painters (including the application of all surface coatings, no matter how applied); bridge, structural and ornamental ironworkers; plumbers and pipefitters; roofers; plasterers and cement masons; or

(3) Work involving installation of assembly lines; conveyor belts and systems; overhead cranes, heating, cooling, and ventilation or exhaust systems; elevators and escalators; boilers and turbines; the dismantling or demolition of commercial or industrial equipment or machinery if the equipment or machinery is an integral part of a building or structure; whether on-site or in-plant; or

(4) Site preparation work and services installation (for example electricity, gas, water) and connection of such services to commercial or industrial equipment or machinery if the equipment or machinery is to be an integral part of a building or structure.

On May 24, 2001, the DOS, after consultation with the Service, had disseminated a cable to all diplomatic and consular posts providing that posts shall seek an advisory opinion when the alien is applying for a B–1 visa to engage in the activities listed above in the Service's June 21, 2001 Memo.

The listed activities are not a definition of ''building and construction work,'' but rather a trigger for additional questions at initial inspection and/or secondary inspection and prior to visa issuance. A Service inspector or consular officer may decide after consideration of all the facts that the activity to be performed does not constitute ''building and construction work,'' as that term is ordinarily understood and approve admission of the alien or the issuance of a visa.

**Why Is the Service Considering Defining the Term ''Building and Construction Work'' as Used in the Admission of B–1 Nonimmigrant Visitors for Business?**

The Service has never defined the phrase ''building and construction'' by regulation and has become aware of potential confusion regarding its proper interpretation and application for the admission of B–1 nonimmigrant visitors for business. The distinction between the installation and service of equipment, which is permissible B–1 activity, and engaging in building and construction, which is not, has been particularly difficult to discern. For example, where large equipment is designed as an integral part of a building, an alien installing and/or servicing such equipment raises the question whether he is engaged in ''building and construction.'' Therefore, the Service is exploring the possibility of defining ''building and construction'' in a manner that would clarify its application in such situations. The Service is seeking public comment on whether it should define ''building and construction'' by regulation and, if so, how that phrase should be defined. The Service also notes that it has taken into consideration the possible economic impact of this Advance Notice of Proposed Rulemaking. As previously noted, aliens admitted to the United States as B–1 nonimmigrant visitors for business are not eligible to engage in building and construction work for United States employers. Therefore, the Service does not believe that this Notice will have a significant impact upon United States entities.

**Will the Service Adopt a Definition of ''Building and Construction Work'' That Is Already Used by Another Federal Agency?**

The Service wishes to hear from the public on the issue of whether it should adopt another federal agency's definition of ''building and construction work.'' One example of a possible definition is the Department of Labor's (DOL) definition of construction at 29 CFR 5.2(j), Subtitle A. The Service seeks comments from the public on the DOL definition, on any other federal definition, on the definition of activities listed in the June 21, 2001 Memo which currently trigger closer scrutiny by both the Service and DOS, and welcome new definitions of the term ''building and construction work.''

**Executive Order 12866**

This advanced notice of proposed rulemaking is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Under Executive Order 12866, section 6(a)(3)(B)–(D), this advanced notice has been submitted to and reviewed by the Office of Management and Budget.

Dated: September 14, 2001.

**James W. Ziglar,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 01–23327 Filed 9–18–01; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF STATE

## Bureau of Consular Affairs

## 22 CFR Part 41

**[Public Notice 3783]**

## Construction Work and the B Nonimmigrant Visa Classification

**ACTION:** Advanced notice of proposed rulemaking.

**SUMMARY:** The Bureau of Consular Affairs (CA) is soliciting comments from the public on the issue of whether the term ''building and construction work,'' as used in 22 CFR 41.31(b)(1) should be defined in regulation, and if so how the term ''building and construction work'' should be defined. Definition of the term ''building and construction work'' may assist both the public and CA in determining whether certain classes of aliens may obtain visas as B–1 nonimmigrant visitors for business.

**DATES:** Written comments must be submitted on or before November 19, 2001.

**ADDRESSES:** Written comments must be submitted by mail to: Legislation and Regulations Division, Visa Office, Room L–603C, 2401 E Street, NW., Washington, DC 20520–0106, or e-mailed to visaregs@state.gov. Please reference the Public Notice Number for this notice.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Gorsky, Chief, Advisory Opinions Division, Directorate for Visa Services, Room L–603F, 2401 E Street, NW., Washington, DC 20520–0106; telephone 202–663–1187; or e-mail to gorskyjg@state.gov.

**SUPPLEMENTARY INFORMATION:**

**What is a B nonimmigrant alien?**

The definition of a B nonimmigrant is an alien whose admission to the United States is based on a temporary visit for business (B–1) or a temporary visit for pleasure (B–2). Section 101(a)(15)(B) of the Immigration and Nationality Act (Act) defines the visitor classification as:

An alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

**What are the current regulations and internal field guidelines governing the admission of B–1 nonimmigrant visitors for business?**

The Department of State (DOS), which is responsible for the issuance of visas overseas to aliens seeking to enter the United States as B–1 nonimmigrant visitors for business, has long interpreted section 101(a)(15)(B) of the Act to mean that an alien may obtain a visa as a B–1 nonimmigrant to perform activities necessarily incident to international trade or commerce. See *Karnuth* v. *Albro*, 279 U.S. 231, 243–44, 49 S.Ct. 274, 278 and *Matter of Duckett*, 19 I & N Dec. 493, 497 (BIA 1987).

22 CFR 41.31(b)(1) provides, in part, that the term ''business * * * does not include local employment or labor for hire. For the purposes of this section building or construction work, whether on-site or in plant, shall be deemed to constitute purely local employment or labor for hire; provided that the supervision or training of others engaged in building or construction work (but not the actual performance of any such building or construction work) shall not be deemed to constitute purely local employment or labor for hire if the alien is otherwise qualified as a B–1 nonimmigrant.''

The Department's Foreign Affairs Manual (FAM), Part 41.31, Note 7.1 on ''Commercial or Industrial Workers'' provides the following:

''a. An alien coming to the United States to install, service, or repair commercial or industrial equipment or machinery purchased from a company outside the United States or to train U.S. workers to perform such services. However, in such cases the contract of sale must specifically require the seller to provide such services or training and the visa applicant must possess specialized knowledge essential to the seller's contractual obligation to perform the services or training and must receive no remuneration from a U.S. source.

''b. These provisions do not apply to an alien seeking to perform building or construction work, whether on-site or in-plant. The exception is for an alien who is applying for a B–1 visa for the purpose of supervising or training other workers engaged in building or construction work, but not actually performing any such building or construction work.''

On May 24, 2001, the Department of State, after consultation with the Immigration and Naturalization Service (INS), disseminated a telegram to all diplomatic and consular posts providing that posts shall seek an advisory opinion when an alien is applying for a B–1 visa to engage in any of the following activities:

''(1) The installation, maintenance, and repair of: Utility services, any part or the fabric of any building or structure, and installation of machinery or equipment to be an integral part of a building or structure; or

(2) Work normally performed by laborers; millwrights; heat and frost insulators; bricklayers; carpenters and joiners; electrical workers; operating engineers (including heavy equipment operators); elevator constructors; sheet metal workers; teamsters; boilermakers; residential commercial or industrial painters (including the application of all surface coatings, no matter how applied); bridge, structural and ornamental ironworkers; plumbers and pipefitters; roofers; plasterers and cement masons; or

(3) Work involving installation of assembly lines; conveyor belts and systems; overhead cranes, heating, cooling, and ventilation or exhaust systems; elevators and escalators; boilers and turbines; the dismantling or demolition of commercial or industrial equipment or machinery is the equipment or machinery is an integral part of a building or structure; whether on-site or in-plant; or

(4) Site preparation work and services installation (for example electricity, gas, water) and connection of such services to commercial or industrial equipment or machinery if the equipment or machinery is to be an integral part of a building or structure.''

The listed activities are not a definition of ''building and construction work,'' but rather a trigger for additional questions prior to visa issuance. A consular officer may decide after consideration of all the facts that the activity to be performed does not constitute ''building and construction work,'' as that term is ordinarily understood and approve the issuance of a visa.

**Why is the Department of State considering defining the term ''building and construction work'' as used in the issuance of visas to B–1 nonimmigrant visitors for business?**

The Department of State has never defined the term ''building and construction work'' in regulation. The Department believes that confusion may exist within the international business and construction community regarding what activities constitute ''building and construction work'' for the purposes of issuance of a visa to an applicant as a B–1 nonimmigrant visitor for business. In particular, the distinction between the installation of equipment, which is a permissible B–1 activity, and ''building and construction work'' has been difficult to draw. For example, large equipment is often designed to be an integral part of a building itself. Aliens working on such equipment might be viewed by some to be performing ''building and construction work,'' and by others to be merely installing equipment. The Department of State is very interested in exploring a definition of ''building and construction work'' that would clarify this gray area. Therefore, the Department seeks public comments on the question of whether a more specific regulatory definition of ''building and construction work'' is required, and if so how the term should be defined.

**Will the Department of State adopt a definition of ''building and construction work'' that is already used by another Federal agency?**

The Department of State wishes to hear from the public on the issue of whether it should adopt another Federal agency's definition of ''building and construction work.'' One example of a possible definition is the Department of Labor's (DOL) definition of construction at 29 CFR 5.2(j), Subtitle A. The Department of State seeks comments from the public on the DOL definition, on any other Federal definition, on the definition of activities listed in the May 24 telegram which currently triggers closer scrutiny by consular officers, and welcomes new definitions of the term ''building and construction work.''

Dated: September 4, 2001.

**Mary A. Ryan,**

*Assistant Secretary for Consular Affairs, Department of State.*

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**RIN 1018–AH83**

## Endangered and Threatened Wildlife and Plants; Reopening of Public Comment Period and Notice of Availability of Draft Economic Analysis for Proposed Critical Habitat Determination for the *Chorizanthe robusta* var. *robusta* (Robust Spineflower)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of public comment period and notice of availability of draft economic analysis.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service) announce the availability of a draft economic analysis for the proposed designation of critical habitat for the robust spineflower *(Chorizanthe robusta* var. *robusta).* We are also providing notice of the reopening of the public comment period for the proposal to designate critical