This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are key to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

8 CFR Parts 103, 212, 214, and 274a
[CBP Dec. 22–10]
RIN 1651–A942

Conforming Amendments Related to Temporary Entry of Business Persons Under the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA)

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Homeland Security (DHS) regulations relating to the temporary entry of Canadian and Mexican citizen business persons into the United States by replacing references to the North American Free Trade Agreement (NAFTA) with references to the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA). The USMCA superseded NAFTA and its related provisions on July 1, 2020. Chapter 16 of the USMCA generally maintains the same treatment as provided under NAFTA with respect to the temporary entry of Canadian and Mexican citizen business persons, so substantive changes to the regulations are not needed. This document simply updates the relevant regulations to replace all references to NAFTA, including references to its appendices and annexes, with the corresponding USMCA references. This document also makes other minor, non-substantive conforming amendments and stylistic changes and corrects typographical errors.

DATES: This final rule is effective on July 11, 2022.

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SUPPLEMENTARY INFORMATION:

I. Background

On November 30, 2018, the Office of the United States Trade Representative (USTR) signed the “Protocol Replacing the North American Free Trade Agreement with the Agreement Between the United States of America, the United Mexican States, and Canada” (the Protocol) to replace the North American Free Trade Agreement (NAFTA).1 The Agreement Between the United States of America, the United Mexican States (Mexico), and Canada (the USMCA) 2 is attached as an annex to the Protocol and was subsequently amended to reflect certain modifications and technical corrections in the “Protocol of Amendment to the Agreement Between the United States of America, the United Mexican States, and Canada” (the Amended Protocol), which USTR signed on December 10, 2019.

A. The USMCA and Its Effect on NAFTA


Mexico, Canada, and the United States certified their preparedness to implement the USMCA on December 12, 2019, March 13, 2020, and April 24, 2020, respectively. Pursuant to paragraph 2 of the Protocol, the USMCA was to take effect on the first day of the third month after the last signatory party provides written notification of the completion of the domestic implementation of the USMCA through the enactment of implementing legislation. As a result, the USMCA entered into force on July 1, 2020.


B. The Temporary Entry of Canadian and Mexican Citizen Business Persons

On December 30, 1993, the legacy Immigration and Naturalization Service (INS) 3 published an interim rule in the Federal Register (58 FR 69265) to implement the provisions of NAFTA by amending its regulations to establish procedures for the temporary entry of Canadian and Mexican citizen business persons into the United States. On January 9, 1998, the final rule was published in the Federal Register (63 FR 1331). Chapter 16 of the USMCA sets forth the provisions for the temporary entry of Canadian and Mexican business persons. As stated in its Statement of Administrative Action, the USMCA maintains the same treatment as provided under NAFTA for the temporary entry of business visitors, traders and investors, intra-corporate transferees, and professionals.4 Further,
Section 503 of the USMCA Implementation Act, Public Law 116–113, 134 Stat. 11, makes conforming changes to the NAFTA-specific provisions of the Immigration and Nationality Act, 8 U.S.C. 1101 et seq., in order to provide the same treatment to Canada and Mexico with respect to temporary entry as was provided under NAFTA. The USMCA does not modify or expand access to visas issued or visa classifications authorized under the INA.

II. Discussion of Amendments to Regulations

This document makes conforming amendments to title 8 of the Code of Federal Regulations (CFR) in order to reflect statutory changes made in section 503 of the USMCA Implementation Act. As the immigration-related provisions of the USMCA are substantially similar to those contained within NAFTA, substantive amendments to the regulations are not required. References to NAFTA’s immigration-related provisions are currently found in 8 CFR 103.7(d)(11), 212.1(l), 214.1(a)(2), 214.2(b)(4), 214.2(0)(2)(ii), 214.2(0)(17), 214.6, and 274a.12(b)(19). Specific changes to 8 CFR are as follows:

In 8 CFR 103.7(d)(11), 212.1(l), 214.1(a)(2), 214.2(0)(2)(ii), 214.2(0)(17), and 274a.12(b)(19), references to NAFTA are replaced with the corresponding references to the USMCA.

Similarly, in 8 CFR 214.2(b)(4), references to NAFTA, including references to its appendices and annexes, are replaced with the corresponding references to the USMCA. The word “existing” is removed from the first sentence in the introductory paragraph of § 214.2(b)(4), along with the entire second sentence of the introductory paragraph of § 214.2(b)(4), which referenced “existing requirements.” These sentences in the introductory paragraph of § 214.2(b)(4) are being amended because NAFTA Appendix A.3 (Existing Immigration Measures) and the definition of “existing” in NAFTA Annex 1608 do not appear in USMCA Chapter 16. The third sentence in the introductory paragraph of § 214.2(b)(4) is being removed because it is redundant with 8 CFR 214.2(b)(4)(ii).

Additionally, “existing” is removed from § 214.2(b)(4)(ii) to conform with the introductory and the USMCA. Other amendments include minor wording, punctuation, and stylistic changes to bring the regulations in line with the text of the USMCA, as well as corrections of typographical errors. Additionally, under NAFTA, occupations in the fields of commercial transactions, public relations and advertising, tourism, tour bus operation, and translation were all grouped together under the heading entitled, “General Service”. The USMCA moved those occupations and changed them into separate categories. To reflect this organizational change in the regulations, paragraphs (b)(4)(ii)(G)(ii) through (7) are removed from under the “General Service” heading and are set out in paragraphs (b)(4)(II) through (L). Lastly, language is added to clarify the cross-reference in paragraph (b)(4)(ii).

In 8 CFR 214.6, references to NAFTA, including references to its appendices and annexes, are replaced with the corresponding references to the USMCA. Other changes include minor wording, punctuation, formatting, and stylistic changes to bring the regulations in line with the text of the USMCA, as well to correct typographical errors.

III. Statutory and Regulatory Requirements

A. Administrative Procedure Act

Under section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), agencies generally are required to publish a notice of proposed rulemaking in the Federal Register that solicits public comment on the proposed regulatory amendments, consider public comments in deciding on the content of the final amendments, and publish the final amendments at least 30 days prior to their effective date. This rule is exempt from APA rulemaking requirements pursuant to 5 U.S.C. 553(a)(1) as a foreign affairs function of the United States because it is amending U.S. domestic regulations to conform to the immigration-related provisions of the USMCA, which is an international agreement negotiated between the United States, Mexico, and Canada.

CBP also has determined that there is good cause pursuant to 5 U.S.C. 553(b)(B) to publish this rule without prior public notice and comment procedures. This rule simply makes conforming amendments to existing DHS regulations to reflect the statutory changes made by section 503 of the USMCA Implementation Act, Public Law 116–113, 134 Stat. 11. Specifically, this rule replaces references to NAFTA with the USMCA, along with other minor, non-substantive stylistic changes. Chapter 16 of the USMCA provides the same treatment to Canada and Mexico regarding temporary entry that NAFTA provided. As a result, prior public notice and comment procedures for this rule are impracticable, unnecessary, and contrary to the public interest.

For the same reasons, a delayed effective date is not required under 5 U.S.C. 553(d)(3). The USMCA entered into force on July 1, 2020. A delayed effective date would be impractical, unnecessary, and contrary to the public interest.

B. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Rules involving the foreign affairs function of the United States are exempt from the requirements of Executive Orders 12866 and 13563. Because this rule involves a foreign affairs function of the United States by implementing a specific trilateral agreement negotiated between the United States, Mexico, and Canada, the rule is not subject to the provisions of Executive Orders 12866 and 13563.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act.

D. Paperwork Reduction Act

As there is no new collection of information required in this document, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

§ 214.2 Special requirements for admission, extension, and maintenance of status.

(b) * * *

(4) Admission of aliens pursuant to the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA). A citizen of Canada or Mexico seeking temporary entry for purposes set forth in paragraph (b)(4)(i) of this section, who otherwise meets the requirements under section 101(a)(15)(B) of the Act, including but not limited to requirements regarding the source of remuneration, shall be admitted upon presentation of proof of such citizenship in the case of Canadian applicants, and valid, unexpired entry documents such as a passport and visa, or a passport and BCC in the case of Mexican applicants. The description of the purpose for which the alien is seeking admission, and evidence demonstrating that he or she is engaged in one of the occupations or professions set forth in paragraph (b)(4)(i) of this section.

(i) Occupations and professions set forth in Section B of Appendix 1 of Chapter 16 of the USMCA—

(A) Research and design. Technical, scientific and statistical researchers conducting independent research or research for an enterprise located in the territory of another Party.

(B) Growth, manufacture, and production. (1) Harvester owner supervising a harvesting crew admitted under applicable law. (Applies only to harvesting of agricultural crops: Grain, fiber, fruit and vegetables.)

(2) Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of another Party.

(C) Marketing. (1) Market researchers and analysts conducting independent research or analysis, or research or analysis for an enterprise located in the territory of another Party.

(2) Trade fair and promotional personnel attending a trade convention.

(D) Sales. (1) Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of another Party but not delivering goods or supplying services.

(2) Buyers purchasing for an enterprise located in the territory of another Party.

(E) Distribution. (1) Transportation operators transporting goods or passengers to the United States from the...
territory of another Party or loading and transporting goods or passengers from the United States, with no unloading in the United States, to the territory of another Party. (These operators may make deliveries in the United States if all goods or passengers to be delivered were loaded in the territory of another Party. Furthermore, they may load from locations in the United States if all goods or passengers to be delivered will be delivered in the territory of another Party. Purely domestic service or solicitation, in competition with the United States operators, is not permitted.)

(2) Customs brokers performing brokerage duties associated with the export of goods from the United States to or through Canada.

(F) After-sales services. Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to the seller’s contractual obligation, performing services or training workers to perform services pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the United States, during the life of the warranty or service agreement. (For the purposes of this provision, the commercial or industrial equipment or machinery, including computer software, must have been manufactured outside the United States.)

(G) General service. Professionals engaging in a business activity at a professional level in a profession set out in Appendix 2 to Annex 16–A of Chapter 16 of the USMCA, but receiving no salary or other remuneration from a United States source (other than an expense allowance or other reimbursement for expenses incidental to the temporary stay) and otherwise satisfying the requirements of Section A to Annex 16–A of the USMCA.

(II) Commercial transactions. (1) Management and supervisory personnel engaging in commercial transactions for an enterprise located in the territory of another Party.

(2) Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of another Party.

(I) Public relations and advertising. Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.

(II) Tourism. Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of another Party. (The tour may begin in the United States; but must terminate in foreign territory, and a significant portion of the tour must be conducted in foreign territory. In such a case, an operator may enter the United States with an empty conveyance and a tour guide may enter on his or her own and join the conveyance.)

(K) Tour bus operations. Tour bus operators entering the United States:

(1) With a group of passengers on a bus tour that has begun in, and will return to, the territory of another Party.

(2) To meet a group of passengers on a bus tour that will end, and the predominant portion of which will take place, in the territory of another Party.

(3) With a group of passengers on a bus tour to be unloaded in the United States and returning with no passengers or reloading with the group for transportation to the territory of another Party.

(L) Translation. Translators or interpreters performing services as employees of an enterprise located in the territory of another Party.

(III) Occupations and professions not listed in Section B of Appendix 1 of Chapter 16 of the USMCA. Nothing in paragraph (b)(4) of this section shall preclude a business person engaged in an occupation or profession other than those listed in Section B of Appendix 1 of Chapter 16 of the USMCA from temporary entry under section 101(a)(15)(B) of the Act, if such person otherwise meets the requirements for admission as prescribed by the Attorney General.

* * * * *

8. Amend § 214.6 as follows:

a. Revise the section heading;

b. In paragraph (a), remove the words ‘North American Free Trade Agreement (NAFTA)’ and add, in their place the words ‘Agreement Between the United States of America, the United Mexican States, and Canada (USMCA);’

c. In paragraph (b):

i. In the definition for Business activities at a professional level, remove the words “Appendix 1603.D.1 of the NAFTA” and add, in their place, the words “Appendix 2 to Annex 16–A of Chapter 16 of the USMCA”;

ii. In the definition for Business person, remove “NAFTA” and add in its place “USMCA”;

iii. In the definition for Business person, remove the word “provision” and add in its place the word “supply”; and

iv. In the definition for Temporary entry, remove “NAFTA” and add in its place “USMCA”;

d. Revise paragraph (e):

e. In the heading of paragraph (d), remove the word “NAFTA” and add in its place the word “USMCA”;

f. In paragraph (d)(1), remove “NAFTA” and add in its place “USMCA”;

g. In paragraph (d)(3)(ii)(A), remove the words “Appendix 1603.D.1” and add the words “under Appendix 2 to Annex 16–A of Chapter 16 of the USMCA” after the word “applicant”; and

h. In paragraph (d)(3)(ii)(D), add a closing parenthesis after “(D)”.

i. In paragraph (e), remove “NAFTA” and add in its place, “USMCA”;

j. In paragraph (i)(2), remove “NAFTA” and add in its place “USMCA”.

The revision reads as follows:

§ 214.6 Citizens of Canada or Mexico seeking temporary entry under USMCA to engage in business activities at a professional level.

* * * * *

(c) Appendix 2 to Annex 16–A of Chapter 16 of the USMCA. Pursuant to the USMCA, an applicant seeking admission under this section shall demonstrate business activity at a professional level in one of the professions set forth in Appendix 2 to Annex 16–A of Chapter 16. The professions in Appendix 2 to Annex 16–A and the minimum requirements for qualification for each are as follows:

Appendix 2 to Annex 16–A of Chapter 16 (Annotated)

General

Accountant—Baccalaureate or Licenciatura Degree; or C.P.A., C.A., C.G.A., or C.M.A.

Architect—Baccalaureate or Licenciatura Degree; or state/provincial license.

Computer Systems Analyst—Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience.

Disaster Relief Insurance Claims Adjuster—claims adjuster employed by an insurance

1 A business person seeking temporary employment under this Appendix may also perform training functions relating to the profession, including conducting seminars.

2 The term “state/provincial license” and “state/provincial/federal license” mean any document issued by a state, provincial, or federal government, as the case may be, or under its authority, but not by a local government, that permits a person to engage in a regulated activity or profession.

3 “Post-Secondary Diploma” means a credential issued, on completion of two or more years of postsecondary education, by an accredited academic institution in Canada or the United States.

4 “Post-Secondary Certificate” means a certificate issued, on completion of two or more years of postsecondary education at an accredited institution, by the federal government of Mexico or a state government in Mexico, an academic institution recognized by the federal government or a state government, or an academic institution created by federal or state law.
company located in the territory of a Party, or an independent claims adjuster)—Baccalaureate or Licenciatura Degree, and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years experience in claims adjustment and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims.

- Economist—Baccalaureate or Licenciatura Degree.
- Engineer—Baccalaureate or Licenciatura Degree; or state/provincial license.
- Forester—Baccalaureate or Licenciatura Degree; or state/provincial license.
- Graphic Designer—Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience.
- Hotel Manager—Baccalaureate or Licenciatura Degree in hotel/restaurant management; or Post-Secondary Diploma or Post-Secondary Certificate in hotel/restaurant management, and three years experience in hotel/restaurant management.

- Industrial Designer—Baccalaureate or Licenciatura Degree in industrial design; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience.
- Interior Designer—Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience.
- Land Surveyor—Baccalaureate or Licenciatura Degree; or state/provincial/federal license.
- Landscape Architect—Baccalaureate or Licenciatura Degree.
- Lawyer (including Notary in the province of Quebec)—L.L.B., J.D., LL.L., B.C.L., or Licenciatura Degree (five years); or membership in a state/provincial bar.
- Librarian—M.L.S. or B.L.S. (for which another Baccalaureate or Licenciatura Degree was a prerequisite).
- Management Consultant—Baccalaureate or Licenciatura Degree; or equivalent professional experience as established by statement or professional credential attesting five years experience as a management consultant; or five years experience in a field of specialty related to the consulting agreement.
- Mathematician (including Statistician)—Baccalaureate or Licenciatura Degree.
- Range Manager/Range Conservationist—Baccalaureate or Licenciatura Degree.
- Research Assistant (working in a post-secondary educational institution)—Baccalaureate or Licenciatura Degree.
- Scientific Technician/Technologist—Possession of (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics; and (b) the ability to solve practical problems in any of those disciplines, or the ability to apply principles of any of those disciplines to basic or applied research.

- Social Worker—Baccalaureate or Licenciatura Degree.
- Sylviculturist (including Forestry Specialist)—Baccalaureate or Licenciatura Degree.
- Technical Publications Writer—Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience.
- Urban Planner (including Geographer)—Baccalaureate or Licenciatura Degree.
- Vocational Counselor—Baccalaureate or Licenciatura Degree.
- Medical/Allied Professionals
  - Dentist—D.D.S., D.M.D., Doctor of Odontology or Doctor of Cirugia Dental; or state/provincial license.
  - Dietitian—Baccalaureate or Licenciatura Degree; or state/provincial license.
  - Medical Laboratory Technologist (Canada)/Medical Technologist (Mexico and the United States)—Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience.
  - Plant Breeder—Baccalaureate or Licenciatura Degree.
  - Poultry Scientist—Baccalaureate or Licenciatura Degree.
  - Soil Scientist—Baccalaureate or Licenciatura Degree.
  - Zoologist—Baccalaureate or Licenciatura Degree.
- Teacher
  - College—Baccalaureate or Licenciatura Degree.
  - Seminary—Baccalaureate or Licenciatura Degree.
  - University—Baccalaureate or Licenciatura Degree.

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PART 274A—CONTROL OF EMPLOYMENT OF ALIENS

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


§ 274a.12 [Amended]

10. Amend § 274a.12, in paragraph (b)(19), by removing the words "North American Free Trade Agreement (NAFTA)" and adding in their place the words "Agreement Between the United States of America, the United Mexican States, and Canada (USMCA)".

Alejandro N. Mayorkas,

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* The term "Biologist" includes the profession of Plant Pathologist.