

# NEXUS memberships dwindling

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At the end of June the NEXUS program turned five years old, with 130,000 members nationally, and slated for continued expansion. But some wonder if the program is really growing or is it closer to shrinking.

“We are pleased to continue expanding the NEXUS program,” said Customs and Border Protection (CBP) Commissioner W. Ralph Basham at the end of August, announcing a new online application process for the trusted traveler program that puts pre-cleared travelers in their own fast-lane. “This program has tremendous benefits for our law enforcement officials as well as travelers.”

James Rector, assistant director of the service port of Blaine, said one NEXUS lane now operating at the Peace Arch processed 30 percent of the port’s traffic during the last quarter.

The air, marine and highway NEXUS programs were harmonized this year, and the online application process has cut initial application processing down from four weeks to 10 days, according to CBP press officer Willie Hicks. The program continues to be expanded to other airports and land crossings, with four additional land borders planned for 2008. The new Peace Arch port of entry will have two NEXUS lanes.

“They’ve nationalized the program,” said CBP public information officer Mike Milne. Initial application processing for all trusted travelers is now done through a Vermont office, complete with an ombudsman position.

## **Shrinking membership**

Despite broader uses for the NEXUS card, including the likelihood it will be accepted as an alternative to a passport when they become mandatory for entering the U.S. next year, membership in the program appears to be dropping.

This summer the original memberships in the program – 25,446 issued in the second half of 2002 – began to expire. According to figures provided by Hicks, 2205 renewals were issued (two were denied) in July and August 2007, outpacing the new applications, 1428 of which were approved during that period (133 were denied).

However, by the end of August Hicks reported 3,198 memberships had expired and not been renewed. During the same period 96 people had their NEXUS memberships revoked.

The program therefore lost almost as many members as it gained in a two-month period – perilously close to negative growth.

Hicks reported that 8,623 memberships were approved in July and August 2002, and therefore expired at the end of August 2007. Only 3,633 renewals and new memberships were approved during that period in 2007.

## **Negative growth**

However, comparing this figure to the renewals, denials, and cards left expired in the system reported above, it leaves 3,218 of those original membership unaccounted for. Hicks suggested these members may have been waiting for appointments to finalize renewals.

The yearly totals for new memberships in NEXUS dropped consistently from the original surge of applications when the program opened in 2002, down to 8211 in 2005, less than was issued in the first two months of the program in 2002. Renewals have boosted the number of cards issued in 2007 to 15,496.

More applicants are being denied membership in NEXUS than when the program first started. In the first two months of the program in 2002, 4 percent of applicants were deemed ineligible. In June and July 2007, 11 percent of new applicants and three percent of renewing applicants were rejected.

Looking at a July/August window the denial rate was 8 percent.

Milne speculated that the program is attracting a wider range of applicants as travelers faced more challenges getting across the border.

“Wait times, construction coming up, promotion of the program, it brings out more people,” he said, responding to speculation that processing in the national facility had become more stringent. “More people are applying who don’t meet the criteria. There’s not a policy change.”

Hicks did not respond when asked if new security databases were being used for more in-depth background checks, resulting in a higher rate of denials.

“It is the opinion of CBP that the revocation and denial numbers and internal databases used are not as important for the traveling public to know as the fact that we continue to provide conditional approval for participation for on-line applications in about 10 days.”

Program participants are also increasingly losing their NEXUS privileges under the program’s “zero-tolerance” policy. Since NEXUS started in 2002, 1604 people have had their memberships revoked. In July and August of this year, 96 NEXUS cards were pulled.

Forgetting your card or passport, an orange rolled under a seat, a friend’s gym bag in the trunk, all can cost a NEXUS member their card. “The name “trusted-traveler” implies you are trusted in all instances to meet all requirements,” Milne said. “The program is based on no violations.”

### **Down the rabbit hole**

David Anderson is a Canadian attorney specializing in business immigration, and the president of the Pacific Access Corridor Enterprise (PACE), an organization that championed the NEXUS program when it was proposed as a more secure alternative to the PACE commuter lane following September 11, 2001.

Anderson had his NEXUS membership revoked when a Canadian officer determined books he had declared were a commercial, not a personal importation as he claimed – a NEXUS no-no. “They kind of shoot first, ask questions later and once your card is pulled it’s a maze to get it back,” he said.

Despite not being issued a customs infraction – the books were charged goods-and-service-tax as personal goods after all – Anderson’s appeal to a local supervisor was rejected.

Without a formal appeal process, Anderson said he isn’t sure how he should proceed. He was told a second appeal could be sent to the project manager for the Movement of People Framework, with an address in Ottawa. He could also reapply through the new online system.

The CBP website states that if your NEXUS membership is revoked or denied “you will be provided information in writing detailing the reason for this action,” though Anderson said he has not found this to be the case for himself or the clients he represents.

One client, he said, still unsure why membership was revoked, has filed a request under the Freedom of Information Act request.

Lacking a “formal appeal process” the website states a meeting with a supervisor at an enrollment center can be scheduled, and lists contact information for the ombudsman in Vermont if an applicant believes “the denial or revocation was based on inaccurate information.”

“It’s a world rather like Alice in Wonderland,” Anderson said. For NEXUS to ultimately succeed, he said, it’s rules and policies needed to be clear and consistent. “I think zero-tolerance has gotten a little out of hand.”

Greg Boos, a Bellingham immigration attorney, said Anderson’s situation was far from unique.

“I’ve definitely been getting lots of calls,” he said, from applicants or renewing members denied membership, or those who have had their cards revoked.

“My NEXUS business has increased 10-fold,” said local immigration attorney Len Saunders. “I’m making a small fortune from people who have lost their NEXUS membership.

There will be a four-some out at Loomis Trail Golf Course talking about who’s having problem getting their NEXUS renewed and two will say they were refused.

Paula Shore, with the Canada Border Services Agency, acknowledged golfers had been losing their cards as NEXUS members drove bags of clubs through for their non-NEXUS friends crossing on foot. She did not anticipate rules for the program were likely to be relaxed. “This is how the program was designed and both countries have agreed these will be the requirements,” she said.

### **Local leaders cite need for local control, clear rules**

Ken Oplinger, president of the Bellingham/Whatcom Chamber of Commerce, was one of Saunders’ clients when he had his NEXUS card revoked in 2003 after he used the lane, but had forgotten his card – an error he only discovered at the booth entering Canada. Oplinger was allowed to proceed but was notified by mail to surrender his card.

Oplinger got his card back through an “informal” appeal process put in place locally in 2005, and he thinks the program has since become more arbitrary with decisions made in Vermont. “We need to return approvals and appeals to the local level,” he said. “A lot of issues leading to denial would be better dealt with face-to-face, individually.”

Decisions and planning about NEXUS needed to reflect local needs, Oplinger stressed. Roughly half of NEXUS members are in the Washington and British Columbia area, using three of eleven NEXUS lanes along the northern border. “We need to look at specific areas and address people’s concerns,” he said

With NEXUS being positioned to be the answer to Western Hemisphere Travel Initiative document requirements, Oplinger said the enrollment numbers needed to be going up, not down or stagnating.

“We’ve got to come up with a formal appeals process,” he suggested. “You can’t really rate an offense without an appeal policy.”

Oplinger thinks a child’s school bag in Mom’s car, or a slip-up on ever-changing agricultural rules, should not be grounds for revoking NEXUS membership, but a case of hidden guavas, or a bag of cocaine should be.

“The zero tolerance policy doesn’t make any sense if we aren’t going to look at the nature of the infraction.”

While acknowledging that restrictions on fruits and vegetables had nothing to do with a terrorist threat, Rector said his agency was not prepared to go back

to the “three-strikes” system that existed in the PACE program, which allowed three minor infractions before membership was revoked.

“After 9-11 zero-tolerance was the direction,” he said. “There are rules in place and the agency is going to make sure those rules stay in place.”

But what is the agency doing to make sure participants know what the rules are? NEXUS members crossing into Point Roberts were being told the leeks in their groceries could cost them their NEXUS card before an information sheet was available to them.

“This is the only one I have,” a CBP officer in primary said when asked for a copy of the new regulations.

“You’re right, there could be a better way to disseminate information,” Rector said. “A lot of this stuff has been pulled in by headquarters.”

What determines admissibility to the program? Those who have been denied membership complain that they don’t know why, with letters stating only that they are “otherwise ineligible” to participate in a trusted traveler program,” but not providing the basis for determining ineligibility.

For example, a former PACE and NEXUS member was denied membership trying to renew, but has had not, to their knowledge violated any NEXUS rules. Their spouse has been ineligible for trusted traveler programs due to an arrest in the 1960s following a bar fight.

Is there a spread of taint from one family member’s past, making other family members ineligible? Is there a “statute of limitations,” or any written guidelines delineating what in a person’s past makes them not a trusted traveler?

Hicks provided data for this story, but would not comment on questions regarding the program policies, or whether written policies exist that define program rules and requirements.

Milne said the trusted traveler ombudsman position in Vermont was vacant at this time. No one was available to discuss the role of the ombudsman, or NEXUS policies.

NEXUS denials, revocations, and confusion over the rules of the program are becoming a theme for staff members at U.S. Representative Rick Larsen's Bellingham Office.

"We're certainly getting a significant number of people coming to our office for help after having problems," said Larsen communications director Amanda Mahnke. Larsen's office is currently working with approximately 40 constituents with concerns about the program.

"We're looking closely at this," she said. "It seems to be a significant problem."

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