

NAFTA: New occupational classifications long overdue

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Amidst a flurry of activity on immigration issues and topics since President Donald Trump took office in January 2017, NAFTA has remained one of the hottest and most persistent topics circulating in the North American business community and beyond.

After multiple rounds of negotiations, no deal appears on the near horizon, although all three countries appear to remain committed to “work[ing] hard and patiently to achieve this outcome,” as noted by Canadian Foreign Minister Chrystia Freeland on June 19 — at least for the time being. Trade tensions, however, are on the rise after the U.S. slapped tariffs on steel and aluminum from Canada and Mexico in early June.

Canada is preparing a retaliatory list of measures it is saying will come into force on July 1, and Mexico has already imposed tariffs on American pork, steel, cheese and other goods in response to the U.S. move. The upcoming Mexican presidential election would also result in a Mexican government that is less inclined to cut a deal with the U.S.

The back-and-forth trade measures and countermeasures have done nothing to strengthen relations across North America. Currently, Trump administration advisers are floating the idea of separate NAFTA negotiations with Canada and Mexico, in order to reach an agreement sooner. However, all possibilities are still on the table, and no one is calling the game yet.

Even should trade negotiations on NAFTA pick up pace again, there is speculation that a deal cannot be reached this year due to multiple factors — including significant gaps in agreement on certain provisions and changes, a Mexican election on July 1, and resulting lame duck period by the outgoing president, and U.S. regulatory requirements regarding notice of intent to sign a deal, release of the text of the agreement, and analysis of the effect a new NAFTA deal will have on the U.S. Finally, a “statement of administrative action” (SSA) is also required preceding actual implementation of legislation, and the legislation would have to be considered in both the U.S. House of Representative and the Senate. With congressional adjournments, all these steps following actual agreement on the scope of revisions to NAFTA mean the actual timeline for implementing a renegotiated NAFTA could easily push into 2019 or beyond.

Updates to trade national (TN) occupational classifications

From an immigration perspective, one of the most important things to achieve under a renegotiated NAFTA is updates to the trade national (TN) occupational classification list under *Appendix 1603.D.1*. These occupational classifications were chosen based on a recognized need for these professions in the U.S. Since it has been nearly 25 years since this analysis was completed, it is reasonable to assume that updates are appropriate.

In 1994, *Ace of Base* had three *Billboard* top 10 hits. Lisa Marie Presley married Michael Jackson. Al Gore's "invention" known as the Internet was still in its infancy. It was a long time ago. Not only has pop culture changed, but economies, technologies and occupations have changed as well. A review of occupational classifications, and what those occupational classifications entail, is long overdue.

Instead of relying on piecemeal policy guidance updates and Department of Labor (DOL) materials, clear guidance from a review of the NAFTA occupational classification list would benefit both TN applicants and the Department of Homeland Security (DHS).

The first level of review should be whether any new occupational classifications should be added to the list. Technology plays a critical role in stimulating economic growth, which in turn, creates a huge demand for qualified workers to spearhead that growth. U.S. companies have long been recruiting top high-tech talent from north of the border to remain competitive in the global marketplace. One issue with NAFTA, however, is that there are only a few explicit information technology (IT) related occupational classifications listed —computer systems analyst, software engineer and hardware engineer.

Ask an IT person if they are either a computer systems analyst or software/hardware engineer and they will likely look at you as if you are still using a dial-up modem to log into your AOL account. This industry, more than any other, has advanced well beyond what would have been contemplated for critical professions back in 1994. Perhaps it is time to look at adding occupations such as network architects, database architects, data warehousing specialists and UX designers to the list rather than be forced to try and inelegantly fit these roles into the occupations from which they evolved.

The second level of review must be to clearly define and delineate what each occupational classification entails. For example, a technical publications writer today is a much different position than what it was in 1994. Right now, we are forced to acquiesce to outdated and slow-to-evolve DOL materials that do not always reflect the realities of real world industries and businesses. Currently the DOL's *Occupational Outlook Handbook* (OOH) is treated as gospel when determining whether a certain position falls under an occupational classification. If the DOL does not happen to list duties that perfectly match the role offered, DHS may take a hard stance and conclude the person does not qualify for a TN.

Better guidance from a thorough review of NAFTA occupational classifications would alleviate the frustrating observance of the OOH and bring NAFTA into the 21st century.

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