the Agent must refer the alien to a CIS Asylum Officer for a "credible fear" interview. If the alien is found to have a credible fear, they are referred to an immigration judge for regular removal proceedings under section 240 of the INA where the alien may apply for asylum or protection.

Fear of Persecution or Torture

Any alien who is placed in ER proceedings, and who indicates an intention to apply for asylum or who asserts a fear of persecution or torture will be interviewed by an asylum officer who will determine whether the alien has a credible fear as defined in INA Section 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). If that standard is met, the alien will be referred to an immigration judge for a removal proceeding under INA Sections 240, 235(b)(1)(A)(ii) and (B), 8 U.S.C. 1225(b)(1)(A)(ii) and (B); 8 CFR 235.3(b)(4).

One of the significant differences between ER proceedings and 240 removal proceedings is that the processing Agent has the responsibility to ensure that any alien who indicates a fear of persecution or torture is referred to an asylum

officer. Agents should consider verbal as well as non-verbal cues given by the alien. The Agent/supervisor processing the alien for ER may be the only official that will interview the alien and therefore the only one able to discover the existence of a potential credible fear or claim. Because of this, exceptional diligence must be made to determine if a potential fear or asylum claim exists.

For example, Agents processing aliens for ER should not make asylum eligibility determinations or weigh the strength of the claims, nor should they make credibility determinations concerning the alien's statements. The Agent should err on the side of caution and apply the criteria generously, referring to the asylum officer any questionable cases, including any cases that might raise a question about whether the alien faces persecution.

Other Claims to Current or Previous Status

If the alien claims to be a U.S. citizen, lawfully admitted for permanent residence, admitted as a refugee under SNA Section 207, or to have been granted asylum under INA Section 208, and is not in possession of documents to prove the claim, the alien should be handled very cautiously to ensure that their rights are fully protected. Border Patrol Agents should make every effort to verify the alien's claim prior to proceeding with the case. This can be accomplished through a thorough check of data systems, careful questioning of the alien, or review of government-issued and other documentation presented. Agents should use all means at their disposal to verify or refute a claim to U.S. citizenship, including verification of birth records with state authorities, etc. Border Patrol Agents processing aliens for ER should contact their servicing Asylum Office point(s) of contact when necessary to obtain guidance on questionable cases involving an expression of fear or a potential asylum claim.

Credible Fear Forms

The forms used by Agents who process aliens under ER provide to all aliens information concerning the credible fear interview, in accordance with the statutory requirement at INA Section 235(b)(1)(B)(iv), 8 U.S.C. 1225(b)(1)(B)(iv). The forms require that the agent inquire whether the alien has any reason to fear harm if returned to his or her country. The mandatory closing questions contained on Form I-867B are designed to help in determining whether the alien has such a fear. If an alien asserts a fear or concern that appears unrelated to an intention to seek asylum or a fear of persecution, the Agent should normally consult with an Asylum Officer to determine whether to refer the alien.

Before remanding any alien who has been processed for ER over to the custody of U.S. Immigration and Customs Enforcement, Office of Detention and Removal (ICE/DRO), Border Patrol Agents are responsible for providing (either by fax or sent electronically) their local CIS Asylum Offices with a copy of the following processing paperwork:

- Form I-860, Notice and Order of Expedited Removal

- Form I-867A, Record of Sworn Statement and Proceedings under Section 235(b)(1) of the Act
- Form I-867B, Jurat for Record of Sworn Statement and Proceedings under Section 235(b)(1) of the Act
- M-444, Information About Credible Fear Interview
- List of Free Legal Services Providers

ENFORCE – Case Processing

In order to ensure complete records are maintained and available, all processing of ERs will be accomplished in ENFORCE per current policy and ongoing training. Border Patrol Agents should ensure that all forms are produced from ENFORCE per service standards and training in conjunction with ER processing for inclusion in the alien's permanent A-File.