

F-3 Visa Status

Background:

In August of 2002, the INS added to section 8 of the Code of Federal Regulations, section 18, Special rules for certain border commuter students. In addition to the new regulatory wording, the Border Commuter Student Act of 2002 created the F-3 and M-3 visa categories. No regulations regarding these visa statuses have been issued. In the absence of definitive instruction from the Federal Government, UTEP and other UT system institutions as well as border institutions across the country have interpreted the existing regulations to mean that Border Commuter Students are part-time students and that the special rules regarding Border Commuter students does not apply to students living in Mexico who are attending fulltime. The Consulate has been issuing F-1 visas for all students from Mexico up until the beginning of the Spring term 2009 for UTEP and the beginning of Fall term 2008 for UT Brownsville and Pan American.

The consulate is now looking at the I-20 during the visa appointment, and any applicant whose I-20 does not list living expenses is being issued the F-3 visa instead of the F-1.

Current Situation:

As of this moment, 1,201 students from Mexico have been issued an F-1 visa without living expenses, and of these, 73 have been issued a Border Commuter I-20. Please note that the 73 Border Commuter students have never been allowed to work on campus nor off campus without first applying for curricular practical training. The remaining 1,128 students have been eligible to work on campus, in TA/RA and general worker positions. It is this group of students along with new student who would have been in this category will be impacted. Typically a large number of these students would be working on campus.

On January 12, 2009, the Office of International Programs was notified via email by a consular information officer who also happens to be an international student at UTEP, of the changes to current practice. The email stated the following:

- If living expenses are noted on the I-20 the student will be interviewed for an F-1 visa
- If living expenses are not specified, the applicant will be interviewed for an F-3
- If an F-1 student wants to attend part time, s/he will need to apply for the F-3 visa
- F-1 visa can be used for fulltime studies only
- F-3 visa can be used for either part-time or fulltime studies
- F-1 students can live in the U.S., F-3 students cannot

The OIP contacted UT Brownsville to see if the same is happening there. They confirmed that the same was occurring at Brownsville and at UT Pan America as well. When

Brownsville asked for clarification from the consulate, their consular official cited the Foreign Affairs manual, 8 U.S.C.1101(a)(15)(F)(iii) “an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, which is described in clause (i) except that the alien’s qualifications for and actual course of study **may be full or part-time**, and who commutes to the United States institution or place of study from Canada or Mexico”

It appears that the Foreign Affairs Manual and the actual language in the Code of Federal Regulations conflict, “the term ‘border commuter student’ means a national of Canada or Mexico who is admitted to the United States as an F-1 nonimmigrant student to enroll in a full course of study, **albeit on a part-time basis**” 8 C.F.R. § 214.2(f)(18)(i)

The consulate in Ciudad Juarez was contacted on February 5, 2009 for clarification but, they have not responded as of yet.

Current Concerns:

Will current fulltime students who currently hold an F-1 visa and live in Mexico be asked to change their visas to a Border Commuter Status and F-3 status? If so when? At this point in time, the consulate has not answered that question.

If current students are requested to change their visa, they will have to pay the visa fee of approximately \$200.

Campus Employment:

How will this affect the awarding of TA/RA ships to Mexican students?

Incoming students who in the past would have had a F-1 visa enabling them to work on campus will no longer have this option unless they choose to prove minimum living expenses of \$13,916 which will make them eligible for the a F-1 visa.

Although the regulations do not state that an F-3 student cannot work on campus, the Social Security office is not issuing SSN cards to students on the F-3 visa. This will essentially remove CPT as an option for these students.

Planned action items to address the situation:

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| Update language in Admission letter | Document issue on NAFSA Issuenet |
| Create a poster advertising the change | Email message to Mexican students |
| Campus announcement | Include information in PASE info sessions |
| Add language to OIP website | F-3 fact sheet for campus community |
| Contact Social Security Office | |

F-1 Visa Allowances:

Students on an F-1 visa have the following responsibilities and benefits:

They must maintain their immigration status by maintaining good academic status, never working off campus without prior authorization, carrying a fulltime course load, and finishing their degree in the amount of time allotted to them. The benefits that they enjoy as long as they are maintaining status, is that they can work on campus immediately, they can apply for Curricular Practical Training, (CPT) after one year of maintaining their status and they can apply for Optional Practical Training, (OPT) after they graduate.

Border Commuter Visa Allowances:

Border Commuter students must maintain their immigration status by making good academic progress, pursuing a degree or certificate program, renewing their I-20 every semester before it expires, and not working on campus or off campus unless they meet the eligibility requirements for CPT. They also may not live in the U.S. The benefits that they enjoy as long as they are maintaining status, they can apply for Curricular Practical Training, (CPT) after one year of maintaining their status and they can apply for Optional Practical Training, (OPT) after they graduate.

Text of Border Commuter Regulations, 8 C.F.R. § [214.2\(f\)\(18\)\(iii\)](#)

18) *Special rules for certain border commuter students* --

214.2(f)(18)(i)

(i) *Applicability* . For purposes of the special rules in this paragraph (f)(18), the term "border commuter student" means a national of Canada or Mexico who is admitted to the United States as an F-1 nonimmigrant student to enroll in a full course of study, **albeit on a part-time basis**, in an approved school located within 75 miles of a United States land border. A border commuter student must maintain actual residence and place of abode in the student's country of nationality, and seek admission to the United States at a land border port-of-entry. These special rules do not apply to a national of Canada or Mexico who is:

214.2(f)(18)(i)(A)-(B)

(A) Residing in the United States while attending an approved school as an F-1 student, or

(B) Enrolled in a full course of study as defined in paragraph (f)(6) of this section.

214.2(f)(18)(ii)

(ii) *Full course of study* . The border commuter student must be enrolled in a full course of study at the school that leads to the attainment of a specific educational or professional objective, **albeit on a part-time basis**. A designated school official at the school may authorize an eligible border commuter student to enroll in a course load below that otherwise required for a full course of study under paragraph (f)(6) of this section, provided that the reduced course load is consistent with the border commuter student's approved course of study.

214.2(f)(18)(iii)

(iii) *Period of admission* . An F-1 nonimmigrant student who is admitted as a border commuter student under this paragraph (f)(18) will be admitted until a date certain. The DSO is required to specify a completion date on the Form I-20 that reflects the actual semester or term dates for the commuter student's current term of study. A new Form I-20 will be required for each new semester or term that the border commuter student attends at the school. The provisions of paragraphs (f)(5) and (f)(7) of this section, relating to duration of status and extension of stay, are not applicable to a border commuter student.

214.2(f)(18)(iv)

(iv) *Employment* . A border commuter student may not be authorized to accept any employment in connection with his or her F-1 student status, except for curricular practical training as provided in paragraph (f)(10)(i) of this section or post-completion optional practical training as provided in paragraph (f)(10)(ii)(A)(3) of this section.

214.2(f)(19)

(19) *Remittance of the fee* . An alien who applies for F-1 or F-3 nonimmigrant status in order to enroll in a program of study at a Department of Homeland Security (DHS)-approved educational institution is required to pay the Student and Exchange Visitor Information System (SEVIS) fee to DHS, pursuant to 8 CFR 214.13, except as otherwise provided in that section.

Excerpt from NAFSA Advisors Manual

3.21.9

Canadian and Mexican border commuter students

Mexican or Canadian citizens who reside outside the United States but who regularly commute across a land border to study may do so on a part-time basis in the F-1 category.

8 C.F.R. § [214.2\(f\)\(18\)](#) , as added by [67 Fed. Reg. 54941](#) (August 27, 2002).

3.21.9.1

F-1 or F-3?

Shortly after INS issued its F-1 border commuter student regulation, the Border Commuter Student Act of 2002 created two new nonimmigrant student visa categories, **F-3** and M-3, for Canadian and Mexican citizens who study part-time in the United States but who live in their home country and commute to academic or vocational classes in the United States. As of the date this release of the Manual was prepared, regulations had not been issued for the **F-3** and M-3 categories.

Border Commuter Student Act of 2002 , Pub. L. 107-274, 116 Stat. 1923 (November 2, 2002).

3.21.9.2

Procedural requirements

Part-time border commuter students are not admitted for duration of status like other F-1 students, but rather for a date-specific period of time. The regulations define a "border commuter student" as:

Authority cite

8 C.F.R. § [214.2\(f\)\(18\)\(i\)](#)

...a national of Canada or Mexico who is admitted to the United States as an F-1 nonimmigrant student to enroll in a full course of study, albeit on a part-time basis, in an approved school located within 75 miles of a United States land border. A border commuter student must maintain actual residence and place of abode in the student's country of nationality, and seek admission to the United States at a land border port-of-entry.

To qualify under the F-1 regulatory provision, a student must:

1. Be a Canadian or Mexican citizen
2. Be registered as a border commuter student
3. Attend a SEVIS-approved U.S. school located within 75 miles of the border
4. Be pursuing a "full course of study," but pursuing it part-time
5. Maintain actual residence and place of abode in their country of citizenship, and commute through a land border port-of-entry to the U.S. for study

Part-time border commuter students are not admitted for "duration of status," but rather "until a date certain." Regulations require the DSO to "specify a completion date on the Form I-20 that reflects the actual semester or term dates for the commuter student's current term of study," and issue a new Form I-20 "for each new semester or term that the commuter student attends at the school." The date-certain for which the students are admitted would be based on the end date of each I-20.

8 C.F.R. § [214.2\(f\)\(18\)\(iii\)](#); CBP Inspector's Field Manual, 15.4(f)(1) special note (D)

Practice Note There have been reports that some part-time border commuter students have been admitted for duration of status, despite the regulatory and policy guidance.

Part-time border commuter students are not permitted to be employed under the on-campus or off-campus work provisions, but may be authorized for curricular practical training or apply for post-completion optional practical training.

Since students that enter under this rule will be F students, schools also have to keep track of the students in SEVIS, and must authorize a reduced course load on the "border commuter student" basis each term or semester.

And

3.37.2.6

Restrictions for Canadian and Mexican Border Commuter Students

Canadian and Mexican citizens admitted as part-time F-1 or **F-3** "border commuter students" (see AM § [3.21.9](#)) are eligible *only* for post-completion optional practical training (see AM § [3.37.2.5](#)). They are not eligible for pre-completion OPT.

8 C.F.R. § [214.2\(f\)\(18\)\(iv\)](#)

Canadians and Mexican citizens admitted as *regular* (full-time) F-1 students are eligible for the full range of OPT just like any other F-1 student.