73. In § 610.102, the definition of *administrative workweek* is revised to read as follows:

§ 610.102 Definitions.

* * * * *

Administrative workweek means any period of 7 consecutive 24-hour periods designated in advance by the head of the agency under section 6101 of title 5, United States Code.

* * * * *

§ 610.111 [Amended]

74. Section 610.111 is amended by removing the word ''regulation'' in the introductory text of paragraph (a) and adding the words ''a written agency policy statement'' in its place; by removing the word ''regulation'' in paragraphs (a)(1) and (a)(2) and adding in each place the words ''written agency policy statement''; and by removing the words ''regulation of the agency'' in paragraph (c)(2) and adding the words ''a written agency policy statement''.

Subpart D—Flexible and Compressed Work Schedules

75. The authority citation for subpart D of part 610 continues to read as follows:

Authority: 5 U.S.C. 6133(a).

76. In § 610.407, the current paragraph is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 610.407 Premium pay for holiday work for employees on compressed work schedules.

* * * * *

(b) An employee on a compressed work schedule is not entitled to holiday premium pay while engaged in training, except as provided in § 410.402 of this chapter.

[FR Doc. 98–31284 Filed 11–23–98; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 208, 240, 274a, and 299

[INS No. 1915–98; AG Order No. 2192–98]

RIN 1115–AF14

Suspension of Deportation and Special Rule Cancellation of Removal for Certain Nationals of Guatemala, El Salvador, and Former Soviet Bloc Countries

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

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Department of Justice (Department) regulations by offering certain beneficiaries of the Nicaraguan Adjustment and Central American Relief Act (NACARA) who currently have asylum applications pending with the Immigration and Naturalization Service (Service), and their qualified dependents, the option of applying to the Service for suspension of deportation or cancellation of removal under the statutory requirements set forth in NACARA (''special rule cancellation of removal'').

Described in very general terms, both suspension of deportation and special rule cancellation of removal are forms of discretionary relief that, if granted, permit an individual subject to deportation or removal to remain in the United States. Integrating the processing of certain applications under NACARA into the Service's Asylum Program will provide an efficient mechanism for considering the suspension of deportation and special rule cancellation of removal applications of most of the approximately 240,000 registered class members of the *American Baptist Churches* v. *Thornburgh (ABC)* litigation and certain other beneficiaries of NACARA who have asylum applications pending with the Service, as well as their qualified family members. The Immigration Court will retain exclusive jurisdiction over most suspension of deportation and special rule cancellation of removal applications submitted by NACARA beneficiaries who have been placed in deportation or removal proceedings.

In addition, this rule proposes to compile and codify the relevant factors and standards for extreme hardship identified within existing case law in order to provide a more uniform and focused mechanism for evaluating this aspect of a person's eligibility for suspension of deportation or special rule cancellation of removal.

DATES: Written comments must be submitted on or before January 25, 1999.

ADDRESSES: Please submit written comments in triplicate 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 No. 1915–98 on your 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: *For matters relating to the Immigration and Naturalization Service:* John Lafferty or Wenona Paul, International Affairs, Department of Justice, Immigration and Naturalization Service, 425 I Street NW., ULLICO Bldg., third floor, Washington, DC 20536, telephone number (202) 305–2663. *For matters relating to the Executive Office for Immigration Review:* Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone number (703) 305–0470.

SUPPLEMENTARY INFORMATION:

I. Background

What is the Nicaraguan Adjustment and Central American Relief Act? On November 19, 1997, President Clinton signed the Nicaraguan Adjustment and Central American Relief Act, enacted as title II of Pub. L. No. 105–100 (111 Stat. 2160, 2193) (as amended by the Technical Corrections to the Nicaraguan Adjustment and Central American Relief Act, Pub. L. No. 105–139 (111 Stat. 2644)). This new law amended the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Immigration and Nationality Act (Act) by providing several distinct forms of relief to certain aliens who are presently residing unlawfully in the United States. Section 202 of NACARA permits certain Nicaraguan and Cuban nationals who meet the standards set forth in that section to apply for adjustment of status to that of lawful permanent resident. The interim rule governing applications for adjustment under section 202 was published in the **Federal Register** on May 21, 1998, at 63 FR 27823.

This proposed rule implements section 203 of NACARA, which permits certain Guatemalans, Salvadorans, and nationals of the former Soviet bloc to apply for suspension of deportation or

cancellation of removal under special provisions set forth in that section. Unlike those applying under section 202, NACARA beneficiaries under section 203 may not become lawful permanent residents unless they meet the statutory requirements for suspension of deportation or cancellation of removal and are found to merit such relief as a matter of discretion.

Throughout the discussion of this proposed rule, the term ''NACARA beneficiaries'' refers to those persons listed in section 309(c)(5)(C)(i) of IIRIRA, as amended by NACARA, who may be eligible to apply for suspension of deportation or cancellation of removal pursuant to the NACARA amendments to IIRIRA.

How does NACARA affect applications for suspension of deportation and cancellation of removal? The Illegal Immigration Reform and Immigrant Responsibility Act, enacted by Congress on September 30, 1996, consolidated the dual system of exclusion and deportation proceedings into removal proceedings for persons placed in proceedings on or after April 1, 1997. Individuals placed in deportation proceedings prior to April 1, 1997, can apply for suspension of deportation under former section 244 of the Act, as in effect prior to April 1, 1997. Suspension of deportation is a discretionary form of relief available to individuals who can establish continuous physical presence in the United States for 7 years prior to the date of application, good moral character during that period, and that deportation would result in extreme hardship to the applicant or to the applicant's parent, spouse, or child who is a lawful permanent resident or United States citizen. Different standards apply to individuals who are deportable on certain criminal, document fraud, or security grounds. Other special exceptions apply to battered spouses and children and to individuals who have served in the United States military.

Under the new framework created by IIRIRA, the discretionary relief of suspension of deportation was replaced by section 240A, cancellation of removal. Congress limited the availability of this type of relief in three fundamental ways. First, Congress amended the rules relating to time counted toward physical presence in the United States. For persons seeking cancellation of removal, section 240A(d)(1) of the Act provides that time counted towards continuous physical presence ceases when a person is served with a charging document and placed in removal proceedings or when a person commits an offense referred to in section 212(a)(2) of the Act that renders the person inadmissible to the United States under section 212(a)(2) or removable from the United States under section 237(a)(2) or 237(a)(4) of the Act, whichever is earlier (the ''stop-time'' rule). The Board of Immigration Appeals (Board) held that, under the transitional rules at section 309(c)(5) of IIRIRA governing persons in deportation proceedings, this ''stop-time'' rule applied equally to individuals placed in proceedings prior to April 1, 1997, who had applied for or who may apply for suspension of deportation. *Matter of N–J–B–*, Int. Dec. #3309 (BIA 1997). In addition, section 240A(d)(2) addresses certain breaks in presence in the United States, for purposes of cancellation of removal eligibility, by providing that an alien shall be considered to have failed to maintain continuous physical presence in the United States if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.

Second, IIRIRA heightened the eligibility standards for both the required period of continuous physical presence in the United States and the degree and type of hardship that must result from removal. Generally, to be eligible for cancellation of removal under the Act as amended by IIRIRA, the applicant must establish 10 years of continuous physical presence in the United States, good moral character during that period, and that removal would result in exceptional and extremely unusual hardship to the applicant's spouse, parent, or child who is a lawful permanent resident or United States citizen.

Third, Congress provided that no more than 4,000 aliens may have their deportation suspended or removal canceled, and their status adjusted pursuant thereto, in any fiscal year.

With certain exceptions, section 203 of NACARA permits certain Guatemalans, Salvadorans, and nationals of former Soviet bloc countries to apply for suspension of deportation or cancellation of removal under the standards that existed prior to enactment of IIRIRA. Specifically, NACARA exempts qualified Guatemalans, Salvadorans, and nationals of former Soviet bloc countries from the ''stop-time'' rule. In addition, section 203(b) of NACARA created a special rule for cancellation of removal for NACARA beneficiaries who have not been placed in deportation proceedings. Special rule cancellation of removal permits these individuals to apply for cancellation of removal under standards that are generally the same as those for suspension of deportation.

Section 204 of NACARA also amended the Act to exempt qualified NACARA beneficiaries from the limit on the number of individuals who may be granted suspension of deportation and cancellation of removal, and adjustments of status pursuant thereto, each year.

What is suspension of deportation and special rule cancellation of removal? Both suspension of deportation and special rule cancellation of removal are forms of discretionary relief that, if granted, permit an individual subject to deportation or removal to remain in the United States. The criteria for granting such relief, in the exercise of discretion, are described in Part IV of this Supplementary Information.

If an individual is granted suspension of deportation or special rule cancellation of removal, his or her immigration status will then be adjusted to that of lawful permanent resident. Suspension of deportation is only available to eligible persons who were placed in deportation proceedings prior to April 1, 1997. Special rule cancellation of removal is available to eligible aliens who are placed in removal proceedings on or after April 1, 1997, or who have not been placed in deportation proceedings and are eligible to apply with the Service under the standards set forth in this proposed rule.

Is there a limit on the number of individuals who may be granted suspension of deportation or special rule cancellation of removal under NACARA? No. NACARA exempts individuals eligible for relief under section 203 of NACARA from the limit on the number of individuals who may be granted suspension of deportation and cancellation of removal each year. Because persons who qualify for relief under Section 203 are not subject to this annual limitation, the interim rule at 8 CFR 240.21, published on September 30, 1998, in the **Federal Register** at 63 FR 52134, does not affect their eligibility for a grant of suspension of deportation or special rule cancellation of removal.

Who can apply under this new law? Unless convicted of an aggravated felony, the following individuals may be eligible to apply for suspension of deportation or special rule cancellation of removal under section 203 of NACARA:

(1) any registered class member of *American Baptist Churches* v. *Thornburgh (ABC),* 760 F. Supp. 796 (N.D. Cal. 1991), who has not been

apprehended at the time of entry after December 19, 1990;

(2) any Guatemalan or Salvadoran national who filed an application for asylum with the Service on or before April 1, 1990; and

(3) any alien who entered the Untied States on or before December 31, 1990, filed an application for asylum on or before December 31, 1991, and at the time of filing was a national of the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia.

In addition and regardless of nationality, the spouse, child (unmarried and under 21 years of age), unmarried son, and unmarried daughter of an individual described in any of the above three categories who is granted cancellation of removal or suspension of deportation may apply for suspension of deportation or special rule cancellation of removal under the provisions of NACARA, unless he or she has been convicted of an aggravated felony. The relationship between the spouse, child, unmarried son, or unmarried daughter and the spouse or parent granted suspension of deportation or cancellation of removal must exist at the time that the parent or spouse is granted suspension of deportation or cancellation of removal. If the alien is an unmarried son or unmarried daughter 21 years of age or older at the time the parent is granted suspension of deportation or cancellation of removal, he or she must have entered the United States on or before October 1, 1990, in order to be eligible to apply for suspension of deportation or special rule cancellation of removal under NACARA. Although a spouse, child, unmarried son, or unmarried daughter is not statutorily eligible to apply for such relief unless the ''principal'' spouse or parent has been granted suspension of deportation or cancellation of removal, applications for relief may be submitted at the same time as the ''principal'' spouse or parent submits an application, or while the ''principal'' spouse or parent's application is pending. The spouse, child, unmarried son, or unmarried daughter will be required to independently establish each of the applicable statutory criteria for suspension of deportation or special rule cancellation of removal and that he or she merits discretionary relief.

Would withdrawal of an asylum application make someone ineligible to apply under section 203 of NACARA? No, Although certain individuals are eligible to apply for relief under section 203 of NACARA based on nationality, entry date to the United States, and the filing of an asylum application by a requisite date, the statute does not require that the asylum application still be pending in order to apply for relief under NACARA.

Will there be a new procedure to apply for suspension of deportation or special rule cancellation of removal under section 203 of NACARA? Yes. To implement section 203 of NACARA efficiently and expeditiously, the Attorney General has decided to integrate the adjudication of suspension of deportation and special rule cancellation of removal applications into the affirmative asylum process. Under this proposed rule, the Attorney General will delegate to asylum officers the authority to grant suspension of deportation or special rule cancellation of removal to certain beneficiaries of NACARA who have asylum applications pending with the Service and to their qualified dependents. Under present regulations, only immigration judges, subject to review by the Board and the Attorney General, are permitted to adjudicate suspension of deportation or cancellation of removal applications within the context of deportation or removal proceedings. Given the large number of NACARA beneficiaries who presently have asylum applications pending before the Service, the Attorney General has determined that delegation of authority to the Service in this limited circumstances is the most efficient method for implementing section 203 of NACARA.

Streamlining the process by permitting eligible applicants to raise their suspensions of deportation or special rule cancellation of removal claims simultaneously with their asylum claims offers an efficient method for resolving many of these claims at an earlier stage in the administrative process. The great majority of section 203 beneficiaries are class members of the *ABC* settlement agreement who currently have asylum applications pending with the Service and are awaiting a *de novo* adjudication of their applications pursuant to the terms of the settlement agreement. Although the *ABC* class members previously placed in deportation proceedings could seek to recalendar their cases in order to apply for suspension of deportation before the Immigration Court, most class members were never placed in proceedings. Absent the proposed rule, these individuals, as well as other NACARA beneficiaries who have asylum applications pending before the Service, would be required to wait until their asylum claims had been adjudicated and, if ineligible for asylum, placed in removal proceedings before they would have an opportunity to file their applications for relief under section 203 of NACARA before the Immigration Court.

Under the proposed rule, an asylum officer will have the authority to consider and grant suspension of deportation or special rule cancellation of removal to an applicant who is clearly eligible for relief from deportation or removal, thus reducing both the time and expense incurred by the Government and the applicant in resolving the claim. Consequently, the proposed rule will implement NACARA in a manner consistent with the humanitarian concerns expressed by Congress in passing this legislation.

II. Process for Applying With the Service

Who will be able to apply with the Service for suspension of deportation or special rule cancellation of removal? The great majority of individuals who are eligible to apply for suspension of deportation or special rule cancellation of removal under NACARA will be eligible to apply for such discretionary relief with the Service. However, not all aliens covered by NACARA will be able to apply with the Service. Asylum officers' jurisdiction to consider applications for suspension of deportation or special rule cancellation of removal will be limited to certain eligible NACARA beneficiaries who have an asylum application pending with the Asylum Program and to their eligible spouses, children, unmarried sons, and unmarried daughters.

The following individuals will be permitted to apply for suspension of deportation or special rule cancellation of removal with the Service:

(1) a Guatemalan or Salvadoran national who applied for asylum with the Service on or before April 1, 1990, and whose asylum application is pending with the Service;

(2) an *ABC* class member who is eligible for benefits of the *ABC* settlement agreement and who has not yet had a *de novo* asylum adjudication with the Service, under the terms of the settlement agreement;

(3) a national of a former Soviet bloc country who meets the application eligibility criteria in section 203 of NACARA and who has an asylum application pending with the Service; and

(4) the spouse, child, unmarried son, and unmarried daughter of an

individual described in any of the preceding three categories, as long as the qualified spouse or parent has pending with the Service an application for suspension of deportation or special rule cancellation of removal or has been granted suspension of deportation or special rule cancellation of removal by the Service and, with certain exceptions, the spouse, child, unmarried son, or unmarried daughter has not been placed in immigration proceedings. To be eligible to apply for suspension of deportation or special rule cancellation of removal under NACARA, an unmarried son or unmarried daughter 21 years of age or older must have first entered the United States on or before October 1, 1990, or have been less than 21 years of age when his or her parent was granted suspension of deportation or cancellation of removal.

With respect to aliens who have been placed in deportation or removal proceedings, this proposed rule gives authority to asylum officers to consider applications for suspension of deportation or special rule cancellation of removal submitted by qualified applicants only if an immigration judge has administratively closed those proceedings or the Board has continued those proceedings because:

(1) the applicant is entitled to a *de novo* asylum adjudication pursuant to the *ABC* settlement agreement (see next section for discussion of class membership and *ABC* eligibility requirements);

(2) the applicant is an *ABC* class member with a final order of deportation who is entitled to a *de novo* asylum adjudication pursuant to the *ABC* settlement agreement, has filed and been granted a motion to reopen under section 203(c) of NACARA, pursuant to the notice published in the **Federal Register** by the Attorney General on January 21, 1998, at 63 FR 3154, or under 8 CFR 3.43 (published in the **Federal Register** on June 11, 1998, at 63 FR 31890), and has requested that the reopened proceedings be closed in order to file for suspension of deportation before the Service; or

(3) the applicant is the spouse, child, unmarried, or unmarried daughter of a NACARA beneficiary who is eligible to apply for, and has applied for, suspension of deportation or special rule cancellation of removal with the Service, and the Immigration Court or the Board has administratively closed or continued the proceedings to permit the applicant to submit an application for suspension of deportation or special rule cancellation of removal with the Service.

All other persons in deportation or removal proceedings who are eligible to apply for suspension of deportation or special rule cancellation of removal under section 203 of NACARA must apply for this relief before the Immigration Court.

To illustrate the jurisdictional divisions between the Service and EOIR over applications for relief under section 203 of NACARA, the Department is considering creating a jurisdictional chart, in table format, to be published with the interim or final rule implementing section 203 of NACARA. The Department solicits comments on whether the public believes such a jurisdictional chart would be useful, and if so, how such a chart would be organized.

Who is eligible for benefits of the ABC settlement agreement? A class member of the *ABC* settlement agreement is eligible for benefits of the agreement only if he or she registered for *ABC* benefits, applied for asylum by a specified cutoff date, has not been convicted of an aggravated felony, and has not been apprehended at the time of entry after December 19, 1990. All Guatemalan nationals who first entered the United States on or before October 1, 1990, and all Salvadoran nationals who first entered the United States on or before September 19, 1990, are class members under the *ABC* settlement agreement. Guatemalan class members were required to register for *ABC* benefits on or before December 31, 1991, and to apply for asylum on or before January 3, 1995. Salvadoran class members were required to register for *ABC* benefits on or before October 31, 1991, and to apply for asylum on or before January 31, 1996. (The Service permitted a two-week administrative grace period, extending to February 16, 1996.) A class member was not required to file a new asylum application under the settlement agreement if the applicant had already filed an asylum application with the Service or the Immigration Court prior to the applicable filing deadline.

Can an ABC class member who registered for ABC benefits, but failed to apply for asylum by the applicable filing deadline, apply for suspension of deportation or special rule cancellation of removal with the Service? No. Although NACARA allows a registered *ABC* class member to apply for suspension of deportation or special rule cancellation of removal, even if he or she failed to apply for asylum by the applicable date necessary to retain *ABC* benefits, the proposed rule requires that such an individual apply for relief under section 203 of NACARA in deportation or removal proceedings before the Immigration Court. If a registered *ABC* class member applied for asylum after the applicable *ABC* filing deadline, the Service will process the asylum application pursuant to current asylum regulations, but will not accept from the class member an application for special rule cancellation of removal. If such a class member is not granted asylum and appears to be deportable or inadmissible, the Service will initiate removal proceedings. The class member may then be eligible to apply for special rule cancellation of removal before the Immigration Court. The Service does not have jurisdiction over an asylum application filed by an *ABC* class member who was in proceedings that were previously administratively closed or continued by the Executive Office for Immigration Review (EOIR) and who missed the applicable asylum filing deadline for *ABC* benefits. In such cases, the Service will move to recalendar proceedings before EOIR, and the class member may apply for suspension of deportation in the context of the recalendared proceedings.

This restriction permits the Service to focus its resources on the adjudication of the applications filed by the registered *ABC* class members who met the filing deadlines; other Guatemalans, Salvadorans, and nationals of former Soviet bloc countries who are qualified to apply under section 203 of NACARA and whose asylum applications are pending with the Service; and the dependents of these groups. Limiting the program to registered *ABC* class members who met the requisite filing deadlines will also serve to protect the integrity of the program by reducing the possibility of fraudulent claims of *ABC* class membership and registration. Because an applicant for suspension of deportation or special rule cancellation of removal will be entitled to immediately apply for and be granted employment authorization, the Service is concerned that there would be an influx of fraudulent applications submitted solely for the purpose of obtaining employment authorization, if no restrictions are placed on the submission of applications. Consequently, to avoid creating such a problem and to avoid diverting resources from the adjudication process in order to verify the status of each new applicant claiming to be a registered *ABC* class member, the Service has chosen to limit the group of persons eligible to apply with the Service for relief from deportation or removal under section 203 of NACARA to those persons who can more readily be

identified by the their previously filed asylum applications.

Must a spouse, child, unmarried son, or unmarried daughter of a beneficiary of section 203 of NACARA have applied for asylum with the Service in order to be eligible to apply for suspension of deportation or special rule cancellation of removal with the Service? No. In the interest of preserving family unity and fostering administrative efficiency, this rule proposes to give the Service jurisdiction to grant or refer an application for suspension of deportation or special rule cancellation of removal filed by a spouse, child, unmarried son, or unmarried daughter of certain NACARA beneficiaries. The spouse, child, unmarried son, or unmarried daughter will not be required to apply for asylum with the Service in order to submit an application for discretionary relief under section 203 of NACARA, so long as the applicant's spouse or parent either has an application for relief under section 203 of NACARA pending with the Service or has been granted suspension of deportation or special rule cancellation of removal by the Service.

If the spouse, child, unmarried son, or unmarried daughter (''dependent'') is in deportation or removal proceedings, he or she appears otherwise eligible for discretionary relief under section 203 of NACARA, and the qualified parent or spouse has submitted an application for such relief with the Service, the Immigration Court may administratively close the dependent's case to permit the dependent to submit an application for suspension of deportation or special rule cancellation of removal with the Service. Similarly, the board may administratively close or continue the dependent's appeal to permit the dependent to submit an application for suspension of deportation or special rule cancellation of removal. A dependent's case that has been administratively closed or continued to allow the dependent to apply with the Service for relief under section 203 of NACARA may be recalendared by the Service if the dependent fails to file his or her application within a required period of time or if the dependent becomes clearly ineligible for relief under section 203 of NACARA prior to submitting his or her application with the Service. A dependent whose case has been administratively closed or continued by EOIR for purposes of filing an application for relief under NACARA with the Service will not be permitted to file an asylum application with the Service. Jurisdiction will remain with EOIR for all matters other than the initial adjudication of the NACARA application.

Although the Service will attempt to interview the dependent and make an eligibility determination at the same time the Service considers the applications of other family members, the application will generally be considered as a separate application for purposes of the filing fee, because it will not have been filed at the same time as the parent's or spouse's application.

When can an application be filed? Anyone who is eligible to apply for suspension of deportation or special rule cancellation of removal and who is in deportation or removal proceedings may apply for such discretionary relief before the Immigration Court in the course of those proceedings. Those who are eligible to apply with the Service will be able to apply when interim or final regulations delegating authority to the Service become effective. The Department expects to publish interim or final regulations after the notice and comment period for this proposed rule has been completed. There is no deadline for filing the application with the Service, as long as the applicant still meets the criteria for eligibility to apply with the Service.

How does one submit an application to the Service? To apply with the Service for suspension of deportation or special rule cancellation of removal under section 203 of NACARA, the applicant must submit a Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105–100), with all attachments and supporting documents, in accordance with the instructions on that form. The Service is currently in the process of preparing the final version of proposed Form I–881. The Service will not accept applications submitted on a Form EOIR–40 or EOIR–42.

Each applicant, including all qualified dependents, must submit a separate application.

Will there be a fee? Yes. The proposed rule establishes a $215 fee for a single applicant, with a maximum family cap of $430 for a family of two or more qualified relatives who submit applications to the Service at the same time. Qualified relatives are limited to the spouse, children, unmarried sons and unmarried daughters of an applicant. A qualified relative who does not submit an application at the same time as the relative's parent or spouse will be required to pay the $215 fee. As with other applications for immigration benefits, applicants may request a fee waiver pursuant to 8 CFR 103.7(c).

The fee for applying directly with the Immigration Court in the course of deportation or removal proceedings will continue to be $100, with a single fee of $100 whenever applications are filed by two or more individuals in the same proceedings. If the application filed with the Service is referred to the Immigration Court, the applicant will not be required to pay an additional fee.

In addition to the fee required to submit an application for suspension of deportation or special rule cancellation of removal, each applicant who is required to be fingerprinted will also be required to include a fingerprinting fee (now $25), or request for fee waiver, when submitting the application to the Service, pursuant to current regulations.

Why is the fee for individuals applying with the Service higher than the fee for individuals applying with the Immigration Court? The proposed fee for individuals applying with the Service is higher, because the cost to the Service to adjudicate applications must be funded from the Immigration Examinations Fee Account (IEFA). The IEFA was established by Congress in 1989, and the revenue deposited in the account is the sole source of funding for the processing of immigration and naturalization applications and petitions, and for other purposes designated by Congress, such as the processing of asylum applications for which no fee is required. No appropriations are provided by Congress from tax dollars. In contrast, the Immigration Court receives funds appropriated by Congress to cover the costs of court functions. The $100 fee to apply for suspension of deportation or cancellation of removal in the Immigration Court partially covers the Service's costs associated with litigating such applications in deportation or removal proceedings.

How was the fee determined? The Service is authorized to charge fees for the adjudication and processing of applications and petitions for a wide variety of immigration and naturalization benefits. The fees are required to recover the cost to the Service of providing a specific immigration service. All fees must be reviewed regularly and adjusted as costs change, as more precise cost determination processes become available, or as directed by legislation. This rule proposes to establish a fee that recovers the costs to the Service associated with processing applications for suspension of deportation and special rule cancellation of removal under section 203 of NACARA.

Revenues generated from the fee proposed in this rule will be deposited

in the IEFA, which provides the sole source of funding available to the Service to process the applications. The Service conducted a cost review of its existing immigration and naturalization application and petition fees in accordance with statutory mandates and Federal cost accounting standards, using activity-based costing (ABC) methodology. ABC methodology provides an accurate and precise cost calculation. This methodology has been used successfully in the private sector and has been used increasingly by Federal agencies to determine the costs of programs, processes, products, and services. (A summary of the approach and methodology used in the review is explained in the proposed rule to adjust the fee schedule of the IEFA for 30 of the immigration adjudication and naturalization applications and petitions. The proposed rule was published in the **Federal Register** on January 12, 1998, at 63 FR 1775. The final rule was published in the **Federal Register** on August 14, 1998, at 63 FR 43604.)

Because Service adjudication of suspension of deportation and special rule cancellation of removal under section 203 of NACARA is a new process, actual historical cost data is not available for establishing a fee based upon actual experience. However, combining the information developed in the IEFA cost review with expert knowledge, it was determined that the application process activities for the Form I–485, Application to Register Permanent Residence or Adjust Status, and the Form I–589, Application for Asylum and for Withholding of Removal, closely resemble the processing and adjudication of a suspension of deportation or special rule cancellation of removal application. Using data from the IEFA cost review, an activity and associated cost model was constructed to anticipate the actual costs of the new process. Integrating the applicable activity costs from the IEFA fee study, the Service calculated a fee of $215 for a single applicant. The maximum amount being proposed for families (as a family cap) is $430.

Must the applicant be fingerprinted? Yes. Each applicant 14 years or older must be fingerprinted. Under current regulations, a fingerprinting fee (now $25), or request for fee waiver, must be submitted to the Service for each person who requires fingerprinting in order to apply for a benefit. An applicant who has previously submitted fingerprints for an asylum application must be fingerprinted again to fulfill current requirements for suspension of deportation or special rule cancellation of removal. The fingerprints will ordinarily be taken at an Application Support Center or a designated Law Enforcement Agency. For cases before the Service, after an application has been submitted, the applicant will be notified in writing of the appointment date and the location of the Application Support Center or designated Law Enforcement Agency where the applicant must go to be fingerprinted. The Service may not conduct an interview until the applicant has been fingerprinted and the Service has received a definitive response from the Federal Bureau of Investigation (FBI) that a full criminal background check has been completed. An applicant's unexcused failure to appear for fingerprinting may result in dismissal of the application for suspension of deportation or special rule cancellation of removal or referral of the application to the Immigration Court. For applications submitted to the Immigration Court, the applicant should proceed as directed by the immigration judge.

How will the interview process before the Service work and what should the applicant bring to the interview? Each applicant will be notified by the Asylum Office of the date, time, and place (address) of a scheduled interview. The Service recommends that each applicant bring a copy of the application and originals of any supporting documents to the interview. Any documents submitted that are written in a foreign language must be accompanied by a certified translation pursuant to 8 CFR 103.2(b)(3). The applicant should also bring some form of identification, if available, including any passport(s), other travel or identification documents, or Form I–94, Arrival-Departure Record.

An asylum officer shall conduct a nonadversarial interview to elicit information relating to eligibility for both asylum and for suspension of deportation or special rule cancellation of removal, if the applicant has applied for both forms of relief.

The applicant has the right to legal representation at the interview, at no cost to the United States Government. Any attorney or representative of record who is representing an applicant must file a G–28, Notice of Entry of Appearance as Attorney or Representative, signed by the applicant.

If the applicant is unable to proceed with the interview in fluent English, he or she must provide, at no expense to the Service, a competent interpreter fluent in both English and a language that the applicant speaks fluently. The interpreter must be at least 18 years of age. The following persons cannot serve as interpreter: the attorney or representative of record or a witness testifying on the applicant's behalf at the interview. If the applicant also has an asylum application pending with the Service, a representative or employee of the applicant's country of nationality, or, if stateless, country of last habitual residence, may not serve as an interpreter. Failure without good cause to bring a competent interpreter to the interview may be considered an unexcused failure to appear for the interview, which may result in dismissal of the application or referral of the application to the Immigration Court.

In most cases, the applicant will be given a notice to return to the Asylum Office for service of the decision and, where appropriate, charging documents placing the person in removal proceedings (the ''pick-up''). Each applicant will also be advised of the requirement to bring an interpreter to the pick-up if the applicant is not fluent in English. An applicant who is not fluent in English must bring an interpreter to the ''pick-up,'' because the applicant may be asked at that time to admit inadmissibility or deportability, and may also be asked whether he or she intends to continue to pursue a pending application for asylum before the Service, if suspension of deportation or special rule cancellation of removal is granted. Although a grant of suspension of deportation or cancellation of removal will confer lawful permanent resident status, section 208 of the Act provides that an alien who is physically present in the United States, or who arrives in the United States, may apply for asylum irrespective of the alien's status.

Must the applicant concede inadmissibility or deportability in order to be granted suspension of deportation or special rule cancellation of removal by the Service? Yes. NACARA provides that the Attorney General may grant suspension of deportation to a qualified individual who is deportable from the United States or special rule cancellation of removal to a qualified alien who is inadmissible or deportable from the United States. The Department has determined that, before suspension of deportation or cancellation of removal may be granted, there must be a finding of inadmissibility or deportability. Because asylum officers are not authorized to make determinations regarding inadmissibility or deportability in most contexts, applicants for suspension of deportation or special rule cancellation of removal before the Service will be required to concede inadmissibility or

deportability before the Service may grant the relief from deportation or removal to the applicant. The instructions for the application will advise the applicant of this requirement. If an asylum officer determines that the applicant is eligible for suspension of deportation or special rule cancellation of removal, the applicant will be informed of the preliminary decision and asked to sign a written concession of inadmissibility or deportability before the final decision is issued. If the applicant declines to admit inadmissibility or deportability and is not granted asylum, the applicant will be placed in immigration proceedings and the application for suspension of deportation or special rule cancellation of removal will be referred to the Immigration Court.

What if an applicant does not appear for the scheduled interview with an asylum officer? An applicant who cannot appear for the scheduled interview should submit prior to the interview a written request to reschedule the interview, explaining the reasons the applicant cannot attend the interview. An unexcused failure to appear for the interview may result in dismissal of the application for suspension of deportation or special rule cancellation of removal or referral of the application to the Immigration Court.

III. Process for applying with EOIR

How does one apply for suspension of deportation or special rule cancellation of removal before the Immigration Court? A person eligible to apply for suspension of deportation or special rule cancellation of removal under section 203 of NACARA who is presently in deportation or removal proceedings should follow the procedures for submitting an application under the regulations and as directed by the immigration judge. The Immigration Court is already adjudicating applications under section 203 of NACARA; there is no need for those who are in proceedings to wait for publication of an interim or final version of this proposed rule to submit an application to the Immigration Court. However, persons who apply for suspension of deportation or special rule cancellation of removal under section 203 of NACARA after this proposed rule is issued as an interim or final rule, will be required to submit their applications on Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105–100), with all attachments and supporting documents, in accordance with the instructions for that form. Each applicant must submit a separate application.

What if a person who is eligible to apply for special rule cancellation of removal is not in proceedings and either does not have an asylum application pending or filed for asylum after the applicable filing deadline? Under this proposed rule, a person who is not in proceedings and who is ineligible to apply with the Service for discretionary relief under section 203 of NACARA will not be permitted to submit an application unless and until he or she is placed in removal proceedings. Under section 203 of NACARA, there is no deadline for filing an application for special rule cancellation of removal. The decision to place an alien in proceedings lies solely with the discretion of the Service.

IV. Eligibility for Suspension of Deportation and Special Rule Cancellation of Removal

What are the applicable statutory provisions? Statutory eligibility for suspension of deportation will be determined based on the criteria governing continuous physical presence, good moral character, and extreme hardship set forth in paragraph, (a) and (b) of former section 244 of the Act, as in effect prior to April 1, 1997, and, as discussed below, subject to applicable bars to discretionary relief as provided in the Act, as in effect prior to April 1, 1997. However, persons eligible to apply for suspension of deportation under section 203 of the NACARA are exempted from the transitional rule governing continuous physical presence contained in section 309(c)(5) of IIRIRA. This means that such applicants are exempt from 240A(d)(1) of the Act, as amended by IIRIRA, which affects the determination of when time counted toward continuous physical presence in the United States stops accruing (the ''stop-time'' rule). Specifically, section 240A(d)(1) of the Act, as amended by IIRIRA, provides that time counted toward physical presence in the United States stops accruing when a person is served a notice to appear under section 239(c) of the Act or commits an offense referred to in section 212(a)(2) of the Act that renders the person inadmissible to the United States under section 212(a)(2) or removable from the United States under section 237(a)(2) or 237(a)(4) of the Act, whichever is earlier. Such persons are also exempt from section 240A(d)(2), which addresses breaks in presence in the United States.

Applications for special rule cancellation of removal under section 203 of NACARA are governed by statutory eligibility requirements contained in section 309(f)(1) of IIRIRA, as amended by NACARA. These requirements correspond, with certain exceptions, to the requirements contained in former section 244(a)(1) and (a)(2) of the Act, as in effect prior to April 1, 1997. Applications under section 203 of NACARA are otherwise subject to the provisions of section 240A of the Act, with the exception of sections 240A(b)(1) (the heightened standards relating to eligibility), (d)(1) (the ''stop-time rule''), and (e) (limitations on the annual number of individuals granted relief).

Additionally, to be eligible for suspension of deportation or special rule cancellation of removal, the alien must not be subject to any of the statutory bars to seeking such relief. Section 244(f) of the Act, as it existed prior to April 1, 1997, and section 240A(c) of the Act provide that certain categories of aliens (crewmen and certain non-immigrant exchange aliens) are ineligible for suspension of deportation or cancellation of removal. Pursuant to former section 242B(e)(2) of the Act, as in effect prior to April 1, 1997, and section 240B(d) of the Act, an alien who was previously granted voluntary departure and received notice of the consequences of failing to depart, but did not depart the United States within the time specified, is barred for a specific period of time from various forms of discretionary relief, including suspension of deportation and cancellation of removal. Similarly, former sections 242B(e)(1), (3) and (4) of the Act, as in effect prior to April 1, 1997, preclude the Attorney General from granting suspension of deportation to aliens who, under certain circumstances, fail at appear to a deportation or asylum hearing, or as ordered for deportation. Applicants for special rule cancellation of removal are subject, where applicable, to the bar to discretionary relief contained in section 240(b)(7) of the Act, relating to failure to appear at removal proceedings. The Attorney General has no authority to waive such bars in the cases in which they apply.

What are the requirements for establishing eligibility? The burden is on the applicant to establish that he or she meets each of the statutory requirements for the relief sought and that he or she is entitled to relief from deportation or removal as a matter of discretion. As explained further below, the general requirements for eligibility relate to the amount of time the applicant has been

continuously physically present in the United States, whether the applicant is and has been of good moral character during the requisite period of continuous physical presence, and the degree of hardship to the applicant or qualified relative resulting from removal. There are two basic standards both for eligibility for suspension of deportation and for special rule cancellation of removal, and the applicable standard is determined by the grounds of deportability or inadmissibility that apply. Aliens who are inadmissible or deportable on certain criminal or other grounds are subject to a higher standard that requires the applicant to establish a longer period of continuous physical presence and a higher degree of hardship resulting from removal. In addition, special eligibility provisions may apply to certain individuals who have been battered or subject to extreme cruelty, or whose children have been subject to such abuse, and to certain individuals who have served in the United States Armed Forces.

To be eligible for suspension of deportation under the general standard set forth in former section 244(a)(1) of the Act, as in effect prior to April 1, 1997, an applicant must not have been convicted of an aggravated felony, must not be deportable for having participated in Nazi persecution or in genocide, and must be deportable under any law of the United States other than paragraph (a)(2) (criminal grounds), paragraph (3) (failure to register and falsification of documents), or paragraph (4) (security and related grounds) of the former section 241(a) of the Act, as in effect prior to April 1, 1997. To be eligible for special rule cancellation of removal under the general standard set forth in section 309(f)(1)(A) of IIRIRA, as amended by NACARA, an applicant must not be inadmissible to the United States under paragraph (2) (criminal and related grounds) or paragraph (3) (security and related grounds) of section 212(a) of the Act, or deportable under paragraph (2) (criminal grounds), paragraph (3) (failure to register and falsification of documents), or paragraph (4) (security and related grounds) of section 237(a) of Act, and may not be an alien who has been convicted of an aggravated felony or has been to be a persecutor.

An applicant for either form of relief who meets the foregoing eligibility requirements must also establish that:

(1) the applicant has been physically present in the United States continuously for at least 7 years before applying for the relief;

(2) the applicant is and has been a person of good moral character during those 7 years of physical presence; and

(3) removal from the United States would result in extreme hardship to the applicant, or to the applicant's spouse, parent, or child, who is a United States citizen or alien lawfully admitted for permanent residence.

The applicant must also establish that the applicant merits relief as a matter of discretion.

Generally, persons who are inadmissible or deportable on the basis of the grounds previously described (other than those who have been convicted of an aggravated felony or involved in the persecution of others) may still be eligible for suspension of deportation under former section 244(a)(2) of the Act, as in effect prior to April 1, 1997, or for special rule cancellation of removal under section 309(f)(1)(B) of IIRIRA, as amended by NACARA, under a higher standard. To be eligible under the higher standard, the applicant must establish that:

(1) the applicant has been physically present in the United States continuously for not less than 10 years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation or removal;

(2) the applicant is and has been a person of good moral character during that period; and

(3) deportation or removal would result in exceptional and extremely unusual hardship to the applicant or to the applicant's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence. The applicant must also establish that the applicant merits relief as a matter of discretion.

What factors are considered in evaluating continuous physical presence? For persons covered by section 203 of NACARA who are presently in deportation proceedings, the primary impact of NACARA is the elimination of the transitional rules contained in section 309(c)(5) of IIRIRA relating to the ''stop-time'' rule and certain breaks in presence. A person eligible to apply for suspension of deportation under NACARA must establish the required period of continuous physical presence by the date on which the application is filed. A person who is already subject to a final order of deportation and must reopen his or her proceedings under 8 CFR 3.43 must establish the required period of physical presence by no later than September 11, 1998, regardless of the date on which service of the charging document was completed.

The proposed rule repeats the statutory requirement that an applicant for suspension of deportation must establish that any break in continuous physical presence was brief, casual, and innocent, and did not meaningfully interrupt the applicant's period of continuous physical presence in the United States. The proposed rule also reflects conclusions set forth in case law that departures under an order of deportation, departures under an order of voluntary departure, or departures during which the applicant formed the intent to commit a crime meaningfully interrupt continuous physical presence.

Although applicants for special rule cancellation of removal are exempt from the ''stop-time'' provision of section 240A(d)(1) of the Act, they are not exempt from section 240A(d)(2) of the Act, relating to breaks in continuous physical presence. Under section 309(f)(2) of IIRIRA, as amended by section 203(b) of NACARA, an applicant for special rule cancellation of removal will be considered to have failed to maintain continuous physical presence in the United States if he or she is absent from the United States for any period in excess of 90 days or for any periods that in the aggregate exceed 180 days. The proposed rule specifies that periods of shorter duration may be found to terminate continuous physical presence if the absence is a meaningful interruption.

What factors are considered in evaluating good moral character? To be eligible for suspension of deportation or special rule cancellation of removal, the person will have to establish good moral character during the requisite period of continuous physical presence in the United States. Good moral character is decided on a case-by-case basis, taking into account the provisions of section 101(f) of the Act, which identify reasons a person cannot be found to be of good moral character, and precedent decisions by the Board and Federal courts.

What factors are considered in evaluating extreme hardship? An applicant for suspension of deportation under former section 244(a)(1) of the Act, as in effect prior to April 1, 1997, or special rule cancellation of removal under section 309(f)(1)(A) of IIRIRA, as amended by section 203 of NACARA, must establish that his or her deportation or removal would result in extreme hardship to the applicant, or to a parent, child or spouse who is a United States citizen or lawful permanent resident alien. In adopting the same standards for special rule cancellation of removal as were required for suspension of deportation under

former section 244(a)(1) of the Act, prior to amendments by IIRIRA, Congress appears to have intended the same standard for extreme hardship to apply to both forms of relief. The phrase ''extreme hardship'' is not defined in the Act, and NACARA provides no additional guidelines for interpretation of this requirement. Instead, ''extreme hardship'' has acquired specific legal meaning through interpretation by the Board and Federal courts.

The Board has not set forth a bright line test for determining ''extreme hardship,'' finding that ''extreme hardship'' within the meaning of section 244(a)(1) of the Act ''is not a definable term of fixed and inflexible content or meaning. It necessarily depends upon the facts and circumstances peculiar to each case.'' *Matter of Hwang,* 10 I & N Dec. 448, 451 (BIA 1964). Over time, however, precedent decisions issued by the Board and federal courts have created a body of case law that has provided a framework for analyzing claims of extreme hardship. *See Matter of Anderson,* 16 I & N Dec. 596 (BIA 1978); *Matter of Ige,* 20 I & N Dec. 880 (BIA 1994); *Matter of O–J–O),* Int. Dec. #3280 (BIA 1996); *Matter of L–O–G, Int Dec.* #3281 (BIA 1996); *Matter of Pilch,* Int. Dec. #3298 (BIA 1996). In these decisions and others, the Board has enumerated a series of factors that are relevant to a determination of extreme hardship. These precedent decisions are binding on the Service and EOIR.

Under this proposed rule, asylum officers will be required to consider suspension of deportation and special rule cancellation of removal applications under the same legal standards that govern adjudication by the Immigration Court. Because of the breadth of the case law governing the ''extreme hardship'' standard, the Department has concluded that a regulatory compilation of the relevant factors and standards identified within this body of law would provide a more uniform and focused source for evaluating extreme hardship claims. This proposed rule is not intended, however, to overturn or modify existing case law. Nor does it intend to limit the development through case law of other relevant factors. Instead, codification is intended to assist adjudicators, attorneys, and applicants to identify factors that may be relevant to an extreme hardship determination in the context of an application for suspension of deportation or special rule cancellation of removal. This regulation, however, does not codify the higher standard of ''exceptional and extremely unusual hardship'' required under former section 244(a)(2) of the Act, as in effect prior to April 1, 1997, section 240A(b)(1) of the Act for persons seeking cancellation of removal, or section 309(f)(1)(B) of IIRIRA, as amended by NACARA, for persons seeking special rule cancellation of removal.

This proposed rule maintains the flexibility of the existing standard by identifying broad factors that have been cited in existing precedent decisions as relevant to the evaluation of whether deportation would result in extreme hardship to the alien or to his or her qualified relative. These factors are (1) the age of the alien, both at the time of entry to the United States and at the time of application for suspension of deportation; (2) the age, number, and immigration status of the alien's children and their ability to speak the native language and adjust to life in another country; (3) the health condition of the alien or the alien's child, spouse, or parent and the availability of any required medical treatment in the country to which the alien would be returned; (4) the alien's ability to obtain employment in the country to which the alien would be returned; (5) the length of residence in the United States; (6) the existence of other family members who will be legally residing in the United States; (7) the financial impact of the alien's departure; (8) the impact of a disruption of educational opportunities; (9) the psychological impact of the alien's deportation or removal; (10) the current political and economic conditions in the country to which the alien would be returned; (11) family and other ties to the country to which the alien would be returned; (12) contributions to and ties to a community in the United States, including the degree of integration into society; (13) immigration history, including authorized residence in the United States; and (14) the availability of other means of adjusting to permanent resident status.

Ultimately, ''extreme hardship'' must be evaluated on a case-by-case basis after a review of all the circumstances in the case, and none of the listed factors alone, or taken together, automatically establishes a claim of extreme hardship. Nor is the list exhaustive, as there may be other factors relevant to the issue of extreme hardship in a particular case. The listed factors should not preclude consideration of other factors raised by an applicant, nor is an applicant required to show that each of the listed factors applies in the applicant's case, in order to establish extreme hardship. Conversely, an adjudicator is not required to consider factors that have not been raised in making an extreme hardship determination.

Generally, no single factor will be dispositive in making an extreme hardship determination. *Matter of Anderson,* 16 I & N Dec. 596. To establish extreme hardship, an applicant must demonstrate that deportation or removal would result in a degree of hardship beyond that typically associated with deportation or removal. For example, extreme hardship requires more than the mere economic deprivation that might result from an alien's deportation from the United States. *Davidson* v. *INS,* 558 F.2d 1361, 1363 (9th Cir. 1977), and *Matter of Sipus,* 14 I & N Dec. 229, 231 (BIA 1972). Loss of a job and the concomitant financial loss is not synonymous with extreme hardship. *Matter of Pilch,* Int. Dec. #3298. Similarly, readjustment to life in the native country after having spent a number of years in the United States is not the type of hardship that has been characterized as extreme, since most aliens who have spent time abroad suffer this kind of hardship. *Matter of Chumpitazi,* 16 I & N 629 (BIA 1978). The birth of a United States citizen child does not in itself provide a basis for a finding of extreme hardship. *Davidson* v. *INS,* 558 F.2d at 1363; *Matter of Kim,* 15 I & N Dec. 88 (BIA 1974). Nor does a significant reduction in one's standard of living or inability to pursue one's profession, in itself, compel a finding of extreme hardship. *Matter of Pilch,* Int. Dec. #3298.

The Board has also found that ''a claim of persecution may not generally be presented as a means of demonstrating extreme hardship, for purposes of suspension of deportation.'' *Matter of L–O–G,* Int. Dec. #3281. In those cases in which a claim of persecution is raised, however, it must be examined from the perspective of extreme hardship, rather than on the basis of the criteria used to identify a refugee under asylum law. *Ordonez* v. *INS,* 137 F.3d 1120, 1123 (9th Cir. 1998). Consequently, issues such as the circumstances under which an individual left his or her country or the political consequences of such a return may be relevant to the discussion of listed factors such as the psychological impact of deportation or removal, current country conditions, immigration history, or remaining ties to the country of deportation or removal. *See Matter of O–J–O,* Int. Dec. #3280 (family's history of conflict with Sandinistas factored into evaluation of effect of current country conditions).

Thus, a factor that may not in itself be determinative may become significant, or even critical, when weighed with all

the other circumstances and factors presented. *Matter of L–O–G,* Int. Dec. #328. Relevant factors that may not be considered extreme in themselves must be considered in the aggregate to determine whether extreme hardship exists. *Matter of Ige,* 20 I & N Dec. at 882. ''In all cases, the particular degree of personal hardship resulting from each of the factors must be taken into account.'' *Matter of L–O–G,* Int. Dec. #328. Similarly, an adjudicator should not discount the effect of a factor simply because it is not unique to the individual. The Board has noted that the ''word 'extreme' should not be equated with 'unique' and hardship for suspension purposes need not be unique to be extreme.'' *Id.*

V. Adjudication by the Service

How will a decision be made if a person has applied for both asylum and suspension of deportation or special rule cancellation of removal? An asylum officer will determine eligibility for suspension of deportation or special rule cancellation of removal concurrently with the determination of eligibility for asylum if an applicant who is eligible to apply with the Service under NACARA has applied for both forms of relief. After considering the information and documents submitted by the applicant, the testimony of the applicant and any witnesses presented at the interview, relevant country conditions information, and other information available to the asylum officer, the asylum officer will determine whether the applicant is eligible for suspension of deportation or special rule cancellation of removal or asylum. The Service will grant suspension of deportation or special rule cancellation of removal if the applicant is clearly eligible for the relief sought. If the Service finds that the applicant is not clearly eligible for suspension of deportation or special rule cancellation of removal and is ineligible for asylum, the asylum officer will refer the application for suspension of deportation or special rule cancellation of removal to the Immigration Court (or dismiss the application without prejudice, if the applicant is in valid non-immigrant or immigrant status). The Service will also process the asylum application under the terms of the settlement agreement for eligible *ABC* class members or under 8 CFR 208.14 for all other NACARA beneficiaries.

When will the Service refer an application to the Immigration Court? Under the proposed rule, asylum officers will not have the authority to deny an application for suspension of deportation or special rule cancellation of removal. Instead, an asylum officer will refer an application to the Immigration Court, if the applicant appears to be inadmissible or deportable and any of the following circumstances apply:

(1) The applicant appears to be statutorily ineligible for the relief sought;

(2) It appears that relief should be denied as a matter of discretion;

(3) The applicant appears to be eligible for relief only under the higher standards set forth in former section 244(a)(2) of the Act, as in effect prior to April 1, 1997, or section 309(f)(1)(B) of IIRIRA, as amended by NACARA (requiring, among other things, 10 years continuous physical presence and a showing of exceptional and extremely unusual hardship resulting from removal);

(4) The applicant appears eligible for relief only under the provisions that apply to battered spouses and children in former section 244(a)(3) of the Act, as in effect prior to April 1, 1997, or section 240A(b)(2) of the Act;

(5) The applicant declines to concede inadmissibility or deportability; or

(6) The applicant fails to appear for an interview or for a fingerprint appointment, and such failure to appear is unexcused. In the case of an unexcused failure to appear for an interview or for fingerprinting, the Service may refer the application to the Immigration Court without conducting an interview, or the Service may dismiss the application.

Generally, referrals to the Immigration Court will occur after the Service has evaluated the application and determined that the applicant is not clearly eligible for suspension of deportation or special rule cancellation of removal. In the case of applicants who are only eligible under the higher standard for either form of relief, referral is necessary to avoid complex determinations regarding admissibility or deportability that are more appropriately made by an immigration judge. Other grounds for referral are related to administrative efficiency and parallel provisions in 8 CFR part 208 with respect to the referral of asylum applications.

What happens if the Service finds that the applicant is eligible for suspension of deportation or special rule cancellation of removal, but is not eligible for asylum? If the Service determines that the applicant is eligible for a grant of suspension of deportation or special rule cancellation of removal by the Service and makes a preliminary determination that the applicant is not eligible for asylum, The Service will grant the applicant suspension of deportation or special rule cancellation of removal and adjust the applicant's status to that of lawful permanent resident. When the Services notifies the applicant of the decision to grant suspension of deportation or special rule cancellation of removal, the Service will notify the applicant that the Service has made a preliminary determination that the applicant is not eligible for asylum, but that the applicant has the right to continue to pursue the request for asylum. At the same time, the Service will give the applicant the opportunity to request to pursue the asylum application or to request in writing to withdraw the asylum application. If the applicant requests in writing to withdraw the asylum application, the application will be dismissed without prejudice. If the applicant wishes to pursue the asylum application and the applicant is eligible for *ABC* benefits, the Service will send the applicant a Notice of Intent to Deny the asylum application and provide an opportunity to rebut the Notice of Intent to Deny pursuant to the terms of the settlement agreement. If the applicant is not eligible for *ABC* benefits and wishes to pursue the asylum application, the Service will send the applicant a Notice of Intent to Deny in accordance with current asylum procedures for applicants who are in valid immigration status.

What happens if the Service determines that the applicant is eligible for both suspension of deportation or special rule cancellation of removal and for asylum? If the asylum officer determines that the applicant is eligible for both asylum and a grant of suspension of deportation or special rule cancellation of removal by the Service, the Service will grant the applicant suspension of deportation or special rule cancellation of removal and adjust his or her status to that of lawful permanent resident. After the Service has adjusted the applicant's status to that of lawful permanent resident, the applicant will still be eligible for asylum. Section 208 of the Act provides that an alien who is physically present in the United States, or who arrives in the United States, may apply for asylum irrespective of the alien's status. Therefore, if an asylum officer has found that the applicant is eligible for asylum, the Service will grant the applicant's asylum application.

What happens if the Service finds that the applicant is eligible for asylum, but not suspension of deportation or special rule cancellation of removal? If the Service determines that the applicant is

eligible for asylum, but appears ineligible for suspension of deportation or special rule cancellation of removal, the Service will grant the application for asylum and dismiss the application for suspension of deportation or special rule cancellation of removal without prejudice.

What happens if the Service finds that the applicant is ineligible for asylum, suspension of deportation, or special rule cancellation of removal? If the Service determines that the applicant is not eligible for a grant of asylum, suspension of deportation, or special rule cancellation of removal by the Service, and the applicant is not in valid immigrant or non-immigrant status, the Service will place the applicant in removal proceedings or move to recalendar or resume proceedings before EOIR if such proceedings were administratively closed or continued. The Service will refer the application for suspension of deportation or special rule cancellation of removal to the Immigration Court or, if proceedings before the Board and been administratively closed or continued, to the Board. The asylum application filed with the Service will also be referred to the Immigration Court, if the application is governed by current asylum regulations. The application for asylum will be denied, if the application is governed by the *ABC* settlement agreement.

What happens to a pending asylum application if the Service adjusts the applicant's status to that of lawful permanent resident? Some asylum applicants may be eligible to adjust their status to lawful permanent resident through means other than section 203 of NACARA. For example, Nicaraguans and Cubans who have adjusted status under section 202 of NACARA may no longer wish to seek asylum in the United States. To avoid unnecessary scheduling of such persons for asylum interviews and unnecessary adjudications, the Service may notify the applicant that it intends to dismiss without prejudice the asylum application unless the applicant notifies the Service in writing within 30 days of the date of the notice that the applicant would like to pursue the asylum request.

The process for adjudicating eligible *ABC* class members' asylum applications is governed by the *ABC* settlement agreement and the 1990 asylum regulations. Accordingly, this provision does not apply to them, and the Service will not presume their applications abandoned. However, if the Service grants an eligible *ABC* class member suspension of deportation or special rule cancellation of removal and makes a preliminary determination that the class member is not eligible for asylum, the Service may notify the class member of the negative preliminary assessment regarding asylum eligibility and give the class member the opportunity to withdraw the asylum request.

How will an application be processed if the applicant was in proceedings in Immigration Court that were administratively closed under the ABC settlement agreement? Pursuant to the *ABC* settlement agreement, EOIR already has administratively closed proceedings for *ABC* class members who were in proceedings before the Immigration Court. This action was taken to afford the class members the opportunity to pursue a *de novo* asylum adjudication with the Service. Because these class members were in deportation proceedings prior to April 1, 1997, they may be eligible to apply for suspension of deportation. If the Service grants either asylum or suspension of deportation to a registered *ABC* class member whose proceedings with the Immigration Court were administratively closed, such grant of asylum or suspension of deportation will terminate those proceedings under this regulation. (The Department currently is engaged in efforts to clarify language in the *ABC* settlement agreement in accordance with this proposal for automatic termination of proceedings before EOIR upon a grant of asylum). If the Service denies asylum to a registered *ABC* class member whose previous proceedings were administratively closed and the asylum officer determines that the applicant is not clearly eligible for suspension of deportation, the Service will move to recalendar proceedings before the Immigration Court, pursuant to the settlement agreement. At the same time, the Service will refer to the Immigration Court the application for suspension of deportation.

How will applications be processed for applicants who have an appeal pending with the Board of Immigration Appeals, which was continued under the ABC settlement? Pursuant to the *ABC* settlement agreement, the Board stayed or continued indefinitely appeals that had been filed by *ABC* class members in order to give them the opportunity to pursue the benefits of the settlement agreement. If the Service grants either asylum or suspension of deportation to a registered *ABC* class member whose proceedings with the Board were administratively closed or continued, such grant of asylum or suspension of deportation will terminate those proceedings under this regulation. (As noted above, the Department currently is engaged in efforts to clarify language in the *ABC* settlement agreement in accordance with this proposal for automatic termination of proceedings before EOIR upon a grant of asylum.) If the Service denies asylum to an eligible *ABC* class member and does not grant suspension of deportation, the Board shall resume proceedings upon notice from the Service, under the terms of the *ABC* settlement agreement. The Service will refer the application for suspension of deportation to the Board. The Board will remand proceedings to the immigration judge solely for adjudication of the application for suspension of deportation unless the eligible *ABC* class member also moves for, and is granted, a remand of the asylum application pursuant to the terms of the *ABC* settlement agreement.

How will applications be processed for class members eligible for ABC benefits who have been issued a final order of deportation? Section 203(c) of NACARA permits eligible NACARA beneficiaries with final orders to file a motion to reopen in order to pursue suspension of deportation or special rule cancellation of removal under NACARA. Section 203(c) requires that all NACARA beneficiaries who are under final orders of deportation, including *ABC* class members, must have filed a motion to reopen no later than September 11, 1998, in order to obtain relief under section 203 of NACARA. (The applicable rule, 8 CFR 3.43, was published in the **Federal Register** on June 11, 1998, at 63 FR 31890.)

An *ABC* class member who has been issued a final order, but currently has an asylum application pending before the Service, may file an application for suspension of deportation with the Service only if he or she has filed a motion to reopen with EOIR, and the motion has been granted. Unless the case is reopened, the alien will remain subject to the order of deportation, which will be enforceable if the alien is denied asylum under the terms of the *ABC* settlement agreement. If the motion is granted, the *ABC* class member may move to have his or her deportation proceedings administratively closed in order to apply for suspension of deportation with the Service. As is the case for all NACARA beneficiaries with final orders, eligible *ABC* class members who have challenged their immigration proceedings in Federal court must file and be granted a motion to reopen by EOIR in order to seek relief under section 203 of NACARA. If the applicant

has pending in Federal court a case that was stayed so that the applicant could pursue *ABC* benefits, the Government will wait until the application for suspension of deportation is adjudicated before requesting that court proceedings be resumed or dismissed.

All motions to reopen under section 203(c) of NACARA must have been filed on or before September 11, 1998. Therefore, any alien who did not file a motion to reopen by that date is no longer eligible to file a motion to reopen proceedings under section 203(c) of NACARA.

Employment Authorization

Are applicants for suspension of deportation or special rule cancellation of removal eligible for employment authorization? Yes. Under current regulations, applicants for suspension of deportation or cancellation of removal are eligible to apply for and be granted employment authorization. 8 CFR 274a.12(c)(10). Applicants for suspension of deportation or special rule cancellation of removal under section 203 of NACARA will also be eligible to apply for and be granted employment authorization under this provision at the time of filing an application with the Service or EOIR.

Travel Outside the United States

Is an applicant permitted to travel outside the United States while an application for suspension of deportation or special rule cancellation of removal is pending? Applicants for suspension of deportation or special rule cancellation of removal under NACARA are subject to present rules and procedures governing advance parole. Nothing in NACARA authorizes travel outside the United States for beneficiaries. Those NACARA beneficiaries who leave the country without first obtaining advance parole and who are inadmissible under section 212(a)(C) or 212(a)(7) may be subject on their return to expedited removal under section 235(b) of the Act.

NACARA beneficiaries who leave the country and are paroled back in will no longer be eligible for suspension of deportation since they would be inadmissible to the United States, rather than deportable from the United States.

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 impact on a substantial number of small entities because of the following reason: This rule would provide new administrative procedures for the Service to consider applications from certain Guatemalans, Salvadorans, nationals of former Soviet Bloc countries, and their qualified relatives who are applying for suspension of deportation or special rule cancellation of removal and, if granted, to adjust their status to that of lawful permanent resident. It will have no effect on small entities, as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. § 804. 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 the 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 to be a ''significant regulatory action'' under section 3(f) of Executive Order 12866, 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 responsibility among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

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

Paperwork Reduction Act

This rule requires applicants to provide biographical data and information regarding eligibility for relief under section 203 of NACARA on an application form (Form I–881). This requirement is considered an information collection that is subject to review by OMB under the Paperwork Reduction Act of 1995. The Service issued a 60-day notice in the **Federal Register** on May 8, 1998, at 63 FR 25523, requesting comments on this new information collection. No comments were received during that initial 60-day comment period. On July 23, 1998, the Service issued a notice in the **Federal Register**, at 63 FR 39596, extending the comment period by 30 days. Comments were received and considered, and certain changes made to the proposed Form I–881 in light of those comments.

The Service solicits additional public comments on the information collection requirements in order 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, including the validity of the methodology and assumptions used;

(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, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In calculating the overall burden this requirement will place upon the public, the Service estimates that no more than 100,000 individuals will apply for relief under section 203 of NACARA in any single year. The Service also estimates that it will take each applicant approximately 12 hours to comply with the information collection requirement. This amounts to 1,200,000 total burden hours, which equates to an annual cost to the public of $33.5 million a year.

The following is the formula for determining the cost to the public: (100,000 respondents × $215 application fee = $21,500,000)+(100,000 respondents × 12 hours per response × $10+$12,000,000)=$33,500,000.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Stuart Shapiro, Desk Officer for the Immigration and Naturalization Service.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, (202) 514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Service has submitted a copy of the Form I–881 and this proposed rule to OMB for its review of the information collection requirements. OMB is required to make a decision concerning the collection of information contained in the proposed regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Service on the proposed regulation.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 240

Administrative practice and procedure, Immigration.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

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

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.1, the last sentence in paragraph (g)(3)(ii) is revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(g) * * *

(3) * * *

(ii) *Asylum officers.* * * * Asylum officers are delegated the authority to hear and adjudicate credible fear of persecution determinations under section 235(b)(1)(B) of the Act, applications for asylum and for withholding of removal, as provided under 8 CFR part 208, and applications for suspension of deportation and special rule cancellation of removal, as provided under 8 CFR part 240, subpart H.

* * * * *

3. In § 103.7, paragraph (b)(1) is amended by adding the entry for ''Form I–881'' to the listing of fees, in proper numerical sequence, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–881. For filing an application for suspension of deportation or special rule cancellation of removal (pursuant to section 203 of Public Law 105–100):

—$215 for adjudication by the Service, except that the maximum amount payable by family members (related as husband, wife, unmarried child under 21, unmarried son, or unmarried daughter) who submit applications of the same time shall be $430.

—$100 for adjudication by the Immigration Court (a single fee of $100 will be charged whenever applications are filed by two or more aliens in the same proceedings). The $100 fee is not required if the Form 1–881 is referred to the Immigration Court by the Service.

* * * * *

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

4. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282, 8 CFR part 2.

5. Section 208.14 is amended by revising the section heading and by adding a new paragraph (f), to read as follows:

§ 208.14 Approval, denial, referral or dismissal of application.

* * * * *

(f) If an asylum applicant is granted adjustment of status to lawful permanent resident, the Service may notify the applicant that his or her asylum application will be presumed abandoned and dismissed without prejudice, unless the applicant requests in writing within 30 days of the notice that the asylum application be adjudicated. If an applicant does not respond within 30 days of the date of the notice, the Service may presume the asylum application abandoned and dismiss it without prejudice.

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

6. The authority citation for part 240 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202, 203, and 204 of Pub. L. 105–100 (111 Stat. 2160, 2193); 8 CFR part 2.

7. In subpart F, a new § 240.58 is added to read as follows:

§ 240.58 Extreme hardship.

(a) To be eligible for suspension of deportation under former section 244(a)(1) of the Act, as in effect prior to April 1, 1997, the alien must meet the requirements set forth in the Act, which include a showing that deportation would result in extreme hardship to the alien or to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence. Extreme hardship is evaluated on a case-by-case basis, taking into account the particular facts and circumstances of each case. Applicants are encouraged to cite in their applications and to document all applicable factors, as the presence or absence of any one factor is not determinative in evaluating extreme hardship. Adjudicators should weigh all relevant factors presented and consider them in light of the totality of the circumstances, but are not required to

offer an independent analysis of each listed factor when rendering a decision.

(b) To establish extreme hardship, an applicant shall demonstrate that deportation would result in a degree of hardship beyond that typically associated with deportation. Factors that may be considered in evaluating whether deportation would result in extreme hardship to the alien or to the alien's qualified relative include, but are not limited to, the following:

(1) The age of the alien, both at the time of entry to the United States and at the time of application for suspension of deportation;

(2) The age, number, and immigration status of the alien's children and their ability to speak the native language and to adjust to life in another country;

(3) The health condition of the alien or the alien's children, spouse, or parents and the availability of any required medical treatment in the country to which the alien would be returned;

(4) The alien's ability to obtain employment in the country to which the alien would be returned;

(5) The length of residence in the United States;

(6) The existence of other family members who will be legally residing in the United States;

(7) The financial impact of the alien's departure;

(8) The impact of a disruption of educational opportunities;

(9) The psychological impact of the alien's deportation;

(10) The current political and economic conditions in the country to which the alien would be returned;

(11) Family and other ties to the country to which the alien would be returned;

(12) Contributions to and ties to a community in the United States, including the degree of integration into society;

(13) Immigration history, including authorized residence in the United States; and

(14) The availability of other means of adjusting to permanent resident status.

(c) Nothing in paragraph (a) of this section shall be construed as creating any right, interest, or entitlement that is legally enforceable by or on behalf of any party against the United States or its agencies, officers, or any other person.

8. Part 240 is amended by adding Subpart H to read as follows:

Subpart H—Applications for Suspension of Deportation or Special Rule Cancellation of Removal Under Section 203 of Public Law 105–100

Sec.

Subpart H—Applications for Suspension of Deportation or Special Rule Cancellation of Removal Under Section 203 of Public Law 105–100

§ 240.60 Definitions.

As used in this subpart the term:

ABC refers to *American Baptist Churches* v. *Thornburgh,* 760 F. Supp. 796 (N.D. Cal. 1991).

ABC class member refers to:

(1) Any Guatemalan national who first entered the United States on or before October 1, 1990; and

(2) Any Salvadoran national who first entered the United States on or before September 19, 1990.

IIRIRA refers to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, enacted as Public Law 104–208 (110 Stat. 3009–625).

NACARA refers to the Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted as title II of Public Law 105–100 (111 Stat. 2160, 2193), as amended by the Technical Corrections to the Nicaraguan Adjustment and Central American Relief Act, Public Law 105–139 (111 Stat. 2644).

Registered ABC class member refers to an *ABC* class member who:

(1) In the case of an *ABC* class member who is a national of Guatemala, properly submitted an *ABC* registration form to the Service on or before December 31, 1991; or

(2) In the case of an *ABC* class member who is a national of El Salvador, properly submitted an *ABC* registration form to the Service on or before October 31, 1991, or applied for temporary protected status on or before October 31, 1991.

§ 240.61 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart H applies to the following aliens:

(1) A registered *ABC* class member who has not been apprehended at the time of entry after December 19, 1990;

(2) A Guatemalan or Salvadoran national who filed an application for asylum with the Service on or before April 1, 1990;

(3) An alien who entered the United States on or before December 31, 1990, filed an asylum application on or before December 31, 1991, and, at the time of filing the application was a national of the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia;

(4) An alien who is the spouse or child of an individual described in paragraph (a)(1), (a)(2), or (a)(3) of this section, at the time a decision is made to suspend the deportation, or cancel the removal, of the individual described in paragraph (a)(1), (a)(2), or (a)(3) of this section;

(5) An alien who is:

(i) The unmarried son or unmarried daughter of an individual described in paragraph (a)(1), (a)(2), or (a)(3) of this section and is 21 years of age or older at the time a decision is made to suspend the deportation, or cancel the removal, of the parent described in paragraph (a)(1), (a)(2), or (a)(3) of this section; and

(ii) Entered the United States on or before October 1, 1990.

(b) This subpart H does not apply to any alien who has been convicted at any time of an aggravated felony, as defined in section 101(a)(43) of the Act.

§ 240.62 Jurisdiction.

(a) *Office of International Affairs.* Except as provided in paragraph (b) of this section, the Office of International Affairs shall have initial jurisdiction to grant or refer to the Immigration Court or Board an application for suspension of deportation or special rule cancellation of removal filed by an alien described in § 240.61, provided:

(1) In the case of a national of El Salvador described in § 240.61(a)(1), the alien filed a complete asylum application on or before January 31, 1996 (with an administrative grace period extending to February 16, 1996), or otherwise met the asylum application filing deadline pursuant to the *ABC* settlement agreement, and the application is still pending adjudication by the Service;

(2) In the case of a national of Guatemala described in § 240.61(a)(1), the alien filed a complete asylum application on or before January 3, 1995, or otherwise met the asylum application filing deadline pursuant to the *ABC* settlement agreement, and the application is still pending adjudication by the Service;

(3) In the case of an individual described in § 240.61(a) (2) or (3), the individual's asylum application is pending adjudication by the Service;

(4) In the case of an individual described in § 240.61(a) (4) or (5), the individual's parent or spouse has an application pending with the Service under this subpart H or has been granted relief by the Service under this subpart.

(b) *Immigration Court.* The Immigration court shall have exclusive jurisdiction over an application for suspension of deportation or special rule cancellation of removal filed pursuant to section 309(f)(1) (A) or (B) of IIRIRA, as amended by NACARA, by an alien who has been served Form I–221, Order to Show Cause, or Form I–862, Notice to Appear, after a copy of the charging document has been filed with the Immigration court, unless the alien is covered by one of the following exceptions:

(1) *Certain ABC class members.* (i) The alien is a registered *ABC* class member for whom proceedings before the immigration judge or the Board were administratively closed or continued (including those aliens who had final orders of deportation or removal who have filed and been granted a Motion to Reopen as required under 8 CFR 3.43);

(ii) The alien is eligible for benefits of the *ABC* settlement agreement and has not had the *de novo* asylum adjudication under the settlement agreement; and

(iii) The alien has not moved for and been granted a motion to recalendar proceedings before the Immigration Court or the Board to request suspension of deportation.

(2) *Spouses, children, unmarried sons, and unmarried daughters.* (i) The alien is described in § 240.61(a)(4) or (5);

(ii) The alien's spouse or parent is described in § 240.61(a)(1), (a)(2), or (a)(3) and has Form I–881 pending with the Service; and

(iii) The alien's proceedings before the Immigration Court have been administratively closed, or the alien's proceedings before the Board have been continued, to permit the alien to file an application for suspension of deportation or special rule cancellation of removal with the Service.

§ 240.63 Application process.

(a) Except as provided in paragraph (b) of this section, the application must be made on a Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105–100 (NACARA)), and filed in accordance with the instructions for that form. Each application must be filed with the filing and fingerprint fees as provided in § 103.7(b) of this subchapter, or request for fee waiver, as provided in § 103.7(c) of this subchapter. The fact that an applicant has also applied for asylum does not exempt the applicant from the fingerprinting fees associated with the Form I–881.

(b) *Applications filed with EOIR.* If jurisdiction rests with the Immigration Court under § 260.62(b), the application must be made on the Form I–881, if filed subsequent to the effective date of the interim or final rule. The application form, along with any supporting documents, must be filed with the Immigration Court and served on the Service's district counsel in accordance with the instructions for the form. Applications for suspension of deportation or special rule cancellation of removal filed prior to the effective date of the interim or final rule shall be filed on Form EOIR–40, Application for Suspension of Deportation.

(c) *Applications filed with the Service.* If jurisdiction rests with the Service under § 240.62(a), the Form I–881 and supporting documents must be filed at the appropriate Service Center in accordance with the instructions for the form.

§ 240.64 Eligibility—general.

(a) *Burden and standard of proof.* The burden of proof is on the applicant to establish by a preponderance of the evidence that he or she is eligible for suspension of deportation or special rule cancellation of removal and that discretion should be exercised to grant relief.

(b) *Calculation of continuous physical presence and certain breaks in presence.* For purposes of calculating continuous physical presence under this section, section 309(c)(5)(A) of IIRIRA and section 240A(d)(1) of the Act shall not apply to persons described in § 240.61.

(1) For applications for suspension of deportation made under former section 244 of the Act, as in effect prior to April 1, 1997, the burden of proof is on the applicant to establish that any breaks in continuous physical presence were brief, casual, and innocent and did not meaningfully interrupt the period of continuous physical presence in the United States.

(2) For applications for special rule cancellation of removal made under section 309(f)(1) of IIRIRA, as amended by NACARA, the applicant shall be considered to have failed to maintain continuous physical presence in the United States if he or she has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days. The burden is on the applicant to establish that any period of absence less than 90 days was brief, casual, and innocent and did not meaningfully interrupt the period of continuous physical presence in the United States.

(3) For all applications made under this subpart, a period of continuous physical presence is terminated whenever an alien is removed from the United States under an order issued pursuant to any provision of the Act or the alien has voluntarily departed under the threat of deportation or when the departure is made for purposes of committing an unlawful act.

(4) The requirements of continuous physical presence in the United States under this subpart shall not apply to an alien who:

(i) Has served for a minimum period of 24 months in an active-duty status in the Armed Forces of the United States and, if separated from such service, was separated under honorable conditions, and

(ii) At the time of the alien's enlistment or induction was in the United States.

(c) *Factors relevant to extreme hardship.* Extreme hardship is decided on a case-by-case basis, taking into account the particular facts and circumstances of the claim and considering the factors enumerated in § 240.58. For purposes of evaluating eligibility for special rule cancellation of removal under this subpart, the factors enumerated in § 240.58 pertaining to extreme hardship resulting from deportation shall apply equally to extreme hardship resulting from removal.

§ 240.65 Eligibility for suspension of deportation.

(a) To establish eligibility for suspension of deportation under this section, the applicant must be described in § 240.61, must establish that he or she is eligible under former section 244 of the Act, as in effect prior to April 1, 1997, must not be subject to any bars to eligibility in former section 242B(e) of the Act, as in effect prior to April 1, 1997, or any other provisions of law, and must not have been convicted of an aggravated felony or be an alien described in former section 241(a)(4)(D) of the Act, as in effect prior to April 1, 1997 (relating to Nazi persecution and genocide).

(b) *General rule.* To establish eligibility for suspension of deportation under former section 244(a)(1) of the Act, as in effect prior to April 1, 1997, an alien must be deportable under any

law of the United States, except the provisions specified in paragraph (c) of this section, and must establish:

(1) The alien has been physically present in the United States for a continuous period of not less than 7 years immediately preceding the date the application was filed;

(2) During all of such period the alien was and is a person of good moral character; and

(3) The alien's deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) *Aliens deportable on criminal or certain other grounds.* To establish eligibility for suspension of deportation under former section 244(a)(2) of the Act, as in effect prior to April 1, 1997, an alien who is deportable under paragraph (2), (3), or (4) of former section 241(a) of the Act, as in effect prior to April 1, 1997 (relating to criminal activity, document fraud, failure to register, and security threats), must establish:

(1) The alien has been physically present in the United States for a continuous period of not less than 10 years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation;

(2) During all of such period the alien has been and is a person of good moral character; and

(3) The alien's deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien, or to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

(d) *Battered spouses and children.* To establish eligibility for suspension of deportation under former section 244(a)(3) of the Act, as in effect prior to April 1, 1997, an alien must be deportable under any law of the United States, except former section 241(a)(1)(G) of the Act, as in effect prior to April 1, 1997) (relating to marriage fraud), and except the provisions specified in paragraph (c) of this section, and must establish:

(1) The alien has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date the application was filed;

(2) The alien has been battered or subjected to extreme cruelty in the United States by a spouse or parent who is a United States citizen or lawful permanent resident (or is the parent of a child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such citizen or permanent resident parent); and

(3) During all of such time in the United States the alien was and is a person of good moral character; and

(4) The alien's deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or the alien's parent or child.

§ 240.66 Eligibility for special rule cancellation of removal.

(a) To establish eligibility for special rule cancellation of removal, the applicant must show he or she is eligible under section 309(f)(1) of IIRIRA, as amended by section 203 of NACARA. The applicant must be described in § 240.61, must be inadmissible or deportable, must not be subject to any bars to eligibility in sections 240(b)(7), 240B(d), or 240A(c) of the Act, or any other provisions of law, and must not have been convicted of an aggravated felony or be an alien described in section 241(b)(3)(B)(i) of the Act (relating to persecution of others).

(b) *General rule.* To establish eligibility for special rule cancellation of removal under section 309(f)(1)(A) of IIRIRA, as amended by section 203 of NACARA, the alien must establish:

(1) The alien is not inadmissible under paragraph (2) or (3) of section 212(a) or deportable under paragraph (2), (3) or (4) of section 237(a) of the Act (relating to criminal activity, document fraud, failure to register, and security threats);

(2) The alien has been physically present in the United States for a continuous period of 7 years immediately preceding the date the application was filed;

(3) The alien has been a person of good moral character during the required period of continuous physical presence; and

(4) The alien's removal from the United States would result in extreme hardship to the alien, or to the alien's spouse, parent or child who is a United States citizen or an alien lawfully admitted for permanent residence.

(c) *Aliens inadmissible or deportable on criminal or certain other grounds.* To establish eligibility for special rule cancellation of removal under section 309(f)(1)(B) of IIRIRA, as amended by section 203 of NACARA, the alien must be described in § 240.61 and establish:

(1) The alien is inadmissible under section 212(a)(2) of the Act (relating to criminal activity), or deportable under section 237(a)(2) (other than section 237(a)(2)(A)(iii), relating to aggravated felony convictions), or 237(a)(3) of the Act (relating to criminal activity, document fraud, and failure to register);

(2) The alien has been physically present in the United States for a continuous period of not less than 10 years immediately following the commission of an act, or the assumption of a status, constituting a ground for removal;

(3) The alien has been a person of good moral character during the required period of continuous physical presence; and

(4) The alien's removal from the United States would result in exceptional and extremely unusual hardship to the alien or the alien's spouse, parent, or child, who is a United States citizen or an alien lawfully admitted for permanent residence.

§ 240.67 Procedure for interview before an asylum officer.

(a) *Fingerprinting requirements.* The Service will notify each applicant 14 years of age or older to appear for an interview only after the applicant has complied with fingerprinting requirements pursuant to § 103.2(e) of this subchapter, and the Service has received a definitive response from the Federal Bureau of Investigation (FBI) that a full criminal background check has been completed. A definitive response that a full criminal background check on an applicant has been completed includes:

(1) Confirmation from the FBI that an applicant does not have an administrative or criminal record;

(2) Confirmation from the FBI that an applicant has an administrative or a criminal record; or

(3) Confirmation from the FBI that two properly prepared fingerprint cards (Form FD–258) have been determined unclassifiable for the purpose of conducting a criminal background check and have been rejected.

(b) *Interview.* (1) The asylum officer shall conduct the interview in a non-adversarial manner and, except at the request of the applicant, separate and apart from the general public. The purpose of the interview shall be to elicit all relevant and useful information bearing on the applicant's eligibility for suspension of deportation or special rule cancellation of removal. If the applicant has an asylum application pending with the Service, the asylum officer shall also elicit information relating to the application for asylum in accordance with § 208.9 of this subchapter. At the time of the interview,

the applicant must provide complete information regarding the applicant's identity, including name, date and place of birth, and nationality, and may be required to register this identity electronically or through any other means designated by the Attorney General.

(2) The applicant may have counsel or a representative present, may present witnesses, and may submit affidavits of witnesses and other evidence.

(3) An applicant unable to proceed with the interview in English must provide, at no expense to the Service, a competent interpreter fluent in both English and a language in which the applicant is fluent. The interpreter must be at least 18 years of age. The following individuals may not serve as the applicant's interpreter: the applicant's attorney or representative of record; a witness testifying on the applicant's behalf; or, if the applicant also has an asylum application pending with the Service, a representative or employee of the applicant's country of nationality, or, if stateless, country of last habitual residence. Failure without good cause to comply with this paragraph may be considered a failure to appear for the interview for purposes of § 240.68.

(4) The asylum officer shall have authority to administer oaths, verify the identify of the applicant (including through the use of electronic means), verify the identify of any interpreter, present and receive evidence, and question the applicant and any witnesses.

(5) Upon completion of the interview, the applicant or the applicant's representative shall have an opportunity to make a statement or comment on the evidence presented. The asylum officer may, in the officer's discretion, limit the length of such statement or comment and may require its submission in writing. Upon completion of the interview, the applicant shall be informed that the applicant must appear in person to receive and to acknowledge receipt of the decision and any other accompanying material at a time and place designated by the asylum officer, except as otherwise provided by the asylum officer.

(6) The asylum officer shall consider evidence submitted by the applicant with the application, as well as any evidence submitted by the applicant before or at the interview. As a matter of discretion, the asylum officer may grant the applicant a brief extension of time following an interview during which the applicant may submit additional evidence.

§ 240.68 Failure to appear at an interview before an asylum officer or failure to follow requirements for fingerprinting.

Failure to appear for a scheduled interview without prior authorization may result in dismissal of the application or waiver of the right to an interview. Failure to comply with fingerprint processing requirements without good cause may result in dismissal of the application or waiver of the right to an adjudication by an asylum officer. Failure to appear shall be excused if the notice of the interview or fingerprint appointment was not mailed to the applicant's current address and such address had been provided to the Office of International Affairs by the applicant prior to the date of mailing in accordance with section 265 of the Act and regulations promulgated thereunder, unless the asylum officer determines that the applicant received reasonable notice of the interview or fingerprinting appointment. Failure to appear at the interview or fingerprint appointment shall be excused if the applicant demonstrates that such failure was the result of exceptional circumstances.

§ 240.69 Reliance on information compiled by other sources.

In determining whether an applicant is eligible for suspension of deportation or special rule cancellation of removal, the asylum officer may rely on material described in § 208.12 of this chapter. Nothing in this subpart shall be construed to entitle the applicant to conduct discovery directed towards records, officers, agents, or employees of the Service, the Department of Justice, or the Department of State.

§ 240.70 Decision by the Service.

(a) *Service of decision.* Unless otherwise provided by an Asylum Office, the applicant will be required to return to the Asylum Office to receive service of the decision on the applicant's application. If the applicant does not speak English fluently, the applicant shall bring an interpreter when returning to the office to receive service of the decision.

(b) *Grant of suspension of deportation.* An asylum officer may grant suspension of deportation to an applicant eligible to apply for this relief with the Service who qualifies for suspension of deportation under former section 244(a)(1) of the Act, as in effect prior to April 1, 1997, who is not an alien described in former section 241(a)(4)(D) of the Act, as in effect prior to April 1, 1997, and who admits deportability under any law of the United States, excluding paragraph (2), (3), or (4) of former section 241(a) of the Act, as in effect prior to April 1, 1997. If the Service has made a preliminary decision to grant the applicant suspension of deportation under this subpart, the applicant shall be notified of that decision and asked to sign an admission of deportability or inadmissibility. The applicant must sign the concession before the Service may grant the relief sought. If suspension of deportation is granted, the Service shall adjust the status of the alien to lawful permanent resident, effective as of the date that suspension of deportation is granted.

(c) *Grant of cancellation of removal.* An asylum officer may grant cancellation of removal to an applicant who is eligible to apply for this relief with the Service, and who qualifies for cancellation of removal under section 309(f)(1)(A) of IIRIRA, as amended by section 203 of NACARA, and who admits deportability under section 237(a), excluding paragraphs (2), (3), and (4), of the Act, or inadmissibility under section 212(a), excluding paragraphs (2) or (3), of the Act. If the Service has made a preliminary decision to grant the applicant cancellation of removal under this subpart, the applicant shall be notified of that decision and asked to sign an admission of deportability or inadmissibility. The applicant must sign the concession before the Service may grant the relief sought. If the Service grants cancellation of removal, the Service shall adjust the status of the alien to lawful permanent resident, effective as of the date that cancellation of removal is granted.

(d) *Referral of the application.* Except as provided in paragraphs (e) and (f) of this section, and unless the applicant is granted asylum or is in lawful immigrant or non-immigrant status, an asylum officer shall refer the application for suspension of deportation or special rule cancellation of removal to the Immigration Court for adjudication in deportation or removal proceedings, if:

(1) The applicant is not clearly eligible for suspension of deportation under former section 244(a)(1) of the Act as in effect prior to April 1, 1997, or for cancellation of removal under section 309(f)(1)(A of IIRIRA, as amended by NACARA;

(2) The applicant does not appear to merit relief as a matter of discretion;

(3) The applicant appears to be eligible for suspension of deportation or special rule cancellation of removal under this subpart, but does not admit deportability or inadmissibility; or

(4) The applicant failed to appear for a scheduled interview with an asylum officer or failed to comply with

fingerprinting processing requirements and such failure(s) was not excused by the Service, unless the application is dismissed.

(e) *Dismissal of the application.* An asylum officer shall dismiss without prejudice an application for suspension of deportation or special rule cancellation of removal submitted by an applicant who has been granted asylum, or who is in lawful immigrant or non-immigrant status. An asylum officer may also dismiss an application for failure to appear, pursuant to § 240.68.

(f) *Special provisions for certain ABC class members whose proceedings before EOIR were administratively closed or continued.* The following provisions shall apply with respect to an *ABC* class member who was in proceedings before the Immigration Court or the Board, and those proceedings were closed or continued pursuant to the *ABC* settlement agreement:

(1) *Suspension of deportation or asylum granted.* If an asylum officer grants asylum or suspension of deportation, the previous proceedings before the Immigration Court or Board shall be terminated as a matter of law on the date relief is granted.

(2) *Asylum denied and application for suspension of deportation not approved.* If an asylum officer denies asylum and does not grant the applicant suspension of deportation, the Service shall move to recalendar proceedings before the Immigration Court or resume proceedings before the Board, whichever is appropriate. The Service shall refer to the Immigration Court or the Board the application for suspension of deportation. In the case where jurisdiction rests with the Board, an application for suspension of deportation that is referred to the Board will be remanded to the immigration judge for adjudication.

(g) *Special provisions for dependents whose proceedings before EOIR were administratively closed or continued.* If an asylum officer grants suspension of deportation or special rule cancellation of removal to an applicant described in § 240.61(a)(4) or (a)(5), whose proceedings before EOIR were administratively closed or continued, those proceedings shall terminate as of the date the relief is granted. If suspension of deportation or special rule cancellation of removal is not granted, the Service shall move to recalendar proceedings before the Immigration Court or resume proceedings before the Board, whichever is appropriate. The Service shall refer to the Immigration Court or the Board the application for suspension of deportation or special rule cancellation of removal. In the case where jurisdiction rests with the Board, an application for suspension of deportation or special rule cancellation of removal that is referred to the Board will be remanded to the immigration judge for adjudication.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

9. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

10. Section 274a.12 is amended by revising the first sentence in paragraph (c)(10), to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(10) An alien who has filed an application for suspension of deportation under section 244 of the Act (as it existed prior to April 1, 1997), cancellation of removal pursuant to section 240A of the Act, or special rule cancellation of removal under section 309(f)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, enacted as Public Law 104–208 (110 Stat. 3009–625) (as amended by the Nicaraguan Adjustment and Central American Relief Act (NACARA), title II of Public Law 105–100 (111 Stat. 2160, 2193) and whose application has been accepted by the Service or EOIR.

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PART 299—IMMIGRATION FORMS

11. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

12. Section 299.1 is amended in the table by adding the entry for Form ''I–881'' in proper numerical sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	*
I–881	10–01–98	Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105–100).
*	*	*

13. Section 299.5 is amended in the table by adding the entry for Form ''I–881'' in proper numerical sequence, to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
*	*	*
I–881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105–100).	1115–xxxx.
*	*	*

Dated: November 17, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–31348 Filed 11–23–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–144–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 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 Boeing Model 747 series airplanes. This proposal would require repetitive inspections of the outboard nacelle struts to detect fatigue cracking of the strut skin and spring beam support fittings, and to detect cracked or loose fasteners of the support fittings; and corrective actions, if necessary. This proposal also provides for optional terminating action for the repetitive inspection requirements. This proposal is prompted by reports indicating that several cracked or broken spring beam support fittings were found on the outboard nacelle struts. The actions specified by the proposed AD are intended to detect and correct such fatigue cracking and loose fasteners, which could result in failure of the outboard nacelle struts and consequent separation of the engine.

DATES: Comments must be received by January 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–144–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

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 Number 98–NM–144–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–144–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports from three operators indicating findings of six cracked or broken spring beam support fittings on the outboard struts of Model 747 series airplanes. Four of the cracked or broken support fittings were found on strut number 1 (left outboard strut), and two others were found on strut number 4 (right outboard strut).

An operator of a Model 747–200 combi airplane that had accumulated 76,372 total flight hours and 14,501 total flight cycles reported finding a 5-inch crack in the inboard skin panel during a preflight check on the number 1 strut, and further investigation revealed a fractured support fitting on the inboard side of that strut. An operator of a Model 747–200F airplane equipped with General Electric CF6–50 series engines, which had accumulated 71,609 total flight hours and 14,808 total flight cycles, reported findings of a severed support fitting on the number 1 strut.

Another operator of a Model 747–200F airplane equipped with Pratt & Whitney JT9D–70 series engines reported findings of two broken support fittings, one on the number 1 strut and one on the number 4 strut. A report indicated that, during a heavy maintenance preliminary check, a misaligned stripe on the outboard nacelle strut was found. Further investigation revealed a broken spring beam on the outboard side of the number 4 strut and a broken support fitting. This airplane had accumulated 72,426 total flight hours and 18,142 total flight cycles. An inspection of the remaining fleet of similar airplanes revealed findings of two fractured support fittings on an airplane that had accumulated 66,035 total flight hours and 16,709 total flight cycles.

All of these operators reported findings of cracked or severed spring beam support fittings located on the inboard side of the strut and attached to the strut skin. These conditions, if not corrected, could cause fatigue cracking of the strut skin and spring beam support fittings on the outboard nacelle struts, which could result in failure of the outboard nacelle struts and consequent separation of the engine.

Other Relevant Rulemaking

The FAA has previously issued AD 95–13–07, amendment 39–9287 (60 FR 33336, June 28, 1995), which currently requires modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies, and correction of discrepancies. The corrective action specified by that AD included a modification to improve the damage tolerance capability and durability of the strut-to-wing attachments, reduce reliance on non-routine inspections of those attachments, and prevent failure of the strut and consequent separation of the engine. Although the accomplishment of the modification required by that AD constitutes terminating action for the requirements of that AD, this proposed AD specifies that same modification as an optional terminating action.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–