

**DEPARTMENT OF HOMELAND SECURITY**  
**U.S. Citizenship and Immigration Services**

Regulatory Impact Analysis: Proposed rule, “Period of Admission and Stay for Canadian and Mexican Citizens Engaged in Professional Business Activities — TN Nonimmigrants.”

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This rule has been designated as significant under Executive Order 12866 as amended by Executive Order 13422. Thus, under section 6(a)(3)(C) of the Executive Order, USCIS is required to prepare an assessment of the benefits and costs anticipated to occur as a result of this regulatory action and provide the assessment to the Executive Office of the President, Office of Management and Budget, Office of Information and Regulatory Affairs.

**I. Introduction:**

The Department of Homeland Security is implementing a series of reforms to strengthen border security and address immigration challenges. One of the reforms is to make changes to assist Canadian and Mexican citizens who seek temporary entry as professionals to the United States as a nonimmigrant NAFTA Professional (TN). The TN status classification allows citizens of Canada and Mexico as NAFTA professionals to work in the United States. This rule is being promulgated to provide employers with a more orderly and timely labor supply and reduce burdens on TN nonimmigrants.

**II. Background.**

**A. USCIS Action.**

This rule affects Canadian and Mexican citizens who seek temporary entry to the United States as TN professionals as established by the North American Free Trade Agreement (NAFTA). This rule proposes to increase, from one year to three years, the maximum allowable period of admission and extensions of stay. The spouse and minor dependents of TN nonimmigrants will be eligible for the same periods of stay. This change will remove requirements on TN nonimmigrants and U.S. employers and facilitate the entry of eligible professionals to the United States. The rule also proposes that filing locations will be prescribed by form instructions in order to provide flexibility in program administration. Finally, this rule proposes to correct erroneous text in the TN regulations.

## **B. NAFTA Professionals – the Current TN program.<sup>1</sup>**

NAFTA created the nonimmigrant NAFTA Professional (TN) status to allow citizens of Canada and Mexico to work in the United States if they met the following conditions:

- Citizen of Canada or Mexico;
- Profession is on the NAFTA list;
- Position in the U.S. requires a NAFTA professional;
- Applicant is to work in a prearranged full-time or part-time job, for a U.S. employer or entity;
- Self employment is not permitted;
- Applicant has the qualifications of the profession.

The TN status holder's employer in the U.S. must provide the applicant a "Letter of Employment in the United States" indicating that the position requires a person consistent with NAFTA. Upon application for a visa at a U.S. consular office, in the case of Mexican professionals, or at the port of entry in the case of Canadian nationals, the applicant must present evidence of professional employment and plans to be employed in prearranged business activities for a U.S. employer or entity at a professional level full-time. An employment letter or contract providing a detailed description of the business activities must be provided from the U.S. or foreign employer meeting the requirements for a TN status application.

A U.S. employer may elect to file Form I-129, Petition for a Nonimmigrant Worker, ("Form I-129") with USCIS, including a request for change of status for beneficiary, plus a fee. TN status is sometimes referred to as a TN visa. However, a Canadian does not formally request a TN visa at a U.S. consulate, thus it is not a visa. The spouse and unmarried minor children of the principal applicant are entitled to derivative status (called TD visa), but they are unable to accept employment in the United States. USCIS Form I-539, Application to Extend/Change Nonimmigrant Status, ("Form I-539") is used by dependents filing for TD status.

## **C. Recent Activity.**

In fiscal year 2006, 74,098 NAFTA professionals with TN status and 17,321 individuals with TD derivative status were allowed entry into the United States. In fiscal years 2005 and 2004, TN entrants numbered 65,010 and 66,219, and TD recipients numbered 14,222 and 12,635, respectively.<sup>2</sup>

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<sup>1</sup> U.S. Department of State, Bureau of Consular Affairs, [http://travel.state.gov/visa/temp/types/types\\_1274.html#1](http://travel.state.gov/visa/temp/types/types_1274.html#1)

<sup>2</sup> See, Temporary Admissions of Nonimmigrants to the United States: 2006, Nonimmigrant Admissions (I-94 Only) by Class of Admission: Fiscal Years 2004 to 2006. On line at [http://www.dhs.gov/xlibrary/assets/statistics/publications/NI\\_FR\\_2006\\_508\\_final.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/NI_FR_2006_508_final.pdf).

Nationals of Mexico, having been granted a TN or TD visa by the U.S. Department of State (DOS) and nationals of Canada who are outside the United States apply for initial TN admission at a U.S. port of entry with U.S. Customs and Border Protection (USCBP) Inspectors. An employer wishing to employ a NAFTA professional who is present in the United States must use Form I-129 to petition for the employee to receive TN classification. Only about 10 percent of NAFTA professionals receive TN status through the filing of a petition with USCIS. Table 1 below summarizes the number of petitions for TN workers received by USCIS and the number approved during the most recent 3 fiscal years (October 1 to September 30).<sup>3</sup>

<i>Filings</i>	Canada	Mexico	<i>Approvals</i>	Canada	Mexico
Fiscal Year 2005	5664	672		5653	638
Fiscal Year 2006	6871	1133		4579	817
Fiscal Year 2007	7687	1518		8909	1553
AVERAGE	6741	1108		6381	1003

Table 2 below summarizes the number of petitions for TD status submitted for relatives of TN professionals received by USCIS and the number approved during fiscal year 2007. As shown in the table, only about 11 percent of the annual requests for TD status are to change status. The remainder are from those in TD status requesting another year.

	Applications	TD approvals
Extension of stay	1,350	2,186 <sup>4</sup>
Change of status	145	252
Total	1,495	2,438

### **III. The Problem Being Addressed.**

This proposed rule is intended to improve the administration of the TN program and make it more flexible and attractive to Canadian and Mexican professionals and employers in the United States. By removing requirements on TN employees and their U.S. employers USCIS will further the intent of NAFTA to facilitate the entry of eligible professionals to the United States. Many TN status holders have been here for several years and most TN status holders renew their status yearly. This requires the alien to submit a letter from his or her immediate supervisor stating the alien's position, salary and length of contract and other similar information. The alien may also have to go physically through a border crossing point and be subjected to an interview. Also, sponsoring employers must spend a considerable amount of time and effort involving

<sup>3</sup> USCIS Form I-539, Application To Extend/Change Nonimmigrant Status, is used by TN dependents filing separately for TD status. No data is available for the number of TD nonimmigrants filing separately.

<sup>4</sup> Multiple beneficiaries (e.g., wife and child) are allowed per application.

letters, evidence of previous admissions or extensions, and disclosure of financial information to USCIS. TN nonimmigrants and their employers view this process as overly burdensome.<sup>5</sup>

#### **IV. TN Program Changes Proposed by this Rule.**

This rule proposes to ease administrative burdens on TN nonimmigrants, their dependents, U.S. employers, and U.S. entities by increasing the period of time granted to a TN nonimmigrant upon admission or pursuant to a timely filed request for extension of stay from a maximum of one year to a maximum of three years. The proposed rule would also permit a TN nonimmigrant to apply for admission at a designated port-of-entry for a period of time that extends beyond the date of original admission for up to three years.

#### **V. Impacts of the Proposed Changes.**

##### **A. Expected Effects on Volume.**

It is difficult to accurately estimate the volume impacts of this proposed rule, however, it is reasonable to assume that the number of petitions submitted or approved will increase somewhat. This analysis estimates a moderate 5 percent increase in the number of persons wanting to enter the United States in TN status after this rule is finalized and the benefits it entails become well known in NAFTA countries. Based on recent nonimmigrant employee statistics, a 5 percent increase would add 3,500 TN nonimmigrants and 720 TD nonimmigrants entering the United States per year.

##### **1. Recent Trends.**

The number of petitions filed with USCIS for TN status has averaged 6,741 for Canadian professionals and 1,108 for Mexican professionals in the most recent three fiscal years. Filings of Form I-129 for TN professionals over the past 3 years has increased significantly. Filings for Canadian professionals in fiscal year 2006 were 21 percent higher than those in fiscal year 2005, and fiscal year 2007 filings were 12 percent higher than in fiscal years 2006. For Mexican professionals, filings increased 69 percent between fiscal years 2005 and 2006, and another 34 percent in fiscal year 2007. Between fiscal years 2005 and 2004 TD status requests increased by 13 percent, and between 2005 and 2006 they increased 22 percent.

##### **2. Predicted Volume.**

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<sup>5</sup> Mettler, Angela, *Abundant opportunities seen; Canada native Leigh Shillington calls the U.S. home*, Jul. 2, 2006, Aberdeen Am. News (SD) A6. (quoting TN status holder, “. . . paperwork is quite intensive.”).

The mix of professionals receiving TN status at a port of entry or consulate through USCBP or DOS, versus through petitions filed with USCIS, is expected to remain rather constant despite changes proposed by this rule. Also, regardless of this rule, TN status filings in fiscal year 2008 for Canadian professionals are expected to continue to increase by about 15 percent and for Mexican TN employees by about 50 percent, based on recent trends. Therefore, 8,841 petitions for TN status could be expected for Canadian professionals and 2,277 for Mexican professionals in fiscal year 2008, irrespective of this rule. In the first years this rule takes effect, TN petition filing volume for USCIS for Canadian professionals is estimated at approximately 9,200 per year and for Mexican professionals at approximately 2,400. TD status requests are expected to increase by about 20 percent to roughly 1,700 applications and 2,900 persons per year.

### **3. Number of petitions in out years.**

New employee or extension of stay. Only 13 percent of all Form I-129 filings received from Canadian professionals and 42 percent of those from Mexican professionals in the most recent three fiscal years have been new entrants in that year, as opposed to repeat entrants or petitions to renew status. Based on that trend, only 1,920 of the projected 9,200 petitions projected from Canadian professionals and 1,030 of the 2,400 projected from Mexican professionals in the year following this rule would be for new TN status requests. The remainder are requests for extension of status for another year.

Almost all TN nonimmigrants are expected to request approval for the maximum stay of three years allowed under this proposed rule. On an annual basis, the longer stay provisions will obviously reduce the number of employers petitioning for TN employees and the number of employees receiving TN status in future years, other determinants remaining the same. As indicated above, anecdotal evidence indicates that most TN professionals stay in the United States for as long as they are employed in an eligible position. It is presumed that tendency will continue. Consequently, in the second full year after this rule takes effect, since most TN professionals will have been approved for 3 years of status, application volume is expected to drop to about 1,200 for Mexican professionals and 2,000 for Canadian professionals, based on the recent data on the number of new requests for TN status. New TD status requests are expected to number about 340 applications for 600 relatives in that year. The newly allowed 3 year stay means that USCBP and DOS will also see drops in the annual number of TN applications they are required to process in Mexico and Canada. Since almost all TN applicants will request and stay for the maximum allowable three year period, this rule may result in consistent increases and decreases in TN application filing volume running in three year cycles following the effective date of

the change. However, other economic and employment trends should modulate filing volume and, after a few years, filings should be a predictable mix of persons requesting TN status for the first time and those filing to renew their status. If application volume modulates within 5 years, and the changes in this rule result in a consistent 5 percent increase in the popularity of the TN program, the mix of petitions at that time would be about 7,000 total TN filings per year, with about 3,800 renewals and 3,200 new applicants. This is less than the 7,800 TN filings per years that USCIS has averaged over the past three fiscal years. Form I-539 filings for TD status are expected to number about 700 for 1,300 relatives per year.<sup>6</sup>

## **B. Qualitative Impacts.**

Stable work force. The increase in the initial period of admission, extension of stay, and readmission at the border is expected to reduce costs for employers and the TN status holders by reducing the potential for an interruption of employment due to foreign travel requirements or delays in annual processing times for extensions. This change is expected to directly contribute to the stability of the work force for a specific firm by making the option of hiring an available TN professional more attractive and affordable. It will also contribute to a more stable and predictable workforce nationwide by allowing TN professionals to stay in the United States for a longer initial term. It has been shown that countries are more productive when its workforce has a high proportion of longer-tenured workers and that the benefits of hiring foreign employees increases when they are professional skilled employees such as those represented by participants in the NAFTA professional nonimmigrant program.<sup>7</sup>

Regulatory consistency. The extended initial period of admission, stay, and readmission at the border from one year to three years will make TN status periods of admission (or extension of stay) the same as for other highly skilled nonimmigrant categories such as H-1B. This will make the TN nonimmigrant classification a workable alternative for certain Canadian and Mexican professionals and U.S. employers now using other, possibly more burdensome, alien employment programs.

Reciprocal trade impacts. This proposal may encourage other NAFTA signatories to reciprocate by effecting similar liberalizing measures with respect to citizens of the United States seeking admission to their countries under the NAFTA.

## **C. Costs.**

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<sup>6</sup> Similar impacts can be expected on USCBP and DOS filing volume.

<sup>7</sup> Borjas, George J. "The Economic Benefits From Immigration," 9 J. Econ. Perspectives 1995. From National Bureau of Economic Research, Inc. on line at <http://www.nber.org/papers/w4955.v5.pdf>.

## 1. USCIS Fees.<sup>8</sup>

USCIS collects a fee of \$320 for every Form I-129<sup>9</sup> and \$300 for every I-539 submitted. TN status is also eligible for USCIS Premium Processing, which requires petitioners to file Form I-907, Request for Premium Processing Service, (“Form I-907”) and a fee of \$1,000.<sup>10</sup> The table below shows the number of petitions received by USCIS that requested and paid for Premium Processing in the past 3 fiscal years. The data show that, over the past three fiscal years, 25.2 percent of Canadian nationals and 41 percent of Mexican nationals requesting TN status have opted for Premium Processing.

### ***PREMIUM PROCESSING REQUESTS***

Filings in FY05

	TN1	TN2
TOTAL	5,664	672
PP	992	259
%PP	17.5	38.5

Filings in FY06

	TN1	TN2
TOTAL	6,871	1,133
PP	1,727	472
%PP	25.1	41.7

Filings in FY07

	TN1	TN2
TOTAL	7,687	1,518
PP	2,535	649
%PP	33.0	42.8

This proposed rule is not expected to change the combination of Premium Processing requests relative to basic fee filings. Thus USCIS projects this percentage to be consistent in the next few years. As estimated in section V.A. above, for first-year filing volume would indicate that 2,300 Canadian professionals and 980 Mexican professionals will request Premium Processing, and 1,400 and 600 in the years following.

Year 1. In the first year after this rule takes effect the total annual fees projected to be collected from Mexican and Canadian professionals requesting TN status is as follows:

Canadian professionals — 9,200 petitions x \$320 =	\$2,944,000
Canadian professionals — 2,300 petitions x \$1000 =	\$2,300,000
Mexican professionals — 2,400 petitions x \$320 =	\$ 768,000

<sup>8</sup> See, 8 CFR part 103.7(b) *et. seq.*

<sup>9</sup> See 8 CFR part 214.6 and [http://travel.state.gov/visa/temp/types/types\\_1274.html#5](http://travel.state.gov/visa/temp/types/types_1274.html#5).

<sup>10</sup> Processing of certain employment-based petitions and applications in 15 calendar days. Applicable to USCIS petitions only. Delays at U.S. consulates cannot be overcome through additional fees, but must be taken into consideration prior to filing.

Mexican professionals — 980 petitions x \$1000 =	\$ 980,000
TD status requests — 1,700 applications x \$300 =	\$ 510,000
<u>TOTAL</u>	<u>\$7,502,000</u>

The increase in initial filing volume expected to be caused by this rule results in about \$375,000 more in collections in the first year above what would be collected absent these proposed changes.

Normal volume. After the three year stay provision takes effect, application volume will decrease substantially in the second year to an approximately 3,200 TN filings and 340 TD filings. However, filing volume is expected to even out in a few years as indicated above. A typical year's filings would result in the following USCIS fees:<sup>11</sup>

Canadian professionals — 5,500 petitions x \$320 =	\$1,760,000
Canadian professionals — 1,400 petitions x \$1000 =	\$1,400,000
Mexican professionals — 1,500 petitions x \$320 =	\$ 288,000
Mexican professionals — 600 petitions x \$1000 =	\$ 600,000
TD status requests — 700 applications x \$300 =	\$ 210,000
<u>TOTAL</u>	<u>\$4,738,000</u>

Therefore, this rule will result in almost \$2.4 million in annual fee savings for TN applicants.

## **2. Department of State and U.S. Customs and Border Protection Fees.**

DOS charges each Mexican TN nonimmigrant a Nonimmigrant visa application processing fee of \$100. USCBP collects a \$50 fee for a request to be classified as a NAFTA professional TN from Canadian nationals. While the changes made by this rule do not affect any DOS or CBP process or regulation, the changes proposed by USCIS will result directly in increased fee collections by DOS and CBP in the first year.

An additional 4,220<sup>12</sup> people per year are expected to request entry into the United States as a result of this rule. Of those, about 16 percent are expected to be from Mexico, consistent with recent results. This will result in additional fees of about \$67,000 being collected by DOS from Mexican professionals. An additional \$177,000 is expected to be collected from Canadian professionals by USCBP. Thus a total of \$244,000 in new Federal nonimmigrant application fees are expected to be generated by this proposed rule in the first year. However, a reduction in DOS and USCBP fee collections is expected in future years because TN and TD status holders will not have to renew their status each year.

<sup>11</sup> Assuming fees stay as they are.

<sup>12</sup> 5 percent increase over average of 2004, 2005, and 2006 entry requests.

### 3. Paperwork Burden.

The public reporting burden for Form I-129 is estimated at 2 hours and 45 minutes, for Form I-907 at 30 minutes, and for Form I-539 at 45 minutes per response, including the time for reviewing instructions, completing and submitting the form. Requiring TN and TD status renewals every three years instead of every year will reduce Form I-129 filings, Form I-907 filings, and Form I-539 filings per year and the paperwork burden on the public accordingly.

A projected typical year will be 7,000 total Form I-129 filings (versus about 11,000 absent this change) 2,000 Form I-907 filings (versus 3,100 absent this change) and 700 Form I-539 filings per year, compared to 1,600 if this rule is not finalized. The resulting difference in hours of burden on the public will be as follows:

*Current baseline (burden that would be imposed without this rule):*

I-129s:	11,000 x 2.75 hours =	30,250
I-907s:	3,100 x .5 hours =	1,550
I-539s:	<u>1,600 x .75 hours =</u>	<u>1,200</u>
TOTAL:		33,000 hours

*Burden imposed after this rule:*

I-129s:	7,000 x 2.75 hours =	19,250
I-907s:	2,000 x .5 hours =	1,000
I-539s:	<u>700 x .75 hours =</u>	<u>525</u>
Total:		20,775 hours

*Difference:* 12,225 hours.

According to the United States Department of Labor Bureau of Labor Statistics estimates, employer costs for employee compensation averaged \$27.82 per hour worked in March 2007.<sup>13</sup> Valuing the effort expended per hour at that rate, this rule will save the public \$340,000 in information collection costs.

### 4. Non-quantified public cost.

Some sources have expressed concern about the effects on U.S. native white-collar worker compensation of allowing NAFTA professionals to work in the United States in TN status.<sup>14</sup> Nonetheless, data show that, while the number of NAFTA professional nonimmigrants has increased substantially over time, personal and family income and other measures of general well-being in the

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<sup>13</sup> See Employer Costs for Employee Compensation, at <http://data.bls.gov/PDQ/servlet/SurveyOutputServlet;jsessionid=f03023a343e1tS02S3FS>

<sup>14</sup> See, for example, *Professionals*, New American 13, April 16, 2007.

United States have continued to outstrip inflation and measures of general concern during that same period.<sup>15</sup> Further, most economists believe that skilled nonimmigrant employees increase national income to a greater extent than what it costs to employ them.<sup>16</sup>

#### **4. Legal fees.**

Extending initial stay to 3 years will reduce legal fees greatly in the two years following this rule taking effect. The legal fees that an immigration lawyer typically charges for assistance in obtaining TN status ranges from \$2,500 to \$4,000 per petition for the initial status, and \$1,500 to \$2,500 for the annual renewal of status.<sup>17</sup> Over a three year period the average cost per year of the initial status and two renewals is about \$2,400. Whereas, with the 3-year initial stay, the average attorney fees per year will be \$1,750, for an average annual savings of \$650 petition.

#### **C. Government Costs.**

This rule reduces costs to the government. Adjudication of TN status once every three years instead of every year, will reduce the resources expended by USCIS in adjudicating these requests. There were 1,257 more TN petitions approved by USCIS in fiscal year 2007 than were submitted, which indicates a processing backlog. This backlog will decrease as this rule frees up the time for affected employees to more timely adjudicate requests for TN status. Thus, government costs associated with TN status processing will decrease. However, USCIS aggregate costs are not expected to change since these employees' efforts will be turned to eliminating the processing backlogs of other application and petition types.

### **VI. Small Entity Effects.**

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 – 612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (P.L. 104-121), (“RFA”) requires Federal agencies to conduct a regulatory flexibility analysis which describes the impact of the proposed rule on small entities whenever an agency is publishing a notice of proposed rulemaking such as this.

#### **A. Regulated Entities.**

The TN status applies to Accountants, Architects, Computer Systems Analysts, and a long list of eligible professions. These positions cover a wide array of

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<sup>15</sup> See, *Income Statistics*, U.S. Census Bureau, at <http://www.census.gov/hhes/www/income/incomestats.html#cps>.

<sup>16</sup> Borjas, *supra*.

<sup>17</sup> Consultation with firms that focus in this area of immigration law practice.

industries.<sup>18</sup> According to the United States Department of Labor, of participants in the employment-based visa program, about 95 percent are small entities as defined by the Small Business Administration (SBA) Small Business Size Regulations at 13 CFR part 121. However, USCIS does not have sufficient data or the resources necessary to gather the data necessary to determine all of the industries that could be affected by this change. Nonetheless, this rule proposes changes to the TN status program designed to directly benefit participating employers and employees. All firms are expected to view the impact of this rule as beneficial.

### **B. Significant Impact.**

This rule will reduce compliance costs on the regulated industries. As stated above, this rule will save the public \$340,000 in information collection costs, almost \$2.4 million in annual fees, and reduce DOS and USCBP fee collections in future years because TN and TD status holders will not have to renew their status each year, for an average savings of about \$400 per petitioner.<sup>19</sup> Also, each firm will save \$650 each year on legal fees associated when they do not have to pay for the annual renewal of status for a total average savings per person of \$1,050 per year. There are no provisions in this rule that add compliance costs. Therefore, USCIS can certify that this rule will not have a significant economic impact on a substantial number of small entities.

## **VII. Conclusions.**

DHS has determined that this rule decreases the costs imposed by the TN nonimmigrant program on the government as well as the public. The changes made by this rule will result in more satisfaction with the NAFTA professional program among the participating employers and the TN status holders by increasing program flexibility and loosening time and travel restrictions. The effect is an increase in the number of TN status petitions filed with and approved by USCIS. A small economic benefit is expected from the increase available of scarce workers for U.S. employers in particular fields and industries.

This rule will result in fees collected by USCIS for filings associated with TN status decreasing by approximately \$2.4 million per year as a result of this rule. In addition, paperwork burden costs will decrease on the public by about 12,225 hours and \$340,000. Eventually, DOS and USCBP annual fee collections from TN nonimmigrants will also decrease as a result of this proposed rule.

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<sup>18</sup> See, North American Free Trade Agreement, Part Five: Investment, Services And Related Matters, Chapter Sixteen: Temporary Entry for Business Persons, Appendix 1603.D.1.

<sup>19</sup> \$2,740,000/7,000 = \$391.