

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 214 and 248

[CIS No. 2429-07; DHS Docket No. USCIS-2007-0056]

RIN 1615-AB64

Period of Admission and Stay for Canadian and Mexican Citizens Engaged in Professional Business Activities—TN Nonimmigrants

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Proposed rule.

SUMMARY: This rule affects certain Canadian and Mexican citizens who seek temporary entry as professionals to the United States pursuant to the TN classification, as established by the North American Free Trade Agreement (NAFTA or Agreement). TN nonimmigrants are Canadian or Mexican citizens who obtain temporary entry into the United States as business persons to engage in business activities at a professional level. This rule proposes to increase the maximum allowable period of admission for TN nonimmigrants from one year to three years, and allow otherwise eligible TN nonimmigrants to be granted an extension of stay in increments of up to three years instead of the current maximum of one year. TD nonimmigrants (“NAFTA Dependent”) are the spouses and unmarried minor children of TN nonimmigrants. TD nonimmigrants who would otherwise be eligible for TD nonimmigrant status would be eligible to be admitted and seek extensions for the same period of time as the TN principal. The purpose of this narrow change is to remove certain administrative requirements on TN nonimmigrants and U.S. employers and U.S. entities, thereby making this nonimmigrant classification more attractive to eligible professionals and their U.S. employers. The rule also proposes to remove filing location requirements from the TN regulations

and instead provides that such locations will be prescribed by form instructions in order to provide more flexibility in program administration, as well as making certain technical modifications to eliminate outdated references to prior requirements. Finally, this rule proposes to revise the text of 8 CFR 214.1(a)(2) and (c)(1) and 8 CFR 248.3 by replacing the outdated term “TC” (the previous classification given to Canadian workers under the 1989 Canada-United States Free Trade Agreement) with “TN.”

DATES: Written comments must be submitted on or before June 9, 2008.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS-2007-0056 by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* You may submit comments directly to USCIS by e-mail at rfs.regs@dhs.gov. Include DHS Docket No. USCIS-2007-0056 in the subject line of the message.

- *Mail:* Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS-2007-0056 on your correspondence. This mailing address may also be used for paper, disk, or CD-ROM submissions.

- *Hand Delivery/Courier:* U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. Contact Telephone Number is (202) 272-8377.

FOR FURTHER INFORMATION CONTACT: Patricia Jepsen, Adjudications Officer, Business and Trade Services, Office of Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone (202) 272-8410.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. U.S. Citizenship and Immigration Services (USCIS) also

invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to USCIS in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS-2007-0056. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to <http://www.regulations.gov>. Submitted comments may also be inspected at the Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529.

II. Background

A. The North American Free Trade Agreement

On December 17, 1992, the United States, Canada and Mexico signed the North American Free Trade Agreement (NAFTA or Agreement). On December 8, 1993, the President signed into law the North American Free Trade Agreement Implementation Act, Public Law 103-182 (NAFTA Implementation Act). Among other things, the NAFTA Implementation Act created a new section 214(e) of the Immigration and Nationality Act, as amended (INA), which created the TN classification for nonimmigrant professionals seeking admission to the United States under NAFTA. Almost immediately following the enactment of this law, on January 1, 1994, NAFTA went into effect, thereby creating one of the largest free trade areas in the world. Chapter 16 of NAFTA provides for the temporary entry of qualified business persons from each of the countries that are signatories to the Agreement. This chapter of NAFTA establishes four categories of business persons who may be allowed temporary entry into the territory of another NAFTA party. The four categories are: (1) Business visitors; (2) traders and investors; (3) intra-company

transferees; and (4) professionals. As discussed below, this proposed regulation would change certain regulatory provisions dealing with the fourth category, NAFTA professionals, by amending 8 CFR 214.6.

B. The TN Nonimmigrant Classification

The TN nonimmigrant classification permits qualified Canadian and Mexican citizens to seek temporary entry into the United States as business persons to engage in business activities at a professional level. 8 CFR 214.6(a). The specific occupations which qualify for the TN classification are set forth in Chapter 16 of NAFTA, Annex 1603, Appendix 1603.D.1., and are reproduced at 8 CFR 214.6(c). Among the types of professionals who are eligible to seek admission as TN nonimmigrants are certain accountants, engineers, lawyers, pharmacists, scientists, and teachers. The spouses and unmarried minor children of TN nonimmigrants, if otherwise admissible, may be granted TD nonimmigrant classification. 8 CFR 214.6(j). Although neither the NAFTA Implementation Act nor the INA prescribes a maximum period of admission to the United States for TN nonimmigrants and their dependents, USCIS regulations currently provide that TN nonimmigrants may be admitted to the United States for a period not to exceed one year. 8 CFR 214.6(e).

Currently, TN nonimmigrants generally may be readmitted to the United States for the remainder of the period authorized on their Form I-94, provided that the TN nonimmigrant's originally-intended professional activity and employer(s) have not changed. 8 CFR 214.6(g)(1) and (2). TN nonimmigrants also may apply to U.S. Citizenship and Immigration Services (USCIS) for admission for a period of time that extends beyond the date of their original terms of admission at any U.S. port-of-entry. 8 CFR 214.6(h)(2). TN professionals also may, upon application to USCIS, be granted extensions of stay for a maximum period of one year. 8 CFR 214.6(h)(1). The spouse and unmarried minor children of TN professionals, if otherwise eligible, may be admitted in TD classification for the period of time granted to the TN professional, and may seek extensions of stay for the same period as the TN professional.

III. Changes Made by This Rule

A. Increased Time of Admission, Extension of Stay, and Readmission at the Border

TN nonimmigrants are not subject to any maximum period of stay, as long as they continue to be engaged in TN business activities for a U.S. employer or U.S. entity at a professional level, provided they maintain the requisite nonimmigrant intent to depart the United States at the conclusion of their authorized periods of stay. USCIS regulations, however, require that such persons, if they wish to remain in the United States beyond the period of their initial admission, either seek readmission in TN status or apply for an extension of stay no less frequently than annually. 8 CFR 214.6(h). This requirement involves, at a minimum, the annual submission of documentation and payment of the filing fees specified in 8 CFR 103.7. This proposed rule would ease administrative burdens on TN nonimmigrants (and their TD dependents) as well as on the 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 at 8 CFR 214.6(h)(2) 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.

The proposed rule does not alter any otherwise applicable evidentiary requirements, change existing filing fee requirements as set forth in 8 CFR 103.7, expand the maximum period of stay in TN status which is already indefinite, or expand the principle of "dual intent" to TN nonimmigrants or their TD dependents.¹ Instead, the proposed changes would increase the initial period of admission, extension of stay, and readmission at the border; provide a cost and resource savings for employers and nonimmigrants alike; and reduce the potential for an interruption of employment due to foreign travel requirements or delays in processing times, thereby contributing to a more stable and predictable

¹ The dual intent doctrine holds that even though a nonimmigrant visa applicant has previously expressed a desire to enter the United States as an immigrant—and may still have such a desire—that does not of itself preclude the issuance of a nonimmigrant visa to him nor preclude his being a bona fide nonimmigrant. *Matter of H-R*, 7 I&N Dec. 651, 654 (INS Reg. Comm'r 1958). See also INA section 214(h) (limiting dual intent to certain H, L, and V nonimmigrants); 8 U.S.C. 1184(h).

workforce. By reducing administrative costs and burdens, these changes are expected to make the TN nonimmigrant classification more attractive to professionals and their U.S. employers. In addition, by extending the initial period of admission, extension of stay, and readmission at the border from one year to three years, the TN nonimmigrant classification will mirror the periods of admission (or extension of stay) for other highly skilled nonimmigrant categories such as H-1B, thus making the TN nonimmigrant classification a workable alternative to those other high-skill categories for certain Canadian and Mexican professionals. Finally, 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.

B. Changes to TD Spouses and Unmarried Minor Children

In a change from the current regulation, the proposed rule would explicitly state that spouses and unmarried minor children of TN professionals, if otherwise eligible, may be admitted or readmitted in TD classification for the period of time granted to the TN professional, and may seek extensions of stay or change of nonimmigrant status for the same period as the TN professional. An application for change of status or extension of stay for a TD spouse or unmarried minor child would be filed on Form I-539.

C. Filing Location

This rule also proposes to eliminate references to specific filing locations in current 8 CFR 214.6(h)(1). It is not necessary for USCIS to indicate in the Code of Federal Regulations where documents will be accepted. Further, fluctuations in volume, shifting workload needs, and benefits processing modifications may make variation of petition and application filing locations necessary in order to better use USCIS resources and serve customers. Codification of filing locations restricts USCIS' ability to address changed circumstances. Filing locations will still be found on USCIS forms and the USCIS Web site. Customers may also call the USCIS customer service line for information on where to file their documents, or may call the agency listing in the government resources pages of their local telephone directories. Moreover, as has been past practice, USCIS will provide the public with an adequate transition period to adapt to any changes to the current

filing location (the Vermont Service Center), should USCIS, in the future, find it necessary to change the filing location(s) for TN applications.

D. Clarification and Correction

This rule also proposes to revise the text in 8 CFR 214.6(g) and (h) to make them more readable and would revise the text of 8 CFR 214.1(a)(2) and (c)(1) and 8 CFR 248.3 by replacing the outdated term "TC" with "TN." "TC" was the previous classification given to Canadian workers entering under the terms of the Canada-United States Free Trade Agreement, which went into effect on January 1, 1989 and was subsequently replaced by NAFTA. NAFTA created a new nonimmigrant classification, "TN," which includes both Canadian and Mexican workers. In addition, USCIS proposes to delete paragraph (k)(2) from section 214.6. This paragraph relates to the now obsolete requirement of a petition for Mexican TN admissions. The sunset of this provision was announced in 69 FR 11287.

The rule also proposes to add a phrase at the end of 214.6(k)(3) to make it clear that, although the Director may not deny a petition, suspend an approved petition, or deny entry to an applicant for TN status based upon a strike or labor dispute involving a work stoppage of workers in progress that has not been certified under (k)(1), the examining officer must consider all relevant facts in determining an alien's eligibility for TN classification.

IV. Regulatory Requirements

A. Regulatory Flexibility Act

DHS has reviewed this proposed rule in accordance with the Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), 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 under 5 U.S.C. 553(b). A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This rule will reduce compliance costs on the regulated industries. This rule will save the public in information collection costs, USCIS fees, and legal

costs, because TN and TD status holders will not have to renew their status each 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.

B. 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.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. 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 United States-based companies to compete with foreign-based companies in domestic and export markets.

D. Executive Order 12866 (Regulatory Planning and Review)

This rule has been designated as a "significant regulatory action" by the Office of Management and Budget (OMB) under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, an analysis of the economic impacts of this rule has been prepared and submitted to the Office of Management and Budget (OMB) for review. 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 expected effect is an increase in the number of TN status petitions filed with and approved by USCIS. A small economic benefit may result from the increased availability 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, total paperwork burden costs on the public will decrease by about 12,225 hours and \$340,000 as a result of fewer required filings. Eventually, DOS and USCIBP annual fee collections from TN nonimmigrants will also decrease as a result of this proposed rule. A copy of the complete analysis is available in the rulemaking docket for this rule at <http://www.regulations.gov>, under Docket No. USCIS–2007–0056, or by calling the information contact listed above.

E. Executive Order 13132 (Federalism)

This rule would have no substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995) (PRA), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rulemaking does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. However, by requiring TN and TD status renewals every three years instead of every year, this rule will reduce the volume of Form I–129 filings, Form I–907, Request for Premium Processing Service, filings, and Form I–539, Application To Extend/Change Nonimmigrant Status, filings per year and the aggregate paperwork burden on the public accordingly. When the rule is published as a final rule, USCIS will submit the appropriate requests for non-substantive change to OMB to reflect the reduced annual respondents and costs.

List of Subjects

8 CFR Part 214

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

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

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

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1258, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 8 CFR part 2.

§ 214.1 [Amended]

2. Section 214.1 is amended by:

a. Removing the designation “Cdn FTA, Professional” and “TC” from the list in paragraph (a)(2);

b. Removing the term “TC” and adding “TN” in its place in the first sentence in paragraph (c)(1).

3. Section 214.6 is amended by:

a. Revising the section heading and by revising paragraphs (e), (g), and (h);

b. Redesignating paragraphs (j)(1), (j)(2) and (j)(3) as paragraphs (j)(2), (j)(3), and (j)(4), respectively;

c. Adding a new paragraph (j)(1);

d. Revising newly redesignated paragraphs (j)(2), (j)(3), and (j)(4); and by

e. Revising paragraph (k);

The addition and revisions read as follows:

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

* * * * *

(e) *Procedures for admission.* A citizen of Canada or Mexico who qualifies for admission under this section shall be provided confirming documentation (Form I–94) and shall be admitted under the classification symbol TN for a period not to exceed three years. Form I–94 shall bear the legend “multiple entry.” The fee prescribed under 8 CFR 103.7(b)(1) shall be remitted by Canadian Citizens upon admission to the United States pursuant to the terms and conditions of the NAFTA. Upon remittance of the prescribed fee, the TN applicant for admission shall be provided a Department-issued receipt (Form G–211, Form G–711, or Form I–797).

* * * * *

(g) *Readmission.* (1) *With a Form I–94.* An alien may be readmitted to the United States in TN classification for the remainder of the period of TN admission authorized on Form I–94, without presentation of the letter or supporting documentation described in paragraph (d)(3) of this section and without the prescribed fee set forth in 8 CFR 103.7(b)(1), provided that the

original intended professional activities and employer(s) have not changed, and the Form I–94 has not expired.

(2) *Without a valid I–94.* If the alien seeking readmission to the United States in TN classification is no longer in possession of a valid, unexpired Form I–94, and the period of initial admission in TN classification has not lapsed, a new Form I–94 may be issued for the period of validity that remains on the TN nonimmigrant’s original Form I–94 with the legend “multiple entry” and the alien readmitted in TN status if the alien presents alternate evidence as follows:

(i) For Canadian citizens, alternate evidence may include, but is not limited to, a fee receipt for admission as a TN or a previously issued admission stamp as TN in a passport, and a confirming letter from the United States employer(s).

(ii) For Mexican citizens seeking readmission as TN nonimmigrants, alternate evidence shall consist of presentation of a valid TN visa and evidence of a previous admission.

(h) *Extension of stay.* (1) *Filing.* A United States employer of a citizen of Canada or Mexico who is currently maintaining valid TN nonimmigrant status, or a United States entity (in the case of a citizen of Canada or Mexico who is currently maintaining valid TN nonimmigrant status and is employed by a foreign employer), may request an extension of stay, subject to the following conditions:

(i) An extension of stay must be requested by filing Form I–129 with the prescribed fee noted at 8 CFR 103.7(b)(1), in accordance with the form instructions.

(ii) The beneficiary must be physically present in the United States at the time of the filing of the Form I–129 requesting an extension of stay as a TN nonimmigrant. If the alien is required to leave the United States for any reason while the Form I–129 is pending, the petitioner may request USCIS to notify the consular office where the beneficiary is required to apply for a visa or, if visa exempt, a DHS-designated port-of-entry where the beneficiary will apply for admission to the United States, of the approval.

(iii) An extension of stay may be approved by USCIS for a maximum of three years.

(iv) There is no specific limit on the total period of time an alien may be in TN status provided the alien is continuing to be engaged in TN business activities for a U.S. employer or entity at a professional level and otherwise continues to properly maintain nonimmigrant TN status.

(2) *Readmission at the border.* Nothing in paragraph (h)(1) of this section shall preclude a citizen of Canada or Mexico who has previously been admitted to the United States in TN status, and has not violated such status while in the United States, from applying at a DHS-designated port-of-entry, prior to the expiration date of that period of admission, for a new period of admission not to exceed three years from the date of request for such new period of admission. The application for a new period of admission shall be supported by a new letter from the United States employer or the foreign employer, in the case of a citizen of Canada who is providing prearranged services to a United States entity, which meets the requirements of paragraph (d) of this section, together with the appropriate filing fee noted at 8 CFR 103.7(b)(1). Citizens of Mexico must present a valid passport and nonimmigrant TN visa when applying for readmission, as outlined in paragraph (d)(1) of this section.

* * * * *

(j) * * *

(1) The spouse or unmarried minor children of a citizen of Canada or Mexico admitted in TN nonimmigrant status, if they are otherwise admissible, may be admitted initially, readmitted, or granted a change of nonimmigrant status or an extension of his or her period of stay for the same period of time granted to the TN nonimmigrant. Such spouse or unmarried minor children shall, upon approval of an application for admission, readmission, change of status or extension of stay be classified as TD nonimmigrants. A request for a change of status to TD or an extension of stay of a TD nonimmigrant may be made on Form I–539 together with appropriate filing fees and evidence of the principal alien’s current TN status.

(2) The spouse or unmarried minor children of a citizen of Canada or Mexico admitted in TN nonimmigrant status shall be required to present a valid, unexpired nonimmigrant TD visa unless otherwise exempt under Sec. 212.1 of this chapter.

(3) The spouse and unmarried minor children of a citizen of Canada or Mexico admitted in TN nonimmigrant status shall be issued confirming documentation (Form I–94) bearing the legend “multiple entry”. There shall be no fee required for admission of the spouse and unmarried minor children.

(4) The spouse and unmarried minor children of a citizen of Canada or Mexico admitted in TN nonimmigrant status shall not accept employment in the United States unless otherwise authorized under the Act.

(k) *Effect of a strike.* (1) If the Secretary of Labor certifies to or otherwise informs the Director of USCIS that a strike or other labor dispute involving a work stoppage of workers is in progress, and the temporary entry of a citizen of Mexico or Canada in TN nonimmigrant status may affect adversely the settlement of any labor dispute or the employment of any person who is involved in such dispute, the United States may refuse to issue an immigration document authorizing entry or employment to such alien.

(2) If the alien has already commenced employment in the United States and is participating in a strike or other labor dispute involving a work stoppage of workers, whether or not such strike or other labor dispute has been certified by the Department of Labor, or whether USCIS has been otherwise informed that such a strike or labor dispute is in progress, the alien shall not be deemed to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers, but is subject to the following terms and conditions:

(i) The alien shall remain subject to all applicable provisions of the Immigration and Nationality Act and regulations promulgated in the same manner as all other TN nonimmigrants;

(ii) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving a work stoppage of workers; and

(iii) Although participation by a TN nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for removal, any alien who violates his or her status or who remains in the United States after his or her authorized period of stay has expired will be subject to removal.

(3) If there is a strike or other labor dispute involving a work stoppage of workers in progress, but such strike or other labor dispute is not certified under paragraph (k)(1) of this section, or USCIS has not otherwise been informed by the Secretary that such a strike or labor dispute is in progress, the Director, USCIS, shall not deny a petition or deny entry to an applicant for TN status based upon such strike or other labor dispute.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

4. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

§ 248.3 [Amended]

5. Section 248.3 is amended by removing the term “TC” and adding “TN” in its place in the first sentence of paragraph (a)(1).

Dated: May 2, 2008.

Michael Chertoff,
Secretary.

[FR Doc. E8–10343 Filed 5–8–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 2

[Docket No. APHIS–2006–0024]

RIN 0579–AC14

Minimum Age Requirements for the Transport of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the Animal Welfare Act regulations by adding minimum age requirements for the transport in commerce of animals. The regulations currently contain such requirements for dogs and cats, but no corresponding ones for other regulated animals, despite the risks associated with the early transport of these species. We also propose to amend the regulations to allow, provided certain conditions are met, for animals to be transported without their mothers for medical treatment and for scientific research before reaching the minimum age and weaning requirement. Establishing minimum age requirements for the transport in commerce of animals and providing for the transport of animals that have not met the minimum age requirements are necessary to help ensure the humane treatment of these animals.

DATES: We will consider all comments that we receive on or before July 8, 2008.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0024> to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment

to Docket No. APHIS–2006–0024, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0024.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1231; (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers. The Secretary of Agriculture has delegated the responsibility of enforcing the Act to the Administrator of the Animal and Plant Health Inspection Service (APHIS). The regulations established under the Act are contained in title 9 of the Code of Federal Regulations (9 CFR), chapter I, subchapter A, parts 1, 2, and 3. The regulations in 9 CFR part 2 pertain to the safe and humane handling of animals.

Section 2.130 sets forth minimum age requirements for dogs and cats to be transported in commerce. Under § 2.130, dogs and cats cannot be transported in commerce or delivered by any person unless they are 8 weeks of age and have been weaned, except if transported to a registered research facility. Currently, no such requirements exist for other regulated animals. It is our position that all animals should be afforded the same protections as provided for dogs and cats. We are currently developing standards for birds in a separate proposed rule; therefore, birds were not considered during the development of the proposed minimum age requirements in this rule.