

CBSA Proposes Amendments to NEXUS and Other Trusted Traveler Programs

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The Canada Border Services Agency (“CBSA”) [recently announced](#) that it was proposing changes to its Trusted Traveller Programs (“TTPs”), which include CANPASS, Free and Secure Trade (“FAST”), and [NEXUS](#). In furtherance of this proposal, CBSA intends to amend the [Presentation of Persons \(2003\) Regulations](#) (the “POP Regulations”), which were implemented under the Canadian [Customs Act](#). A summary of these proposed amendments appears below.

Elimination of the Good Moral Character Requirement

The current POP Regulations require TTP applicants to be of “good moral character” in order to participate in Canada’s TTPs. However, this term is not defined in the POP Regulations. CBSA now wishes to replace the term “good moral character” with the following eligibility criteria:

- a. Failing to provide complete personal information, supporting documents, and/or attend interviews (if required) with the Royal Canadian Mounted Police or the Canadian Security Intelligence Service will render an applicant ineligible.
- b. Unless the applicant has also received a Record Suspension or Pardon, one summary conviction (or two summary convictions arising out of a single occurrence) will render an applicant ineligible for ten years, beginning after the end of the imposed sentence. In addition, an indictable offence (or multiple convictions, other than two summary convictions arising out of a single occurrence) will result in a lifetime ban. Finally, any convictions in relation to the following border enforcement priorities can result in a lifetime ban:
 1. Drugs and chemical precursors, obscenity and hate propaganda, endangered species, terrorism, kidnapping, child pornography, or trafficking in persons/human smuggling;

2. The importation, exportation or trafficking of alcohol and tobacco, currency, firearms and weapons; or
3. The exportation of items on the Export Control List.

All foreign convictions will be assessed by determining its Canadian equivalent under the Canadian *Criminal Code*.

- a. In the case of pending criminal charges (which would render the applicant ineligible if a conviction resulted) and any outstanding criminal warrants relating to such offenses, an applicant will be ineligible until a court decision is made on the charge(s)/warrant(s) or the warrant(s) have expired.
- b. Violations of program legislation (such as legislation and regulations administered or enforced by CBSA) can result in ineligibility. For example, multiple minor seizures would result in a ten-year ban and any contraventions in relation to the border enforcement priorities listed above would result in a lifetime ban.
- c. National security concerns may render a person ineligible if there are sufficient grounds to suspect that the person constitutes a threat to the security of Canada as defined in Section 2 of the *Canadian Security Intelligence Service Act*.
- d. Other security threats such as war crimes, crimes against humanity, and transnational crime such as trafficking of persons/human smuggling, money laundering, or terrorism financing are also grounds to deny, cancel or suspend an authorization.
- e. The Immigration and Refugee Protection Act (“IRPA”) currently authorizes the Minister of Immigration, Refugees and Citizenship Canada (“IRCC”) to declare a foreign national ineligible (who is otherwise admissible) to enter Canada for a period of up to three years based on public policy considerations, as outlined in Subsection 22.1(1). CBSA’s proposal will also make such persons ineligible for TTPs.
- f. Where a person is required (i.e. by court order) to surrender their travel documents (such as a passport under the *Family Orders and Agreements Enforcement Assistance Act*), this person will also become ineligible for a NEXUS or FAST authorization (or their existing authorization may be suspended).

Although this proposed change may be significant for CANPASS or FAST participants, its effect on NEXUS participants may be less so. This is because NEXUS is a joint initiative of the United States and Canada. As a result, failure to satisfy the eligibility criteria of either country renders an applicant ineligible for NEXUS.

The NEXUS eligibility criteria used by United States Customs and Border Protection (“USCBP”) are already stricter in many ways than CBSA’s proposed eligibility criteria. For example, CBSA’s proposed criteria still allow an applicant who has been convicted of a criminal offence to remain eligible if they have received a Canadian Pardon or Record Suspension. However,

USCBP does not recognize a Canadian Pardon or Record Suspension when considering an applicant's eligibility to participate in NEXUS.

Clarification of the Residence Requirement

The POP regulations currently require an applicant to have resided only in one or more of the following countries during the three years preceding the date of receipt of the application and continuing until the day on which the authorization is issued:

- a. Canada or the United States;
- b. If the person is serving as a member of the American armed forces in a foreign country, that foreign country;
- c. If the person is a family member of a person who is a member of the Canadian or American armed forces serving in a foreign country, that foreign country; or
- d. If the person is a family member of a person who is serving at a Canadian or American diplomatic mission or consular post in a foreign country, that foreign country.

The proposed amendments will clarify that applicants must legally reside in the above countries during the required period.

Clarification of Conditions for TTP Participation

The proposed amendments will further clarify the conditions associated with TTP participation, including:

- a. Goods that may not be imported when using a TTP, such as:
 1. Commercial goods (subject to exceptions that will be set out);
 2. Goods that are controlled, restricted, prohibited and/or require additional documents/permits to be seen by an officer on importation (excluding pets when accompanied by proper paperwork); or
 3. Having more than \$10,000 in Canadian currency, monetary instruments, or equivalent (even if it is properly declared).
- a. Only goods imported by pre-approved companies and carriers authorized under the Customs Self-Assessment program are allowed in the trailer of a commercial highway conveyance.

Clarification of Circumstances Leading to Suspension, Warning, or Cancellation of TTP Participation

The proposed amendments will clearly identify the grounds that could lead to suspension or cancellation of an applicant's TTP participation, as well as circumstances that could result in a warning:

- a. No longer meeting any of the listed eligibility criteria may lead to membership cancellation.
- b. Pending criminal charges, outstanding criminal warrants, or court orders to surrender travel documents would lead to a suspension but not a cancellation. A single lack of compliance with a program condition could result in membership suspension for one year.
- c. Repeated lack of compliance with program conditions within a twelve-month period could result in membership cancellation and a period of ineligibility for six years.

The CBSA announcement states that it will accept comments relating to these proposed changes by email until August 19, 2016. It also states that CBSA intends to update its internal policies to reflect these amendments until implemented by regulation. In other words, CBSA is expected to implement these changes even before the POP Regulations are formally amended.