

Department's regulatory list of nonimmigrant visa classifications.

DATES: Effective date: This rule takes effect August 11, 2003.

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SUPPLEMENTARY INFORMATION:

What Is the Background for These New Visa Classifications?

Prior to the September 11 terrorist attacks on the United States, Canadian and Mexican citizens living in their home countries, but traveling back and forth across the border to take part-time classes in the United States were admitted into the country as visitors. However, due to security concerns in the aftermath of the attacks, the Immigration and Naturalization Service (INS), now the Department of Homeland Security (DHS), stopped admitting these part-time students as DHS held that they were not eligible for admittance to the United States as visitors, since their purpose was to attend class. They also were not eligible for either F1 (academic) or M1 (non-academic or vocational) visas because these classifications require students to attend class on a full-time basis.

The "Border Commuter Student Act of 2002", Public Law 107-274, creates new visa classifications for Canadian and Mexican citizens and residents who seek to commute to the United States for the purpose of full-time or part-time study at a DHS-approved school. These students (classified F3 and M3) are permitted to study on either a full-time or part-time basis. The family members of border commuter students are not entitled to derivative F2 or M2 status.

How Is the Department Amending Its Regulations?

The rule amends the nonimmigrant visa classification table at 22 CFR 41.12 by adding new classifications: F3 and M3.

Regulatory Analysis and Notices

Administrative Procedure Act

The implementation of this rule as a final rule is based upon the "good

cause" exceptions established by 5 U.S.C. 553(b)(B) and 553(d)(3). The Department has determined that since the new nonimmigrant classifications became effective upon enactment of the Border Commuter Student Act of 2002 and since there is substantial immediate benefit to many aliens, there is not sufficient reason to delay its implementation. Additionally, this rule does not make changes in current policy with respect to the admission of border commuter students, but provides for a proper classification for such students. The Department has determined that adherence to the notice and comment period normally required under 5 U.C. 553(b) would cause disruption in the studies of these students.

Regulatory Flexibility Act

Pursuant to section 605 of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and the Department of State hereby certifies that it is not expected to have a significant economic impact on a substantial number of small entities.

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 in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 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.

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports and visas.

PART 41—[AMENDED]

■ 1. The authority citation for Part 41 continues to read as follows: 8 U.S.C. 1104, Pub. L. 105-277, 112 Stat. 2681-795 through 2681-801.

■ 2. Amend the table in § 41.12 by adding new categories F3 and M3 in alpha-numeric order to read as follows:

§ 41.12 Classification symbols.

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NONIMMIGRANTS

Symbol	Class	Section of law
* * * * *		
F-3	Canadian or Mexican national commuter student	101(a)(15)(F)(iii).
* * * * *		
M-3	Canadian or Mexican national commuter student (Vocational student or other nonacademic student) ...	101(a)(15)(M)(iii).