



Citizenship and  
Immigration Canada

Citoyenneté et  
Immigration Canada

# ENF 4

## Port of Entry Examinations

## ENF 4 Port of Entry Examinations

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Edited by the Operational Manuals, Operational Bulletins and Business Process Maps Unit,  
OIMD, OMC, CIC

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### Updates to chapter

#### Listing by date:

##### Date: 2011-01-06

- Section 7.7: Updated link to COD 7 - BSO Booklet and added direct link to Immigration Secondary Referral List.
- Section 11.13: Clarification of BSO's role when issuing a removal order to a permanent resident.
- Section 12.5: Inserted correct reference to LICO table (OP 6 Section 11.1).
- Section 12.16: Corrected reference for A44(1) report.
- Section 13.13: Updated list of exceptions to passport and travel document requirement to include those entering under the Visiting Forces Act.
- Section 13.16: Added U.S. passport card to the list of evidence of U.S. citizenship.
- Section 13.21: Added military personnel and their family members entering Canada under the Visiting Forces Act to the list as to when to issue a visitor record.
- Section 22.10: Updated name of training course to reflect current Control and Defensive Tactics (CDT).
- Section 28: Open Skies information was updated.

##### Date: 2010-06-14

- Appendix B – This Appendix has been updated with current contact information.

##### Date: 2010-02-23

- Section 13.35: A link to the United Nations High Commissioner for Refugees has been added.

##### Date: 2009-12-14

- Section 27.5: Changes were made to the procedure for requesting the removal of an enforcement flag.
- Appendix D: A new appendix was added to provide information on the Transit Without Visa (TWOV) program and the China Transit Trial (CTT).

##### Date: 2009-12-8

- All broken links were updated.
- Section 3: References to R40 and R42 were added.
- Section 3.1: Warrant for Arrest and Order of Citizenship and Immigration to Deliver Inmate were added. Reference to Record of Direct Backs has been changed from Appendix D to Appendix C.
- Section 4.1: Authorities found in the *Criminal Code* and the *Customs Act* were incorporated.
- Section 5.2: Minor change for clarity.
- Section 5.6: Added references to ENF 10 and PP3.
- Section 7.6: Removed reference to the Primary Automated Lookout System (PALS).
- Section 8.3: Added the responsibility of an officer to arrest persons who have committed a serious infraction of the law.
- Section 8.4: Changes were made to increase clarity and accuracy.

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- Section 10: Additional information added on the examination of Registered Indians to align with the section on Canadian Citizens.
- Section 11.15: Terminology change. References to Immigration Warrants Response Centre (IWRC) have been replaced with Warrants Response Centre (WRC).
- Section 12.6: Update new photo specification for facial size on PR Card.
- Section 12.9: Changes were made in accordance with regulation R2(b) which describes the age of dependency as age 22 and not 19. Changes were made to increase clarity and accuracy.
- Section 12.17: Terminology change. Canada Employment Centre (CEC) has been replaced by Citizenship and Immigration Centre. Acronym CIC is not used to avoid confusion.
- Section 13.34: Temporary resident permit was replaced by visitor record for foreign nationals who are work permit exempt.
- Section 19: This section has been incorporated to provide additional guidance on examinations that may lead to prosecution. Former sections 18.7, 18.8, and 18.9 have been deleted and replaced.
- Section 21.6: Communication and Cooperation with the Media was updated to reflect new procedures for high-profile, contentious and sensitive cases.
- Section 21.10: Terminology change. Pressure Points and Control Tactic (PPCT) has been replaced by Control and Defensive Tactics (CDT).
- Sections 22.4, 22.7, 22.8, 22.9: Change in procedure for DART officers when referring suspected human smugglers.
- Appendix B: Reference to Memorandum of Understanding concerning partnership, communication, cooperation and information sharing between CIC and the RCMP has been removed.
- Appendix C: Addresses, office hours and phone numbers for PHAC Quarantine Operations Centres were updated.

### **Date: 2009-07-15**

- References to officers at ports of entry have been changed throughout the document to Border Services Officer (BSO).
- References to Immigration were replaced with Immigration Secondary.
- Section 3: Medical examination added.
- Section 3.1: Link added to the Record of Direct Backs.
- Section 4.1: Reference to A138(1) was added.
- Section 4.4: The link to a CIC port-of-entry map was replaced with a link to a CBSA port-of-entry map.
- Section 6: A definition of Border Service Officer was added to the definitions.
- Section 7.1: The memorandum of understanding (MOU) between CIC and CCRA was updated to the current MOU between CIC and CBSA.
- Section 7.2: BSO Handbook was changed to reflect new publication, Canada Border Services Officer Reference Booklet.
- Section 7.6: Acronyms were spelled out; specifically: Primary Automated Lookout System (PALS) and Integrated Primary Inspection Line (IPIL)
- Section 7.9: Further detail was given on referral forms.

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- Section 8.5: Guidelines for the use of telephone interpretation services have been added to this section.
- Section 10.1: INAC phone number updated.
- Section 11.4: Inland added to CBSA office.
- Section 12.5: Deleted specific dollar amounts. Added link to OP 6.
- Section 12.6: Two bullets have been added to the procedures and some existing procedures have been reworded and reordered for greater clarity.
- Section 12.11: The section on Medical surveillance has been reworked for greater clarity.
- Section 12.12: The sections have been reordered and the section on medical surveillance has been revised.
- Section 13.2: Further clarification was given to Air Marshals since they are not visa exempt.
- Section 13.3: Further clarification on Implied Status was added.
- Section 13.5: A reference to OP 11, section 17 was added. The contact phone number for the Office of Protocol was updated. The Watch Office contact phone number was added for after-hours service.
- Section 13.21: Further clarification was given on when to document a temporary resident on a Visitor Record.
- Section 13.31: This section was created from text that was previously imbedded in Section 13.30.
- Section 13.32: This section was created from text that was previously imbedded in Section 13.30.
- Section 13.33: This section was created from text that was previously imbedded in Section 13.30.
- Section 13.34: Human Resources and Skills Development Canada was updated to Service Canada and the link for the SIN card was updated.
- Section 18.2: Minor change for clarity
- Section 18.3: A new section on Direct back was created. No text changes.
- Section 18.4: A new section on Direct back and refugees was created.
- Section 18.8: This section has been updated to reflect current CBSA and RCMP roles and responsibilities in terms of investigations. A link was added to ENF 7, Investigations and Arrests, Chapter 14 on note-taking.
- Section 18.9: This section has been updated to reflect current CBSA and RCMP roles and responsibilities in terms of investigations. A link was added to ENF 7 on investigations and note-taking.
- Section 19: This section has been updated to reflect current CBSA and RCMP roles and responsibilities in terms of investigations. Clarity was given to BSOs in possession of defensive equipment when encountering situations beyond their scope. A link was added for additional information.
- Section 20: Information on the Reciprocal Arrangement has been removed.
- Section 21.1: A qualifying statement on the language used to refer to officers at the POEs was removed.



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- Section 21.5: Duty Manager was replaced by manager/supervisor. References to Immigration were replaced with Immigration Secondary. Canadian Inspection Services was added before the acronym CIS.
- Section 21.6: Replaced FRT with Integrated Compliance and Enforcement Team (ICET). Information on Enforcement Division added for clarity.
- Section 21.12: Airport Unit in the Ports and Border Management Directorate was replaced by Air and Marine Division of the People Programs Directorate.
- Section 24.5: Full Document Entry was added before the first acronym FDE.
- Section 24.6: Immigration Warrant Response Centre was added before the acronym IWRC.
- Section 25: International Civil Aviation Organization was added before the acronym ICAO. A link to UN documents was updated.
- Section 25: The links to the Foreign Missions and International Organizations Act, the Convention on the Privileges and Immunities of the United Nations, the Vienna Convention on Diplomatic Relations, and to the information on orders (OICs) made by the Governor in Council have been removed.
- Section 26.1: Ports and Border Management Directorate was replaced by People Program Directorate.
- Section 26.5: Ports and Border Management Directorate was replaced by People Program Directorate. The global address for enforcement flags was added.
- Appendix A: The link to the MOU between CBSA and CIC replaced the link to the MOU between CIC and CCRA.

### **Date: 2009-07-21**

- Section 13.3 - Implied Status procedure was added.

### **Date: 2007-04-27**

Minor changes were made throughout chapter ENF4.

- Section 5.6: "Point of finality of an examination" was changed to "End of examination" (in English only).
- Sections 7.2 and 7.7: Reference to "Customs Inspector handbook on immigration" was changed to "Border Services Officer Handbook on Immigration".
- Section 12.6: Some additions were made under "Photographs".
- Section 12.8: Reference R1(2) was corrected to R(2).
- Section 12.12: Reference R32(a) was corrected to R32(b).
- Section 12.17: Clarification was made by adding "the removal of these conditions".
- Section 13.2: Reference R190(3)(f) was replaced by R190 (bullet # 3).
- Section 13.2: Reference R190(3)(a)(i) was added (bullet # 12).
- Section 13.2: Bullet for implied status was added.
- Section 18.2: Reference to permanent resident was deleted as R41 does not apply to PRs.
- Section 20.1: CBSA National Headquarters was changed to CIC National Headquarters.
- Section 26.5: A general e-mail address was added.

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### 2007-03-07

The Record of Direct Backs template has been added under Appendix D.

### 2007-01-26

A new section 18.3 has been added to provide CBSA officers with guidance on how and when to use the policy of direct back as it relates to refugee claimants at land border ports of entry.

Section 18.3 outlines the procedure for directing back refugee claimants under exceptional circumstances at land border ports of entry after the implementation of the Safe Third Country Agreement.

Section 20.7 has been eliminated as the direct back procedures for refugee claimants at land border does not fall under the Reciprocal Arrangement.

### 2006-01-26

Numerous minor and substantive changes have been made throughout this chapter and any previous version of it should be discarded as section numbers have changed significantly throughout the document. In addition, updates have been made throughout to reflect changes made by the TAC process as a result of the CIC/CBSA transition. Of particular importance are the following changes:

- Section 10.2 outlines the procedure for establishing registered Indian status without documents.
- Section 15 outlines temporary resident permit procedures.
- Section 17.2 refers to a list of quarantine operations centres found in Appendix C of this document.
- Section 20 outlines the Reciprocal Arrangement between Canada and the United States
- Section 21 introduces all new DART procedures including passenger screening procedures and operational principles.
- Section 22 outlines alternate means of examination (AME) formerly referred to as alternate inspection systems (AIS) in section 20 of the former ENF 4 release.
- Section 24.4 outlines POE procedures for completing an Authorization to Return to Canada pursuant to A52(1) (ARC) [IMM 1203B].
- Section 24.5 outlines how to complete the ARC screen in FOSS.
- Section 25 is new and outlines the *Foreign Missions and International Organizations Act*.
- Section 26 is new and explains the procedure for requesting that an enforcement flag be removed in FOSS.
- Section 27 is new and outlines the *Open Skies Treaty*.

As other changes were made throughout ENF 4, officers are encouraged to peruse the entire chapter.

### 2003-09-25

Both minor and substantive changes and clarifications have been made throughout ENF 4, which is the main document describing port of entry examinations. Any former version of this chapter should be discarded in favour of the one now appearing on CIC explore.

The major changes that were made to this chapter include:

- Section 4 is now available and details the delegations and designations of the Immigration and Refugee Protection Act and Regulations. This section provides a link to the specific authorities of officers in each of the five domestic regions, as well as the international region and also includes the authority found in IRPA to designate an officer, a minister's delegate and a port of entry.
- Section 7.1 has been reworded to reflect the fact that the MOU with Customs has now been signed. This section also provides a hyperlink to the CIC-CCRA MOU.
- Sections 7.2, 7.4 and 7.7 have been reworded to clarify the role of Customs Inspectors when performing Immigration functions, and useful hyperlinks were also added.

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- Section 8.3 has been expanded upon to clarify the right to counsel of foreign nationals at ports of entry.
- Section 9.5 has been updated to reflect the correct e-mail address of the Citizenship Case Processing Centre (CPC) in Sydney, Nova Scotia for officers to use when requesting that citizenship records be searched.
- Section 11.4 contains CIC's policy with respect to examination of permanent residents at POE's with respect to the residency obligation.
- Section 12.6 has been expanded upon to detail the proper procedures for officers to follow when completing a "Confirmation of Permanent Residence" form (IMM 5292B).
- Section 13.3 has been rewritten and clarified. This section identifies the instances whereby a foreign national can return to Canada using their original visa.
- A hyperlink has been added to section Section 13.7 which details the proper procedures to follow when dealing with U.S. government officials assigned to temporary postings in Canada.
- Section 13.28 details the newly implemented SIN card procedures for seasonal agriculture workers.
- A hyperlink has been added to Section 21.1, which provides further information on Alternate Inspection Systems (AIS). As a result of this, sections 20.2, 20.3, 20.4, 20.5, and 20.6 have been removed.
- Sections 21.1, 21.2 and 21.3 have been rewritten to provide up to date information on Advanced Passenger Information (API), Passenger Name Recognition (PNR) and the Passenger Assessment Units (PAU).

As other changes were made throughout ENF 4, officers are encouraged to peruse the entire chapter.

### 2003-05-05

#### **Section 22 - Entering previously deported persons onto CPIC**

A new section provides port of entry officers with guidance on entering an ARC document in FOSS and outlines the impact that A44(1) reports have on the PDP initiative.

## 1. What this chapter is about

This chapter describes how a border services officer (BSO) conducts primary and secondary immigration examinations of:

- Canadian citizens;
- registered Indians;
- permanent residents;
- permanent residence applicants;
- foreign nationals; and
- temporary resident permit holders.

## 2. Program objectives

The objectives of the Act for conducting primary and secondary immigration examinations are:

- to facilitate the entry of persons who have the right to enter Canada;
- to facilitate the entry of foreign nationals into Canada for purposes such as trade and commerce, tourism, international understanding and cultural, educational and scientific activities;
- to protect the health and safety of Canadians and to maintain the security of Canadian society;
- to promote international justice and security by denying access to Canadian territory to persons who are criminals or security risks; and
- to offer safe haven to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group, as well as those at risk of torture or cruel and unusual punishment.

## 3. The Act and Regulations

The authority for a BSO to conduct an examination comes from a variety of sources including the *Immigration and Refugee Protection Act* (IRPA), its Regulations and the Designation of Officers and Delegation of Authority documents.

### Statutory requirements relating to persons seeking entry into Canada

The Act and Regulations impose the following obligations on persons seeking to enter Canada.

Section	Requirement	Explanation
A11(1)	Apply for visa	Foreign nationals must, before entering Canada, apply for a visa or for any other document required by the Regulations.
A15	Submit to an examination	An officer is authorized to examine any person making an application, including those seeking to enter Canada.
A16(1)	Tell the truth and produce required documentation	Any person who makes an application to enter Canada must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that an officer reasonably requires.
A16(2)	Fingerprints, photographs and a medical examination	Foreign nationals must produce photographic and fingerprint evidence if required to establish identity or compliance with the Act. A foreign national must also submit to a medical examination on request.

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A18(1)	Appear for examination	Every person seeking to enter Canada must appear for an examination to determine whether they have a right to enter Canada or may be authorized to enter and remain in Canada.
A18(2)	In-transit passengers	Every person who seeks to leave an area at an airport that is reserved for passengers who are in transit or who are waiting to depart Canada must appear for an examination.
A20(1)(a)	To become a permanent resident	Every foreign national who seeks to become a permanent resident must establish that they hold the visa or other document required under the Regulations and have come to Canada in order to establish permanent residence.
A20(1)(b)	Entry of temporary residents	Every foreign national who seeks to become a temporary resident must establish that they hold the visa or other document required under the Regulations and will leave Canada by the end of the period authorized for their stay.
A20(2)	Provincial selection criteria	Foreign nationals seeking to become permanent residents who intend to reside in a province that has sole responsibility for the selection of foreign nationals under a federal-provincial agreement pursuant to A9(1) must also establish that they hold a document issued by the province indicating that the competent authority of the province is of the opinion that the foreign national complies with the province's selection criteria.
A28(1)	Residency obligation	Permanent residents must comply with the residency obligation in section A28 with respect to every five-year period.
A29(2)	Obligations of temporary residents	Temporary residents must comply with any conditions imposed under the Regulations and with any requirements under the Act and must leave by the end of the period authorized for their stay.
A30(1)	Work and study	A foreign national may not work or study in Canada unless authorized to do so under the Act.
R,6, R7, R8 & R9	Permanent and temporary resident visas, work and study permits	A foreign national must apply for these documents prior to entering Canada.
R27(1) & R27(2)	Appear for examination	A foreign national must appear without delay before an officer at a port of entry(POE) for an examination or, if entering at a place other than a port of entry, must appear without delay for examination at the nearest port of entry.
R28	Making an application	Persons seeking to enter Canada are deemed to be making an application pursuant to A15(1) and must therefore submit to an examination.
R30	Submit to medical examination	All foreign nationals seeking to enter Canada for more than six months who have resided or sojourned in certain countries in excess of six months, are required to submit to a medical examination and must be in possession of a medical certificate stating that they are not inadmissible on health grounds.
R40	Direction to leave	Except in the case of protected persons within the meaning of subsection 95(2) of the Act and refugee protection claimants, an officer who is unable to examine a person who is seeking to enter Canada at a port of entry shall, in writing, direct the person to leave Canada.
R41	Direct Back	An officer may direct back a foreign national who is seeking to enter Canada from the United States temporarily if:

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		<ul style="list-style-type: none"> <li>• the examination cannot be completed;</li> <li>• the Minister's delegate is not available to review the report;</li> <li>• the admissibility hearing cannot be held by the Immigration Division.</li> </ul>
R42	Withdrawing an application	An officer who examines a foreign national who is seeking to enter Canada and who has indicated that they want to withdraw their application to enter Canada shall allow the foreign national to withdraw their application and leave Canada unless a report is being or has been prepared under subsection 44(1) of the Act.
R43	Mandatory conditions in cases requiring further examination	<p>All foreign nationals who have been authorized to enter Canada under A23 must comply with the following conditions:</p> <ul style="list-style-type: none"> <li>• report for the completion of the examination or the admissibility hearing;</li> <li>• not engage in any work in Canada;</li> <li>• not study in Canada; and</li> <li>• report in person at a port of entry if they withdraw their application to enter Canada.</li> </ul>
R45	Deposits or guarantees	An officer can require a person or a group of persons seeking to enter Canada to pay a deposit or post a guarantee, or both, to guarantee compliance with any conditions imposed.
R50	Documents: applicants for permanent residence	A foreign national seeking to become a permanent resident requires a permanent resident visa as well as a passport, travel document or other document prescribed by the Regulations. [For detailed requirements, see R50(1), R50(2) and R50(3).]
R51	Obligations of applicants for permanent residence	<p>A foreign national in possession of a permanent resident visa who seeks at a port of entry to become a permanent resident must inform the officer if they have become or ceased to be a spouse, common-law partner or conjugal partner after the visa was issued or if facts have changed since the visa was issued, or material facts relevant to the issuance of the visa have changed and were not divulged when the visa was issued.</p> <p>The foreign national must also establish that they and their family members, whether accompanying or not, meet the requirements of the Act and Regulations.</p>
R52	Documents: temporary residents	A foreign national who seeks to become a temporary resident must hold one of the following documents that is valid for the period of their authorized stay: a passport, travel document or other document prescribed by the Regulations. [For detailed requirements and exceptions, see R52(1) and R52(2).]
R183 & R185	General and specific conditions on temporary residents	Temporary residents must comply with conditions of their entry including the requirement to leave by the end of the period authorized for their stay and, not to work nor study unless authorized by the Regulations.
R184	Conditions on crew members	Foreign nationals who enter Canada as crew members or to become crew members are required to join the means of transportation within the period imposed or, if no period is imposed, within 48 hours. Crew members must leave Canada

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		within 72 hours after ceasing to be a crew member.
R196	Requirement for a work permit	A foreign national must not work in Canada unless authorized by a work permit or the Regulations.
R243	Requirement to pay removal costs	A foreign national is not allowed to return to Canada if they were removed from Canada at the expense of Her Majesty, and the debt incurred from removal is outstanding.

### 3.1. Forms

Form title	IMM Form number
Warrant for Arrest	BSF 499
Certificate of Departure	IMM 0056B
Order of Citizenship and Immigration to Deliver Inmate	IMM 0419
Order for Detention	IMM 0421B
Medical Surveillance Undertaking	IMM 0535B
Visitor Record	IMM 1097B
Authorization to Return to Canada pursuant to R52(1)	IMM 1203B
Direction to Leave Canada	IMM 1217B
Performance Bond – The Immigration and Refugee Protection Act	IMM 1230
Direction to Return to the United States	IMM 1237B
Acknowledgement of Conditions	IMM 1262E
Affirmation for Visa	IMM 1281B
Allowed To Leave	IMM 1282B
Visitor's Visa	IMM 1346B
Declaration	IMM 1392B
FOSS Full Document Entry - Generic	IMM 1442B
Confirmation by Transporter Regarding Passenger(s) Carried	IMM 1445B
Port of Entry/Secondary Examination Record	IMM 5059B
Change of Address/Information Notice	IMM 5260B
Generic document – 3 Part Distribution (Confirmation of Permanent Residence)	IMM 5292B
Entry For Further Examination or Admissibility Hearing	IMM 5396B
Supplementary Identification Form	IMM 5455B
Acknowledgement of Terms and Conditions (Entrepreneur) <i>Immigration Act</i> , 1976	IMM 5458B
<u>Authority to release personal information to a designated individual</u>	IMM 5475E
Use of a Representative	IMM 5476E
Record of Direct Backs	Appendix C
Customs Referral Form (Airport)	E311
Customs Referral Form (Border)	E67
Customs Referral Form (Border: Commercial Drivers)	Y28

## 4. Instruments and Delegations

Chapter IL-3, Designation of Officers and Designation of Authority, outlines the authorities designated geographically and describes them regionally, nationally or internationally and in accordance with the physical location of the officer. To identify a particular designation or delegation, one must check the Modules for the line number associated with a particular section of the Act or Regulations and then check the same line number in the corresponding geographic list.

The Designation of Officers and Delegation of Authority documents for the *Immigration and Refugee Protection Act* and its Regulations may be found in the chapter IL 3 of the Operational Manuals.

### 4.1. Powers and authorities of an officer

The following sections provide authority for an officer relating to the examination of persons seeking to enter Canada.

<b>Powers of officer under IRPA</b>	<b>Section</b>
Authority for an officer to conduct an examination where a person makes an application. (R28 specifies that all persons who seek to enter Canada are making an application and are therefore subject to an examination).	A15(1)
Authority for an officer to: <ul style="list-style-type: none"> <li>board and inspect any means of transportation bringing persons to Canada;</li> <li>examine any person carried by that means of transportation and any record or document respecting that person;</li> <li>seize and remove any record or document to obtain copies or extracts; and</li> <li>hold the means of transportation until the inspection and examination are completed.</li> </ul> This section provides authority for officers to commence an examination prior to the passenger's arrival at the Primary Inspection Line (PIL).	A15(3)
Authority to require a person being examined to produce a visa and all relevant evidence that the officer reasonably requires including, in the case of foreign nationals, photographic and fingerprint evidence and a medical examination.	A16(1) & (2)
Authority for an officer to authorize a person to enter Canada for the purpose of further examination or an admissibility hearing at a later time or date.	A23
Authority to issue a temporary resident permit, if justified by the circumstances, to an inadmissible person or to a person who does not meet the requirements of the Act, and to cancel it at any time.	A24
Authority for the Minister to examine the circumstances concerning a foreign national who is inadmissible and to grant permanent resident status or an exemption from any applicable criteria or obligation of the Act if the Minister is of the opinion that it is justified by: <ul style="list-style-type: none"> <li>humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or</li> <li>public policy considerations.</li> </ul>	A25(1)
Authority to report permanent residents and foreign nationals who are believed to be inadmissible.	A44(1)



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Authority to impose conditions, including the payment of a deposit or the posting of a guarantee for compliance with any conditions considered necessary, on a permanent resident or foreign national who is the subject of a report.	A44(3)
Authority to authorize a foreign national, against whom a removal order has been enforced, to return to Canada.	A52(1)
Authority to issue a warrant for the arrest and detention of a permanent resident or foreign national who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing or removal from Canada.	A55(1)
Authority to arrest and detain without a warrant, a foreign national, other than a protected person: <ul style="list-style-type: none"> <li>• who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection A44(2); or</li> <li>• if the officer is not satisfied of the identity of the foreign national in the course of any procedure under the Act.</li> </ul>	A55(2)
Authority to detain a permanent resident or foreign national, on entry to Canada, if an officer considers it necessary in order to complete an examination or has reasonable grounds to suspect that the person is inadmissible on grounds of security or for violating human or international rights.	A55(3)
Authority to order the release from detention of a permanent resident or a foreign national before the first detention review by the Immigration Division if the officer is of the opinion that the reasons for the detention no longer exist. This section also allows the officer to impose any conditions, including the payment of a deposit or the posting of a guarantee for compliance with the conditions, that the officer considers necessary.	A56
Authority to conduct eligibility determinations for refugee claimants and to refer eligible claims to the Refugee Protection Division.	A100(1)
Authority of designated officers having the authority and powers of peace officers for the purpose of enforcing the provisions of the Act, including arrest, detention and removal of persons from Canada.	A138(1)
Authority to search any person seeking to come into Canada including their luggage, personal effects, and the means of transportation if the officer believes, on reasonable grounds, that the person has not revealed their identity or has hidden documents relevant to their admissibility.	A139
Authority to seize and hold any means of transportation, document or other thing that, on reasonable grounds, was fraudulently or improperly obtained or used or that the seizure was necessary to prevent its fraudulent or improper use or to carry out the purposes of the Act.	A140
Authority to impose, vary or cancel conditions on any person who is obliged to submit to a medical examination.	R32
Authority to conduct alternate means of examination.	R38
Authority to direct a person who cannot be examined, other than protected persons and refugee claimants, to leave Canada.	R40
Authority to direct persons to return to the United States.	R41
Authority to allow or to refuse to allow a person to withdraw from	R42

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Canada.	
Authority to impose conditions on persons authorized to enter Canada for further examination under section A23.	R43
Authority to require the payment of a deposit or the posting of a guarantee.	R45
Authority to impose conditions including the period of time that a temporary resident may remain in Canada.	R183
Authority to impose specific conditions on a temporary resident.	R185
Authority to issue a work permit on the basis of Canadian interests	R205
Authority to issue a work permit on the basis of humanitarian reasons.	R206
Authority to issue a study permit in certain cases.	R216
Authority to require a transporter to provide a written report with respect to a stowaway.	R262
Authority to require a transporter to provide copies of a passenger's ticket, itinerary and information about travel and identity documents.	R264
Authority to require a transporter to assemble all members of the crew aboard a vessel.	R266
Authority to require a transporter to provide a written report respecting a foreign national who has ceased to be a member of the crew.	R268
Authority to require a commercial transporter to provide advance passenger information on passengers it will be carrying to Canada.	R269(1)
Authority to require a commercial transporter to provide all reservation information it holds respecting a passenger being carried to Canada.	R269(2)

<b>Powers of officer under the Criminal Code</b>	<b>Section</b>
Authority of an officer within the meaning of the <i>Customs Act</i> , the <i>Excise Act</i> or the <i>Excise Act, 2001</i> , or a person having the powers of such an officer, to perform any duty in the administration of any of those Acts.	CC2
Authority and powers of a peace officer, including those set out in sections 487 to 492.2 of the <i>Criminal Code</i> to enforce the <i>Immigration and Refugee Protection Act</i> .	CC2
Authority to use as much reasonable force as is necessary in the administration and enforcement of their duties	CC25-27
Authority to arrest persons found committing or known to have committed a criminal offence.	CC495(1)
Limitations on when an officer will arrest persons found committing or known to have committed a criminal offence.	CC495(2)
Authorizes officers to release from custody persons arrested, with or without warrant, for an offence described in section 496 if public interest and court appearance are satisfied.	CC497

<b>Powers of officer under the Customs Act</b>	<b>Section</b>
Sets out that "peace officer" notably includes an officer within the meaning of the <i>Customs Act</i> , the <i>Excise Act</i> or the <i>Excise Act, 2001</i> , or a person having the powers of such an officer, when performing any duty in the administration of any of those Acts, and an officer authorized under subsection 138(1) of the <i>Immigration and Refugee Protection Act</i> .	CA2

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Lists the particular sections of the <i>Customs Act</i> that, if violated, are punishable by either indictment or summary conviction. Officers, therefore, may arrest for contraventions of those sections listed.	CA160
Authorizes designated officers, when at a CBSA office and performing their normal duties, to make an arrest for a criminal offence under any other Act of Parliament.	CA163.5(1)

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### 4.2. Designation of officers

A6(1) authorizes the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness to designate persons or classes of persons to carry out any purpose or provision of the Act. A designation is made, in most cases, where the word “officer” is referred to in the Act or Regulations with respect to a power, duty, requirement or authority.

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### 4.3. Ministerial delegations

A6(2) authorizes the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness to delegate powers to other persons. A delegation is made, in most cases, where the word “Minister” is referred to in the Act or Regulations with respect to a power, duty, requirement or authority. Certain ministerial powers, referred to in A6(3), may not be delegated.

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### 4.4. Designations of ports of entry

The Minister has authority under R26 to designate ports of entry. The purpose in designating a port of entry is to ensure that persons seeking to enter Canada are aware of where they are required to report for examination.

Schedule 1 (<http://laws.justice.gc.ca/en/showdoc/cr/SOR-2002-227/sc:1/en>) of the Regulations lists ports of entry that provide service on a 24/7 basis and where BSOs are on duty at all times.

See a list of POEs with detailed information including the types of services and hours of operation at: [http://atlas/do-rb/indexpages/index\\_e.asp](http://atlas/do-rb/indexpages/index_e.asp).

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## 5. Departmental Policy

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### 5.1. What is an examination?

R28 stipulates that a person makes an application by:

- submitting an application in writing;
- seeking to enter Canada;
- seeking to transit through Canada in airports as provided for by R35; or
- making a claim for refugee protection.

A15(1) authorizes an officer to examine any person making an application in accordance with the Act. This chapter deals only with the examination of persons seeking to enter Canada.

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### 5.2. Persons to be examined

A18(1) provides that all persons who seek to enter Canada, whether they intend to or not, must appear for an examination. This includes Canadian citizens, permanent residents and registered Indians.

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### 5.3. Primary and secondary examinations

All persons seeking to enter Canada must appear for an examination to determine whether they have a right to enter Canada or may become authorized to enter and remain in Canada. The

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examination process at a port of entry may include a primary and a secondary examination. Primary examinations are completed by a BSO at PIL. In some remote ports, a Royal Canadian Mounted Police (RCMP) officer may complete the primary examination. Immigration Secondary examinations are conducted by a BSO at Immigration Secondary following a referral from a BSO at PIL. This chapter refers to both primary and secondary examinations at a port of entry.

### 5.4. Instructions by the Minister

A15(4) provides that an officer shall conduct an examination in accordance with any instructions that the Minister of Citizenship and Immigration Canada or the Minister of Public Safety may give. The authority for the Ministers to give instructions to officers can be used to ensure consistency in the application of the Act with respect to examinations. Instructions given by the Ministers are not Regulations (see A93) but are nevertheless binding on officers. At present, there are no instructions by the Ministers respecting examinations.

### 5.5. Duties and conduct of the BSO

A BSO must deal with each person being examined in a courteous, professional and efficient manner. They should ensure that those who are inadmissible or who seek to contravene the law are prevented from entering Canada and that those who readily comply with the law are allowed to enter. Most individuals seeking entry to Canada do not pose a risk and should be allowed forward with minimal delay. BSOs should carefully examine all the facts before making a decision and, where appropriate, explain the reasons for that decision to the traveller.

### 5.6. End of examination

R37 provides that the examination of a person seeking to enter or transit through Canada is not final until one of the following outcomes takes place:

Outcome	Explanation
A final determination is made that the person has a right to enter Canada or is authorized to enter Canada.	The Regulations provide that an examination is not final until the person has left the controlled area of the port of entry or, if no controlled area exists, has left the port of entry. For example, an examination may be continued if during a customs secondary examination, evidence arises that indicates the person may be inadmissible to Canada. If the person's passport has been stamped or even if the person has been granted permanent resident status, this decision is not final and may be revisited as long as the person has not left the controlled area of the port of entry.
A person in transit departs from Canada.	Certain passengers in transit through Canada are not required to appear for examination if they remain in a controlled area pending their onward flight out of Canada. They are nevertheless subject to examination. If for any reason, they seek to leave the area at an airport that is reserved for passengers who are in transit or who are waiting to depart Canada, they must report for examination. A18(2)
The person is allowed to leave Canada and their departure is confirmed.	A BSO may determine a person to be inadmissible and allow them to leave Canada pursuant to R42 if no A44(1) report is prepared or transmitted. The examination concludes once their departure is verified. If for any reason the person does not depart, then the examination resumes.
Entry is authorized by the Minister.	The Minister's delegate, in reviewing a report pursuant to A44(1), continues the examination of the person seeking entry. If the Minister's delegate determines the report is not founded, the person will be allowed to enter Canada and the examination will conclude.
A removal order is issued by the Minister.	The Minister's delegate, after reviewing a report pursuant to A44(1), may issue a removal order. This concludes the

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	examination.
The Minister refers the case to the Immigration Division for an admissibility hearing.	The Minister's delegate, after reviewing a report pursuant to A44(1), may determine that the report is well founded and refer it to the Immigration Division of the IRB for an admissibility hearing. This concludes the examination.

A23 allows an officer to authorize a person to enter Canada for the purpose of further examination or an admissibility hearing. The person remains under examination until one of the above outcomes takes place.

For more information on the end of examination, see ENF 5, Writing 44(1) Reports, section 10.

For more information on Pre-Removal Risk Assessments, see Protected Persons 3.

For more information on Removals, see ENF 10, Section 15.

## 6. Definitions

Border Services Officer (BSO)	A person designated as an officer by the Minister, employed by the Canada Border Services Agency A6(1) [R2].
Canadian citizen	A citizen referred to in subsection 3(1) of the <i>Citizenship Act</i> .
Common-law partner	In relation to a person, an individual who is cohabiting with the person in a conjugal relationship, having so cohabited for a period of at least one year [R1(1)].
FOSS	Field Operations Support System: CIC/CBSA client immigration database.
Foreign national	A person who is not a Canadian citizen or a permanent resident, and includes a stateless person [A2(1)].
Officer	A person designated as an officer by the Minister under A6(1) [R2].
Permanent resident	A person who has acquired permanent resident status and has not subsequently lost that status under section A46 [A2(1)].
Protected person	A person on whom refugee protection is conferred and whose claim or application has not subsequently been deemed to be rejected because of cessation or vacation proceedings [A95(2)].
Indian	A person who is registered as an Indian under the <i>Indian Act</i> [R2].
Refugee	A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion: (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or (b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country [A96].
Sterile transit area.	An area in an airport where in-transit passengers, in-transit pre-clearance passengers or goods that are in transit or pre-controlled are physically separated from other passengers and goods [R2].

## 7. Primary inspection line (PIL) examinations

The examination process usually commences upon the arrival of a person at a port of entry. This may be a land border, an airport, a marine harbour or any other place designated as a port of entry. BSOs at PIL are delegated the authority to conduct the initial immigration examination of persons seeking entry into Canada. BSOs at PIL administer legislation and programs by providing

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a wide range of inspection, examination and enforcement activities on behalf of many government departments and agencies.

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### 7.1. Memorandum of Understanding with Citizenship and Immigration Canada

On December 12, 2003, the Canada Border Service Agency (CBSA) was created and immigration enforcement and intelligence responsibilities under the *Immigration and Refugee Protection Act* (IRPA) were transferred to the new Agency from Citizenship and Immigration Canada (CIC).

The purpose of this Memorandum of Understanding (MOU) is to define, in general terms, the basis for cooperation between CIC and the CBSA regarding:

- the delivery of the immigration program;
- information sharing; and
- the provision of various services.

For more information on the roles and responsibilities of the CBSA and CIC and the full text of the MOU see: [http://cicintranet.ci.gc.ca/transition/memorandum/umbrella\\_cadre\\_e.htm](http://cicintranet.ci.gc.ca/transition/memorandum/umbrella_cadre_e.htm).

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### 7.2. Canada Border Services Officer Reference Booklet

The Canada Border Services Officer Reference Booklet provides detailed information to BSOs at PIL regarding the examinations of persons seeking entry into Canada. The booklet is a quick reference to:

- responsibilities of the BSOs at PIL;
- items on the Immigration Secondary Referral List;
- inadmissibility sections of the *Immigration and Refugee Protection Act* (IRPA);
- documentary requirements of foreign nationals;
- security features of documents;
- foreign worker requirements;
- various immigration documents for Canada and the United States; and
- offences under the IRPA.

The Canada Border Services Officer Reference Booklet may be found at:

<http://cicintranet.ci.gc.ca/cicexplore/english/org/sed/sem/pdf/customs-eng.pdf>

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### 7.3. Liaison with officers at PIL

The BSOs at PIL are encouraged to inquire about the results of their referrals to Immigration Secondary. The BSOs at Immigration Secondary do not operate under the same time constraints as the BSOs at PIL and have more time to conduct immigration examinations effectively. The BSOs at Immigration Secondary should, whenever possible, provide feedback on the results of referrals. Liaison is a key element in developing and maintaining an effective and positive working relationship with officers who conduct the primary portion of the examination process. In addition, discussing cases allows the BSOs at Immigration Secondary to give guidance to the BSOs at PIL regarding immigration requirements. This increases the quality of referrals from PIL.

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### 7.4. Responsibilities of primary examining officers

BSOs conducting primary examinations are responsible for:

- questioning persons and reviewing documentation to determine whether persons have a right to enter Canada (Canadians, permanent residents and registered Indians) or are foreign nationals who may be authorized to enter Canada as temporary residents;

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- determining whether or not persons seeking entry into Canada are persons seeking entry into Canada as permanent residents;
- authorizing persons to enter Canada and stamping passports when required;
- referring persons for a more detailed Immigration Secondary examination when appropriate, in accordance with the Immigration Secondary Referral List; and
- authorizing foreign nationals to leave Canada or directing them to return to the USA at ports where there are no BSOs present at the Immigration Secondary.

### 7.5. Primary examination questions

Primary examination questions are designed to elicit essential information about citizenship, residency, intention, employment, length of stay and identity as quickly as possible. Normally, the examining BSO at PIL begins by asking one or more of the six primary questions below. Under most circumstances, a BSO at PIL does not need to ask all questions of all travellers.

Issue	Question	Rationale
Citizenship	What is your citizenship?	By asking this question first, the BSO can identify persons who may enter Canada by right. It is rare that persons who have a right to enter Canada would be referred to Immigration Secondary. If the person is not Canadian, this question enables the BSO to identify those persons who may require a passport or a visa to enter Canada. If the person has a machine-readable passport, the BSO does not necessarily have to ask about citizenship. A passport reader, however, is no substitute for a good verbal examination.
Residency	Where do you reside?	This question helps the BSO to determine the passport and visa requirements of foreign nationals. By determining residency, the BSO can eliminate from an Immigration Secondary examination those travellers who are permanent residents of Canada and who may enter Canada by right. If the person is a permanent resident, the BSO may ask the supplementary question: "How long have you been away?" The BSO at PIL must refer for Immigration Secondary examination all permanent residents who may not comply with the residency obligation of A28, which requires permanent residents to reside in Canada for at least 730 days out of every five-year period to maintain their status. The possible loss of permanent resident status under section A46 can be further explored at a secondary examination.
Intention	What is the purpose of your trip to Canada?	Once the BSO determines that the foreign national may not come into Canada by right, they must establish why the person is coming to Canada. By asking this question, they can identify the need for a referral to CBSA Immigration Secondary for control purposes (for example, to become a permanent resident, to work or study).
Employment	Do you intend to take or seek employment while in Canada?	If the BSO has not yet determined whether the person is coming to Canada to work, this question ensures that employment opportunities for Canadians are protected and that the person will comply with relevant employment regulations.
Length of stay	How long do you intend to stay in Canada?	BSOs may allow persons to enter Canada for a stay of up to six months and should stamp the passport of persons

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		who are otherwise admissible. Persons who are intending to remain in Canada for longer than six months should be referred for a secondary examination.
Identity	What is your name?	If the BSO has any reason to doubt the person's identity, they will ask for the person's name. A comparison can then be made with the person's documents to determine if the name given is the same as the name in the document, or in the case of an aircraft passenger, the same as the one on the E 311 form.

The BSO at PIL may ask additional questions as warranted but usually does not conduct in-depth examinations. This would create line-ups and delays for the travelling public. A BSO at PIL who doubts the *bona fides* of a person or believes that a detailed examination may be in order should refer the person to an Immigration Secondary examination.

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### 7.6. Criminality

BSOs at PIL do not ask a person about criminality during a PIL examination. Questions about criminality are better suited for Immigration Secondary where BSOs at Immigration Secondary have more time to conduct a full examination and question a person in a more private setting. Consequently, when a BSO at PIL suspects, through questioning, lookouts and Integrated Primary Inspection Line (IPIL), or other indicators, that a foreign national may have a criminal record, the person should be referred to a CBSA Immigration Secondary examination. If there are no BSOs on duty in Immigration Secondary, the person may be asked about criminality at the CBSA Customs Secondary. All BSOs should take care to ensure privacy by not questioning a person about criminality in the presence of accompanying family members or other travellers.

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### 7.7. Immigration Secondary Referral List

The Immigration Secondary Referral List can be found in the Canada Border Services Officer Reference Booklet. It captures the categories of persons that must be referred for an Immigration Secondary examination. BSOs at PIL may refer anyone else who they believe should be examined in more detail.

Examples of types of referrals that should be sent to Immigration Secondary include cases where the BSO at PIL:

- has doubts about the person's identity;
- suspects the person may have a criminal record;
- believes the person may require documentation such as a work or study permit;
- has concerns about the length of time the person is requesting in light of their actual travel plans.

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### 7.8. Referral of persons with medical conditions

A38 states that foreign nationals are inadmissible to Canada on health grounds if their health condition:

- is likely to be a danger to public health;
- is likely to be a danger to public safety; or
- might reasonably be expected to cause excessive demand on health or social services.

Referral for an Immigration Secondary examination is mandatory when a foreign national:

- is seeking to enter Canada in order to undergo medical treatment; or
- is obviously ill.



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It is not possible, given the time constraints of the primary examination process, to assess the health status of every foreign national seeking authorization to enter Canada. BSOs at PIL should adopt a practical approach based partly on visual risk assessment and partly on common sense and experience.

BSOs should not be consciously looking for medical problems as part of their examination but should refer for further examination those whom a reasonable person would judge to be ill.

Examples could include foreign nationals who:

- act abnormally;
- have incoherent speech;
- are on a stretcher or are accompanied by medical personnel (nurse, personal physician etc.);
- are in possession of medication that would suggest or indicate a serious illness; or
- exhibit obvious signs of illness.

On occasion, persons who are critically ill or injured will be transported to a hospital in Canada via an ambulance. Due to the seriousness of the person's condition, BSOs may feel that conducting a full primary or secondary examination is not advisable at that time. The BSO should not unduly delay persons where urgent medical treatment is needed. Information should be obtained from the ambulance driver regarding the name of the person and the hospital so that a BSO can conduct an examination when the person's condition is more stable.

### 7.9. CBSA referral forms

There are three forms that a BSO at PIL uses to refer persons to the Customs or Immigration Secondary examination areas.

CBSA referral forms		
Form	Use	Explanation
E311	Primarily airports	The E311 form is completed by passengers on airplanes destined to Canada and by some bus and train passengers. A passenger presents the form to the BSO at the primary inspection booth who verifies the information and codes the form.
E67	Land border crossings and ferry sites	The E67 form is completed by a BSO at PIL at land borders.
Y28	Land border crossings and ferry sites	The Y28 is completed by a BSO at PIL for commercial drivers.

These forms facilitate the control and streaming of passengers, provide data for Statistics Canada and are used to refer passengers to Secondary under Immigration, Customs or Agriculture or to refer passengers to Health Canada.

Note: The E311 is not only a referral form but also a declaration card. While travellers always complete the E311 in air mode, the E67 at land and marine modes is only issued if the traveller/vehicle is referred to secondary.

The forms carry a code by which the BSO at PIL gives the reason for referral to secondary examination.

The immigration portion of form E67 is coded with four letters (T,E,L,O). When using the E67, the BSO at PIL will circle the appropriate letter to indicate the reason for referral.

TELO coding on the E67		
Letter	Meaning	Explanation
T	Time	The person intends to stay in Canada for an extended or unusual period of time.
E	Employment	The person has indicated an intention to seek employment in Canada.
L	Lookout	The person may be the subject of a "watch for" as being of interest to CBSA officer BSOs in Immigration Secondary.

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O	Other	This includes any other reason not covered above. In this case, the PIL officer will typically write a few words on the E67 to guide secondary examination. Officers should be cautious when recording any information on the E67 as the person who is being referred may be able to read the form.
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### 7.10. TELO code on the E311 form

In keeping with International Civil Aviation Organization (ICAO) standards, the E311 form used at airports does not contain the TELO coding. Instead the BSO at PIL officer writes “IMM” with the appropriate TELO code.

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## 8. Secondary examinations

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### 8.1. What is an Immigration Secondary examination

An Immigration Secondary examination is usually initiated by a referral from BSOs at PIL. It can also result from a referral from a BSO such as a Disembarkation and Roving Team (DART) member, who has boarded and inspected an airplane, a bus, train or ship before any of the passengers have presented themselves at PIL. An Immigration Secondary examination is usually conducted by a BSO in the Immigration Secondary area but may be conducted by a BSO at Customs Secondary if no BSO at Immigration Secondary is available at the port of entry. An Immigration Secondary examination may also be conducted by telephone or other electronic means if the person is in a remote location where no BSO is available.

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### 8.2. Authority to continue an Immigration Secondary examination after a PIL referral

A23 authorizes BSOs at PIL and/or at Immigration Secondary to adjourn an examination and refer the person being examined to another BSO for the completion of the examination. This provision provides a legal means for referring a person from PIL to Immigration Secondary for the continuation of the immigration examination.

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### 8.3. Responsibilities of examining BSOs at Immigration Secondary

BSOs conducting Immigration Secondary examinations are responsible for facilitating the entry of Canadians, registered Indians and permanent residents as well as *bona fide* foreign nationals and for denying entry to persons who are inadmissible and/or likely to constitute a threat to the safety, security and good order of Canadian society.

#### Responsibilities of such officers include:

- examining persons seeking entry to Canada to determine admissibility;
- facilitating the entry of Canadians, permanent residents and registered Indians;
- authorizing foreign nationals to enter Canada as temporary or permanent residents and issuing documents where appropriate;
- receiving refugee claims and determining eligibility to make such claims;
- reporting persons who are inadmissible;
- reviewing inadmissibility reports;
- issuing removal orders, where appropriate, to inadmissible persons;
- referring cases to the Immigration Division, where appropriate, for an admissibility hearing;
- authorizing an inadmissible person to enter Canada on a permit;
- denying entry to inadmissible persons, arranging for their removal and confirming their departure;

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- allowing persons who are inadmissible, to voluntarily withdraw their application; and
- arresting persons who have committed a serious infraction of the law.

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### 8.4. Right to counsel at port of entry examinations

For the purpose of an Immigration Secondary examination, a person is not entitled to counsel unless formally arrested or detained. Arrested or detained persons must be informed without delay of their right to counsel and granted the opportunity to retain and instruct counsel.

The Supreme Court of Canada has held that an Immigration Secondary examination at a port of entry does not constitute a 'detention' within the meaning of sub section 10(b) of the *Canadian Charter of Rights and Freedoms* [*Dehghani v. Canada (Minister of Employment and Immigration)*, [1993] 1 S.C.R. 1053]. The Court determined that the principles of fundamental justice do not include the right to counsel for routine information-gathering such as at port-of-entry examination interviews.

This court decision clarifies that the *Charter* only gives the right to counsel to those who are arrested or detained. Generally, CBSA's policy is not to permit counsel at examination if detention has not occurred.

The right to counsel depends on what transpires after the foreign national is first subject to examination. For example:

- if a foreign national is being examined and the examination does not go beyond what is required to establish admissibility, the person is not entitled to legal counsel;
- if the examination becomes very lengthy and exhaustive yet not beyond what is required to establish admissibility, the foreign national is not entitled to legal counsel. The BSO may, however, give consideration to allowing the foreign national to acquire legal counsel;
- if the foreign national is not restrained in any way but advised to come back the next day for further examination as outlined in A23, then they are not deemed detained and there is no right to counsel;
- if a foreign national is being held for a lengthy period of time and is subject to questioning by other agencies such as the RCMP or CSIS, then this may constitute detention and the foreign national should be notified of their right to counsel;
- if restraining devices are used or the foreign national is placed in a holding cell, even temporarily, then an officer must inform the foreign national of the reason for the detention and of their right to counsel;
- if the person is arrested for a criminal offence, they must be informed of the reason for the arrest and of their right to counsel; and
- if the foreign national is detained overnight in a detention facility, the foreign national shall be advised of their right to counsel and their right under the Vienna Convention to contact their government once the decision to detain has been made by a BSO.

For more information on counsel or detention, refer to immigration chapter ENF 20, Detention, and ENF 6, Chapter 1, Arrest and Detention.

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### 8.5. Use of interpreters

BSOs regularly encounter hundreds of different languages and dialects. Often the person seeking entry will not speak French, English or any other language familiar to the BSO. In such cases, the BSO may be able to authorize entry on the basis of documentation in the possession of the traveller. In appropriate circumstances, the BSO can ask accompanying friends or family members to assist in translation. At times a BSO may also solicit help from staff or other persons who are familiar with the language. This is a pragmatic practice that allows a BSO to facilitate the entry of travellers in cases where an official interpreter is not readily available.

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A BSO who is using a non-accredited interpreter to conduct an examination should suspend the examination if it becomes apparent that the person may be inadmissible. The examination can be continued once a competent interpreter is available. This is important for the following reasons:

- When making a decision on admissibility, the BSO needs a reliable and trustworthy interpreter in order to be sure that information provided by the client is accurately translated. Inaccurate translation could result in a decision detrimental to the client based on misinformation. This would constitute a breach of natural justice.
- Information obtained at examination is often used as evidence in admissibility hearings and, less frequently, in criminal prosecutions. If a competent interpreter is not used, the evidence can be discredited or rendered inadmissible.
- All immigration decisions relating to admissibility are subject to judicial review by the Federal Court. The Federal Court reviews the fairness of the process leading to the decision and will strike down any decision based on evidence obtained through an interpreter whose competency is in doubt.
- It is to the benefit of both the client and the CBSA that a competent interpreter be used in examinations that may lead to a person being found to be inadmissible to Canada.

Instructions on hiring and using interpreters are contained in chapter SA 7.

### **Guidelines for the use of telephone interpretation**

Telephone interpretation is a viable alternative to in-person interpretation and should be considered in order to process refugee claimants at the time of arrival in order to complete front-end screening requirements and to establish identity.

The following guidelines outline procedures for the use of telephone interpretation when the service is available and appropriate. The BSO should:

- Determine if interpretation services are required. If the claimant speaks an official language, ask them if they would be comfortable conducting the interview in that language. If so, record this in officer notes. Reiterate throughout the interview that if at any point they should require an interpreter that you will pursue their request;
- Secure an interpreter by accessing local resources or by using the IRB roster of accredited interpreters available at [http://cicintranet.ci.gc.ca/interpreters-interpretes/list\\_e.asp](http://cicintranet.ci.gc.ca/interpreters-interpretes/list_e.asp);
- Follow port procedures in terms of completing interpreters' contracts, worksheets and obtaining required payment information;
- Wherever possible, ensure that the interpreter is accredited, has signed the IRB's Interpreter's Code of Conduct or other similar Codes and is familiar with guidelines including: verbatim interpretation, confidentiality, non-bias, and instructions when providing telephone interpretation. For more details, refer to the IRB's Interpreter Handbook available at <http://www.irb-cisr.gc.ca/eng/brdcom/publications/inter/pages/index.aspx>;
- Ensure that the interpreter is on a land line and that they are alone;
- Ensure that the interpreter and the person concerned are not known to each other and that there is no conflict of interest;
- Whenever operationally feasible, provide female refugee claimants the option of being interviewed by same sex officers with the assistance of same sex interpreters when cultural sensitivities and/or signs of gender related persecution exist;
- Ask the question "Do you and the interpreter understand one another?" to begin the dialogue and to ensure that the claimant and interpreter understand each other;

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- Use, when necessary, a series of introductory warm-up questions to observe the claimant's ability to respond quickly and easily to the questions and to satisfy the officer that the interpreter is fluent in both languages;
- Ask the claimant directly whether they are able to clearly understand the interpreter and record the question and response in officer notes;
- Advise claimants and interpreters to let the officer know if at any point in the examination they do not understand or are having difficulties;
- Remain vigilant throughout the examination to ascertain if the claimant is able to understand the interpretation and to communicate effectively;
- Read back the information provided by the claimant through the interpreter in order to confirm that it accurately captures the claimant's responses;
- Record the name of the telephone interpreter on the IMM 5611 – *Claim for Refugee Protection in Canada* and IMM 1265 – *Interpreter Declaration* and note that the interpretation was provided over the phone with the start and end time of the interview as well as any breaks in interpretation services;
- Note if more than one interpreter was used with the corresponding names and start and end times;
- In the case of unaccompanied minors, contact the relevant child protection office and make every attempt to obtain interpretation services in the interim;
- Make attempts to find another interpreter in cases where it is evident that the claimant is unable to communicate through the current interpreter; and
- If no interpretation services are available, note on file all attempts that were made to secure these services. This is especially important in cases of detention.

Situations where it would be inappropriate to conduct a telephone interview include, but are not limited to:

- Certain cases where claimants are physically and/or mentally challenged;
- When guidelines for the interpreters are not met. Examples include:
  - when the interpreter does not have access to a landline or is unable to work in a private space; or
  - When telephone line quality or the quality of equipment makes hearing the parties very difficult.

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### 8.6. Confidentiality

Fast-flow counters where BSOs conduct Immigration Secondary examinations are designed to deal with cases expeditiously but offer limited privacy. A BSO should take care to consider the sensitive nature of information that may arise during an examination and, where appropriate, should secure a private setting for the continuation of an examination. Such cases might involve personal medical information, issues of criminality or the completion of documentation for entrepreneurs and their family members who are seeking to become permanent residents.

Information obtained in the course of a secondary examination is confidential. The *Privacy Act* requires that personal information concerning clients only be released to the client or the client's designated representative.

Subsection 8(2) of the *Privacy Act* contains exceptions to this requirement. For example, pursuant to subsection 8(2)(f) of the *Privacy Act*, CIC has entered into a Statement of Mutual Understanding (SMU) with the United States Immigration and Naturalization Service (USINS) [now the Department of Homeland Security (DHS)] and the U.S. State Department (DOS) which permits the exchange of information on persons who are or there are reasonable grounds to

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believe may be inadmissible or subject to removal. This agreement also allows for the sharing of information between the CBSA and the DHS and DOS.

### 8.7. Pre-questioning procedures

Before questioning a traveller, a BSO at Customs or Immigration Secondary officer should:

- review the referral information from PIL (such as that found on the E67 or E311 forms) to identify the reason for the referral;
- obtain the person's relevant identity documents such as a passport, travel document, citizenship card, permanent resident card or birth certificate;
- view the airline ticket of any person travelling by air; and
- determine if the person is in possession of any immigration documents that may assist in quickly establishing the reason the person is seeking entry into Canada.

### 8.8. FOSS checks

Using the information on the identity document presented by the person, a BSO at Immigration Secondary shall complete a name query in the Field Operations Support System (FOSS). It is a departmental policy that a FOSS check be completed for all persons referred for an Immigration Secondary examination.

### 8.9. Basic questioning

Basic questioning by BSOs should cover the following areas, as appropriate:

Issue	Question	Explanation
<b>Identity</b>	What is your name?	This will enable a BSO to identify the person. The name should be verified against the referral card, identity documents and the airline ticket.
<b>Citizenship</b>	What is your country of citizenship?	The BSO should ask this of each person being examined to ensure that the person's stated citizenship matches the identity document they present. This response will help a BSO determine passport and visa requirements. If satisfied that the person is a Canadian citizen, the BSO shall allow the person to enter Canada without further questioning.
<b>Residency</b>	Where do you reside?	Establishing if a person is a permanent resident may enable the BSO to authorize entry into Canada with minimal further delay. This question will also help a BSO to determine passport and visa requirements and to verify whether the person can return to the country of residence if it is different from the country of citizenship. For example, if the person claims to be a resident of the United States but has a passport of another country, a BSO may want to see their Resident Alien card before authorizing entry into Canada.
<b>Intentions</b>	What is the purpose of your trip? How long do you intend to stay in Canada? Where in Canada are you planning to go? Do you intend to look for work in Canada? Do you intend to study in	If the person is not someone who may enter Canada by right, a BSO should establish the person's intention in seeking entry. Questions such as these may assist in this determination.

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	Canada?	
<b>Funds available</b>	May I see your ticket please? What sources of funds do you have access to while in Canada?	Questions such as these are appropriate for determining if the foreign national possesses the financial means to carry out their intended travel plan and to depart at the end of their authorized time. The BSO should be satisfied that the foreign national will not take unauthorized employment or have to rely on social assistance while in Canada. Additional questioning may be required if the foreign national cannot establish how they will support themselves while in Canada. If they indicate that a friend or relative will support them, it may be advisable to contact the support person to verify this information.
<b>Personal history</b>	What is your occupation? Do you intend to visit anyone in Canada? Do you have any family or friends in Canada?	If the BSO is concerned that the foreign national may not leave Canada at the end of the authorized time, further questioning may be necessary to establish ties to the person's homeland. In these cases, questions concerning the person's family both abroad and in Canada may be appropriate, including questions concerning marital status.
<b>Background</b>	Do you or have you had any health problems? Have you ever been convicted of a crime or an offence? Have you ever been refused entry into or removed from Canada?	The person's past may be relevant to admissibility. Questions such as these may be appropriate for determining whether the person is inadmissible due to ill health, criminality or previous non-compliance with immigration requirements.

See chapter ENF 2, Evaluating Inadmissibility, for more information on determining admissibility.

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## 9. Examining Canadian citizens at ports of entry

### 9.1. The right to come into Canada

A Canadian citizen within the meaning of the *Citizenship Act* has a right to enter and remain in Canada pursuant to A19(1).

### 9.2. Examination of Canadian citizens

A15(1) provides for an officer to proceed with an examination where a person makes an application to the officer in accordance with the Act.

R28(b) provides that a person seeking to enter Canada is making an application.

Additionally, A18(1) requires every person seeking to enter Canada to appear for an examination to determine whether they have the right to enter Canada or may be authorized to enter and remain in Canada. This includes Canadian citizens.

A BSO at Immigration Secondary will normally examine a Canadian citizen only when the BSO at PIL doubts the person's citizenship. A BSO at a port of entry should examine Canadian citizens as expeditiously as possible. Once the officer establishes that a person is a Canadian citizen, the examination should end and the person should be allowed to enter Canada without further delay. It is not appropriate for BSOs to elicit further personal information from a Canadian citizen.

Canadian citizens may be asked to willingly provide additional information if it will assist a BSO in determining the admissibility of an accompanying foreign national.

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### 9.3. Determining Canadian citizenship

The following documents are acceptable proof of Canadian citizenship:

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- Canadian passport;
- Certificate of Canadian Citizenship (both large and pocket or wallet size; the smaller form now exists in two versions: one with a 44mm x 57mm (1 3/4" x 2 1/4") photograph, and the other with a 35mm X 53mm (1 3/8" X 2 1/16") photograph);
- Canadian Emergency Passport (a BSO at PIL will automatically refer for secondary examination a person in possession of a Canadian Emergency Passport. Once they have verified the person's identity, the BSO at Immigration Secondary retains the passport and forwards it to the Passport Office, Foreign Affairs Canada, Ottawa);
- Certificate of Naturalization;
- Certificate of Registration of Birth Abroad; and
- Certificate of Retention of Canadian Citizenship.

A Canadian provincial birth certificate is a good indicator of Canadian citizenship, but does not contain a photograph. The BSO must therefore be satisfied that the person is the rightful holder.

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### 9.4. Establishing citizenship without documents

Canadians returning to Canada by air usually have to provide proof of identity and citizenship to get on the flight. Canadians arriving at land borders, however, will frequently be without satisfactory documentary proof of Canadian citizenship. In these cases, a BSO should question the person until they are satisfied of the person's Canadian citizenship. Once satisfied that the person is a Canadian, the person must be allowed to enter Canada without further delay.

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### 9.5. Citizenship record searches

A BSO at Immigration Secondary may request a search of citizenship records by e-mailing the Citizenship Case Processing Centre (CPC) in Sydney, Nova Scotia, at [CPC-SYDNEY-SEARCHENQ@cic.gc.ca](mailto:CPC-SYDNEY-SEARCHENQ@cic.gc.ca).

The official response will be provided via e-mail. Where a record letter is required, a BSO at Immigration Secondary must follow up the e-mail request by submitting a completed Application for Search of Citizenship Records using form CIT 0058E. A written response will be forwarded by FAX as well as by regular mail.

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**Note:** Citizenship searches will only reveal if a person has obtained Canadian citizenship through naturalization. The Sydney CPC does not keep records of persons who are Canadian citizens by birth. Proof of citizenship by birth can be established by a search of provincial birth certificates or baptismal records.

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After a person has received Canadian citizenship, the information is entered into the citizenship database (GCMS or CRS). CRS data is electronically fed into FOSS on a regular basis and FOSS identifies this information as an NCB (type 11 code).

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### 9.6. Laissez-passer

A *laissez-passer* may be issued to Canadian citizens by Canadian visa offices abroad. A *Laissez-passer* is only issued when a Canadian embassy or consulate vouches for the complete reliability of the bearer and there is sufficient reason for issuing one. For this reason, an extensive examination of the holders of a *laissez-passer* should not normally be necessary at the port of entry. In rare cases, a *laissez-passer* may be issued to foreign nationals in lieu of a diplomatic or courtesy visa.

A *laissez-passer* document bears the seal of the issuing office. The BSO at Immigration Secondary should collect the *laissez-passer* from the bearer at the port of entry and forward it to the Canadian embassy, consulate or office that issued it.



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### 9.7. Emergency passports

An emergency passport may be issued at a Canadian visa office abroad to facilitate the return of a Canadian citizen. It can also be issued as a one-trip document for travel from a Canadian visa office abroad without passport services (for example, a Canadian Honorary Consul) to another office with full passport services.

The emergency passport is approximately 8 x 10½ inches in size, printed on light green paper, and is serially numbered.

The BSO at PIL is required to refer holders of an emergency passport for an Immigration Secondary examination. The Passport Office requires the surrender of an emergency passport immediately on the holder's arrival in Canada or at the destination for which the passport was issued. The BSO at Immigration Secondary shall recover the emergency passport and promptly forward it to:

Passport Office  
219 Laurier Ave, 11<sup>th</sup> floor  
Ottawa  
K1A 0G3

A space is provided on the face of the document for a signature indicating that the passport has been received.

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## 10. Examining registered Indians at ports of entry

A19(1) provides that every person registered as an Indian under the *Indian Act*, whether or not that person is a Canadian citizen, has the right to enter and remain in Canada.

The term "Indian" is defined under the *Indian Act* as a person who is registered as an Indian or is entitled to be registered as an Indian. Section 6 of the *Indian Act* defines who is entitled to be registered as an Indian.

A15(1) provides for an officer to proceed with an examination where a person makes an application to the officer in accordance with the Act. R28(b) provides that a person seeking to enter Canada is making an application. Additionally, A18(1) requires every person seeking to enter Canada to appear for an examination to determine whether they have the right to enter Canada or may be authorized to enter and remain in Canada. This includes registered Indians.

A BSO at Immigration Secondary will normally examine a registered Indian only when the BSO at PIL doubts the person's status. A BSO at a port of entry should examine registered Indians as expeditiously as possible. Once the officer establishes that a person is a registered Indian, the examination should end and the person should be allowed to enter Canada without further delay. It is not appropriate for BSOs at Immigration Secondary to elicit further personal information from a registered Indian. Registered Indians may be asked to willingly provide additional information if it will assist an officer in determining the admissibility of an accompanying foreign national.

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### 10.1. Determining registered Indian status

A Certificate of Indian Status, issued by the Department of Indian and Northern Affairs, is proof of Indian status. Once a BSO establishes that a person has Indian status, the BSO must allow the person to come into Canada without further delay.

Certificates of Indian Status are issued on request to persons registered as Indians under the *Indian Act* who have reached 16 years of age. Under special circumstances, certificates can also be issued to registered Indian children under the age of 16.

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The regional office of the Department of Indian and Northern Affairs is responsible for the Certificates of Indian Status, including procedures for laminating certificates and for verifying that the information is consistent with the Indian Register. The certificates are normally issued by the regional district or band office charged with maintaining the field copy of the Indian Register for the band.

Certificates of Indian Status are stored in a computerized central registry at the Department of Indian and Northern Affairs. If BSOs require verification of Indian status or have reason to doubt the authenticity of a card being presented, they may contact the Supervisor, Registration Services at:

Indian and Northern Affairs Canada

Terrasses de la Chaudière  
10 Wellington, North Tower  
Gatineau, Quebec

Postal address:  
Ottawa, Ontario  
K1A 0H4

Toll-free 1-800-567-9604

Outside North America: (819) 953-4200

[InfoPubs@ainc-inac.gc.ca](mailto:InfoPubs@ainc-inac.gc.ca).

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### 10.2. Establishing registered Indian status without documents

Registered Indians seeking entry into Canada may not be in possession of documentary proof of their status. In such cases, a BSO should question the person until they are satisfied of their status. Once satisfied that the person is a registered Indian, the person must be allowed into Canada without further delay.

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### 10.3. American Indians not registered in Canada

It is the position of both the Canadian and U.S. governments that the authorization of entry of non-citizen North American Indians is governed solely by immigration legislation and not by the Jay Treaty. The rules governing the entry of American Indians into Canada differ from those governing access to the United States by Canadian Indians.

Under the U.S. *Immigration and Nationality Act*, Canadian Indians who can demonstrate that they have "50% or more Indian blood," by presentation of their band registration card, are entitled to permanent resident status in the United States. As a result, Canadian Indians who arrive at U.S. ports of entry and state that they intend to work in the United States are instructed by United States Customs and Border Protection officials to apply for permanent resident status on the spot. The applicants are immediately issued temporary residency cards and are entitled to work in the United States without work permits.

Under Canadian immigration law, however, North American Indians are only accorded the right to enter Canada if they are registered on the Canadian Band Lists. An American Indian can only obtain registered band status if they can establish that their mother or father was a member of a Canadian band. Therefore, American Indians coming to Canada to work or study require work or study permits.

Virtually all members of the Indian nations whose traditional lands straddle the border are entitled to be registered under the *Indian Act*, and once they have exercised this option, they may enter Canada by right under A19(1). Some American Indians have difficulty accepting that Canadian law requires them to be registered formally as members of a Canadian Indian band before they can legally work in Canada. BSOs should deal tactfully with cases of this nature.

The question of the right of a non-registered Indian to work in Canada is currently under litigation and will be determined by the courts. At present, such persons are bound by the requirements of

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the Act and Regulations. Given the contentious nature of the issues involved, a BSO at Immigration Secondary should communicate refusal of entry to American Indians who do not qualify for registered Indian status in Canada with sensitivity.

Wherever possible, BSOs at ports of entry should facilitate the entry of American Indians who wish to enter Canada as temporary residents

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### 11. Examining permanent residents at ports of entry

A2(1) defines a permanent resident as a person who:

- has acquired permanent resident status; and
- has not subsequently lost that status under section A46.

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#### 11.1. Rights of permanent residents

A27(1) provides that a permanent resident has the right to enter and remain in Canada subject to the provisions of the Act.

A19(2) requires an officer to allow a permanent resident to enter Canada if satisfied following an examination on their entry that they have that status.

Permanent residents who are under enforcement proceedings keep their permanent resident status and retain the right to enter Canada until a final determination of their loss of status has been made.

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#### 11.2. Verifying permanent resident status

The permanent resident card is the only valid proof of permanent resident status in Canada.

The following documents are satisfactory indicators of permanent residence:

- the original Record of Landing;
- a certified true copy of a Record of Landing document issued by CIC National Headquarters;
- a letter issued by CIC National Headquarters verifying permanent residence;
- a passport duly stamped showing the date on which permanent residence was granted, if the person was granted permanent resident status before 1973; and
- a Confirmation of Permanent Residence document [IMM 5292B].

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#### 11.3. Establishing permanent resident status without documents

BSOs at ports of entry have the discretion to authorize the entry of permanent residents, even in the absence of documentation. If documentary evidence is not available, the BSO at Immigration Secondary must establish the person's permanent resident status through questioning and checking the person's status in FOSS. The status of persons who became permanent residents before 1973 has to be verified by contacting the Query Response Centre at National Headquarters at: [QRC@cic.gc.ca](mailto:QRC@cic.gc.ca).

Once a BSO is satisfied that a person is a permanent resident, the examination should be concluded and the person should be allowed to enter Canada without delay.

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#### 11.4. Investigating permanent residents for inadmissibility

When a permanent resident appears at a POE for examination, the BSO must determine whether the person is a permanent resident.

BSOs must remain cognizant of the fact that the Act gives permanent residents of Canada the right to enter Canada at a POE once it is established that a person is a permanent resident,

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regardless of non-compliance with the residency obligation in A28 or the presence of other inadmissibilities.

BSOs can refuse entry to a permanent resident only when the person has already lost the status in accordance with the provisions of A46 (such as a final determination has been made that they have failed to comply with the residency obligations or when a removal order comes into effect). In other words, once a permanent resident's status is established, the person may enter Canada by right and the immigration examination under IRPA concludes.

However, BSOs will sometimes become aware of evidence of non-compliance with the residency obligation in the course of the determination that a person is a permanent resident. When BSOs believe that a person who they have determined is a permanent resident is in non-compliance with the residency obligation of A28, the BSO may explain to the person that it has been established that they have a right to enter Canada, that there is some reason to believe they could be the subject of a report under IRPA which could lead to the issuance of a removal order, and that although the person may now enter Canada, they may choose to answer additional questions to determine whether the BSO's concerns are well founded or not.

In cases where:

- permanent resident status is established;
- the permanent resident refuses to provide any further information and enters Canada; and
- the BSO believes, on a balance of probabilities, that the person is in non-compliance with the residency obligation;

the BSO at Immigration Secondary may report the person (pursuant to A44(1)) if there is sufficient evidence to support an inadmissibility allegation. In the absence of sufficient evidence to support the writing of an inadmissibility report, the BSO may enter any available information into FOSS (date of entry, last country of embarkation, current address in Canada, etc.) and forward notification of the same to a CBSA inland office in Canada to determine whether an investigation is warranted.

For more information on procedures for dealing with clients who fail to meet the residency obligation, refer to ENF 23, Loss of Permanent Resident Status.

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### 11.5. Permanent resident card

The permanent resident (PR) card, is the status document referred to in A31(1) that indicates that the holder is a permanent resident of Canada. A person who holds a PR card is presumed to have PR status unless a BSO at Immigration Secondary determines otherwise. As of December 31, 2003, the PR card, or alternatively, the A31(3) travel document issued by one of Canada's visa offices abroad, is the new prescribed document for permanent residents-when boarding a commercial transporter bound for Canada.

For more information on the permanent resident card, refer to ENF 27, Permanent Resident Card.

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### 11.6. Prescribed document

A148(1)(a) prohibits commercial transporters from carrying a person to Canada who does not hold a prescribed document. R259 makes the PR card a prescribed document for the purpose of A148. As of 31 December 2003, valid PR cards or A31(3) travel documents are prescribed documents for establishing permanent resident status. Consequently, the PR card or the A31(3) travel document is the prescribed document for PRs, for the purposes of boarding a commercial transporter (i.e., aircraft, train or ship) bound for Canada.

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### 11.7. Permanent resident cards with one-year validity date

R54(2) provides that a permanent resident card will be issued with a validity of one year instead of five years as per R54(1), if the permanent resident:

- is subject to a process set out in A46(1)(b) until there has been a final determination;

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- is the subject of a report prepared under A44(1) that is being considered by the Minister;
- is the subject of a removal order made by the Minister pursuant to A44(2); or
- is the subject of a report under A44(1) which has been referred by the Minister to the Immigration Division under A44(2).

See R54(2) for additional details.

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### 11.8. Travel document

A31(3) states:

A permanent resident outside Canada who is not in possession of a status document indicating permanent resident status shall, following an examination, be issued a travel document if a BSO is satisfied that:

- (a) they comply with the residency obligation under A28 [of the Act];
- (b) an officer has made the determination referred to in paragraph 28(2)(c) [of the Act]; or
- (c) they were physically present in Canada at least once within the 365 days before the examination and they have made an appeal under 63(4) that has not been finally determined or the period of making such an appeal has not yet expired.

[Paragraph A28(2)(c) cited in A31(3)(b) above states in part "... that humanitarian and compassionate considerations... taking into account the best interests of a child directly affected by the determination, justify the retention of permanent resident status...."]

The purpose of the travel document is to facilitate the return of all permanent residents to Canada. This includes those who may have accidentally lost their permanent resident card while outside Canada, as well as those who are appealing a decision made outside Canada that they failed to meet the residency obligation under A28.

The travel document will take the same form as a temporary resident visa counterfoil that is placed in a passport or travel document. It is valid for one entry to Canada simply to facilitate the permanent resident's return.

It is to be cancelled upon entry to Canada by drawing a line from the top left of the counterfoil to the bottom right and stamped: "Cancelled without prejudice." The BSO at Immigration Secondary would counsel the permanent resident that they may apply for a permanent resident card from within Canada.

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### 11.9. Coding on the travel document

Permanent residents who have demonstrated that they have complied with the residency obligation listed in A28 will be issued counterfoils bearing the coding "R".

- In cases where permanent residents have not met the residency requirement, but where humanitarian and compassionate considerations grounds exist to support the retention of their status pursuant to A28(2)(c), a counterfoil bearing the coding "RC" will be issued.
- In cases where the document has been issued pursuant to A31(3)(c) (where an appeal of a loss of status determination is filed, or the time period for filing an appeal has not expired and the person has been physically present in Canada at least once in the past 365 days) the counterfoil will bear the coding "RX".
- In cases where the permanent resident does not meet the residency obligation and no humanitarian and compassionate grounds exist but the Immigration Appeal Division has ordered the appellant to appear in person at the hearing, a counterfoil bearing the coding "RA" will be issued.

Counterfoils bearing the "RX" code or the "RA" code will be mandatory referrals for BSOs at PIL.

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If a person, with a counterfoil bearing the “RX” or “RA” coding is returning to Canada to attend an appeal of a decision made outside Canada regarding loss of status, or where an appeal has yet to be filed and the period for filing has not expired, the BSO at Immigration Secondary should authorize entry without delay if satisfied that no final determination has been made with respect to their loss of permanent resident status. The BSO at Immigration Secondary should update FOSS as to their date of entry and current address.

The principal difference between a travel document and a one-year permanent resident card is the period of validity. Where the travel document is cancelled upon return to Canada, the permanent resident card remains valid until the outcome of an appeal is decided or until the period for making an appeal expires. In most cases, the BSO at Immigration Secondary would not prepare a new A44(1) report at the port of entry if the person is already in the enforcement stream.

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### 11.10. Persons appealing the loss of permanent resident status

A BSO at Immigration Secondary who encounters a person in possession of a permanent resident card issued with a one-year validity should check FOSS to determine whether there is a final determination that the person has in fact lost their status under A46. If the person is returning to Canada to attend the appeal of a decision made outside Canada regarding the loss of status or where an appeal has yet to be filed, and the period for filing has not expired and that person is in possession of a travel document, the BSO should authorize entry without delay if satisfied that no final determination has been made with respect to their loss of status.

The BSO should update FOSS as to their date of entry and current address, using a non-computer based entry (NCB).

In most cases, the BSO would not prepare a new A44(1) report at the port of entry if the permanent resident already has a removal order.

For more information on how to deal with permanent residents who have received a loss of status determination outside Canada but who have not been issued a removal order, refer to ENF 23, Loss of Permanent Resident Status.

Upon a final determination of loss of permanent resident status, a person becomes a foreign national. Should they return to Canada, they must be assessed to determine if they meet the requirements of the Act and Regulations for entry as a temporary resident even if they still possess a permanent resident card.

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### 11.11. Permanent residents holding a Canadian Certificate of Identity

Foreign Affairs Canada may issue a Canadian Certificate of Identity to a permanent resident of Canada who has not acquired Canadian citizenship and who is unable to obtain other travel documents. Within the validity of the certificate, the BSO must allow the holder to enter Canada.

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### 11.12. Residency obligation for permanent residents

A28(1) states that a permanent resident must comply with the residency obligation with respect to every five-year period. A28(2) stipulates that a permanent resident complies with this obligation if, on each of a total of 730 days in that five-year period, they are:

- physically present in Canada;
- outside Canada but accompanying a Canadian citizen spouse or common-law partner or, in the case of a child, their parent;
- outside Canada employed on a full-time basis by a Canadian business or in the public service of Canada or of a province;
- outside Canada accompanying a permanent resident spouse or common-law partner or, in the case of a child, their parent, who is employed on a full-time basis by a Canadian business or in the public service for Canada or a province; or

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- able to meet other conditions for compliance that are set out in the Regulations.

When a BSO is assessing the residency obligation, the period considered is limited to the five years immediately preceding the examination. Where persons have been permanent residents for less than five years, they must be able to comply with the residency obligation in respect of the five-year period immediately after becoming a permanent resident.

For more information on loss of permanent resident status, see ENF 23, Loss of Permanent Resident Status.

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### 11.13. Issuing removal orders against permanent residents

The decision that a permanent resident has lost their status may be made outside Canada by a visa officer; whereas, at a port of entry, if there is evidence that a permanent resident has failed to comply with the residency obligation as set out in A28, a BSO may write a 44(1) report for the allegation A41(b). If the Minister's delegate finds the report to be well-founded and insufficient humanitarian grounds exist, the Minister's delegate shall issue a departure order pursuant to R228(2). The permanent resident has the right to appeal the decision made outside Canada or at the port of entry to the Immigration Appeal Division (IAD), pursuant to A63. Permanent Residents who have been issued a removal order maintain their right of entry until the appeal period has elapsed; therefore, BSOs should allow entry to Canada until a final determination of status is made.

For more information, see the following chapters:

- ENF 2, Evaluating Inadmissibility;
- ENF 5, Writing 44(1) Reports;
- ENF 23, Loss of Permanent Resident Status;
- ENF 6, Review of Reports under A44(1); and
- ENF 19, Appeals before the Immigration Appeal Division (IAD) of the Immigration and Refugee Board (IRB).

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### 11.14. Other inadmissibility allegations

If a BSO believes a permanent resident is inadmissible for reasons other than failure to comply with the residency obligation, they are still required to allow the person to come into Canada. A BSO at Immigration Secondary should attempt to obtain sufficient information (including current address, phone number, and employment location) to enable follow-up action from an inland office in the event an investigation ensues.

See manual chapter ENF 2, Evaluating Inadmissibility, for more information on determining inadmissibility.

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### 11.15. Arrest and detention of permanent residents

Arrest and detention under A55(1) should only be considered when the BSO at Immigration Secondary can clearly identify that a threat to the public exists or in cases where there is an active warrant. Where a warrant exists, the BSO must verify the information with the Warrant Response Centre (WRC) before executing the warrant and placing the person under arrest. For more information on arrest procedures, refer to ENF 7, Investigations and Arrests. For more information on detention, refer to ENF 20, Detention.

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### 11.16. Seizing permanent resident visas and permanent resident cards

A140(1) authorizes an officer to seize and hold a document or other thing if the officer believes on reasonable grounds that:

- it was fraudulently or improperly obtained or used;
- the seizure is necessary to prevent its fraudulent use or improper use; or

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- the seizure is necessary to carry out the purposes of the Act.

A BSO at Immigration Secondary may seize and hold the permanent resident card temporarily while determining through an examination whether the holder is in fact a permanent resident. Once the BSO determines that the person is indeed a permanent resident, the BSO must authorize entry to the permanent resident and their documents must be returned immediately.

If the BSO prepares an A44(1) report against the permanent resident, the IMM 5292B and permanent resident card should be returned to the holder who will retain their permanent resident status until a final decision is made respecting their loss of status. Pending this decision, A31 requires that a permanent resident be provided with a status document. R53(1) provides that the status document is the permanent resident card.

The BSO may seize these documents if they have reason to believe that they were fraudulently issued or obtained or to prevent their improper or fraudulent use. For example, if there is a final determination that the person has lost their permanent resident status, a BSO may seize and retain the documents in order to prevent their improper use.

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## 12. Examining foreign nationals seeking to become permanent residents at ports of entry

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### 12.1. Permanent resident visas

Under the previous *Immigration Act*, 1976, a permanent residence applicant was issued an Immigrant Visa [IMM 1000] from a consulate or visa office outside Canada, and would subsequently present it at a port of entry in order to be “landed” as a permanent resident.

Under the *Immigration and Refugee Protection Act* (IRPA), permanent residence applicants are issued a Confirmation of Permanent Residence document [IMM 5292B], which is to be presented at the port of entry for processing in order to become a permanent resident.

The permanent resident visa and the confirmation of permanent residence are evidence that an overseas visa officer was satisfied that, at the time of issuance, the foreign national named in the document was not inadmissible and met the selection criteria and requirements of the Act and Regulations.

Most applicants for permanent residence have applied for and obtained a permanent resident visa from a Canadian visa office outside Canada. They are required to present their document to a BSO on arrival in Canada.

All persons in possession of a permanent resident visa seeking to establish permanent residence in Canada must be examined by a BSO at Immigration Secondary.

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### 12.2. Examination of foreign nationals with permanent resident visas

When an applicant in possession of a permanent resident visa applies to become a permanent resident at a port of entry, the role of the BSO at Immigration Secondary is to:

- verify the person’s identity;
- confirm that the information on the permanent resident visa is correct;
- establish that the applicant complies with all requirements of the Act and Regulations and is not inadmissible;
- confirm that the applicant’s marital, common-law, or family status has not changed since the issuance of the permanent resident visa;
- confirm that the applicant and their family members (whether accompanying or not) still meet the requirements of the class of permanent residents under which the permanent resident visa was issued;



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- impose and explain any appropriate conditions; and
- welcome the new permanent resident to Canada and provide information about programs and services available to facilitate integration into Canadian society.

The Regulations require that foreign nationals in possession of a permanent resident visa who are presenting themselves for permanent residence advise an officer:

- if their marital status has changed since the visa was issued, as required by R51(a)(i); and
- of any other facts relevant to the issuance of the visa that have changed since the visa was issued, or that the foreign national failed to disclose at the time the permanent resident visa was issued, as required by R51(a)(ii).

If the BSO at Immigration Secondary establishes that the foreign national is inadmissible and that a change in the relevant facts is evident, the BSO may prepare a report under A44(1). For more information on report writing, refer to ENF 5, Writing section 44(1) Reports.

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### 12.3. FOSS check

A BSO at Immigration Secondary shall conduct a name query in FOSS for every foreign national in possession of a permanent resident visa who is seeking to establish permanent residence in Canada. A name query may reveal that the person has multiple FOSS client identification numbers in which case, the BSO should consider merging them into a single client ID. FOSS ID numbers under which warrants were issued or Mississauga or Vegreville sponsorship files must be maintained as the primary means of identification and should not be purged.

The BSO shall also ensure that there is no information recorded in FOSS that would alter the decision to grant permanent residence.

For example, there may be an outstanding warrant for the applicant's arrest or the applicant may have been previously deported from Canada. A BSO at Immigration Secondary should carefully review any adverse information to determine whether the person satisfies all the requirements of the Act and Regulations. In some cases, it may be useful for the examining BSO to contact the officer who issued the permanent resident visa to confirm whether this information would have altered the decision to issue a visa. In some cases, the BSO may need to defer the examination, pursuant to A23, to obtain more information before deciding whether to grant permanent resident status.

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### 12.4. Documents required by foreign nationals seeking permanent resident status

R50(1) specifies the type of passport, travel or identity document that an applicant must have in their possession to be given permanent resident status. This document is necessary to verify the identity of the person seeking permanent residence.

R50(2) provides that protected persons who have been issued a permanent resident visa may become permanent residents when it is not possible for them to obtain a passport, identity or travel document

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### 12.5. Verifying information on the permanent resident visa

A BSO at Immigration Secondary shall verify the information on the permanent resident visa by comparing it with the passport to confirm basic data, and then review the form with the person concerned to ensure that the information they initially provided has not changed. The BSO then completes the fields in the permanent resident visa relevant to the granting of permanent resident status.

The examining BSO should:

- examine the passport and any other identity documents provided;
- use the applicant's passport and other identity documents to confirm that each name is correctly spelled and that the family and first names are clearly identified;

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- verify the date of birth with the identity documents provided by the applicant (the day and month are sometimes transposed due to different international systems for displaying the date);
- check the information on sex and marital status, particularly when dealing with common-law relationships and accompanying family members. If there has been a change in marital status, it may be necessary to amend the permanent resident visa;
- in cases where there is a sponsor or accompanying family members, confirm the familial relationship to the sponsor or head of family;
- confirm that the permanent resident visa is still valid and has not expired;
- confirm that the applicant has passed the required medical examination(s) and that their validity has not expired;
- confirm that the applicant intends to establish permanent residence in Canada;
- confirm that the applicant is not inadmissible under section A39. Persons who have been sponsored or persons who have been issued visas as government-assisted refugees can generally be accepted as having adequate settlement arrangements that would not place them within the meaning of section A39. For further information on settlement funds and the Low Income Cut-Off (LICO) table, refer to OP 6 Section 11.1; and,
- verify the accuracy of information contained on permanent resident visas for all members of the family travelling together before authorizing permanent residence.

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### 12.6. Confirmation of Permanent Residence document [IMM 5292B]

Successful permanent residence applicants are issued the “Confirmation of Permanent Residence” [IMM 5292B] document from a Canadian consulate or visa office outside Canada. The IMM 5292B, coupled with a Permanent Resident Visa [IMM 1346] counterfoil placed in the holder’s passport or travel document, replaced the Immigrant visa (IMM 1000), which was issued under the 1976 *Immigration Act*. Both documents must be presented to a BSO at a port of entry in order to complete the processing towards permanent residency to Canada.

The Confirmation of Permanent Residence document contains a photo of the holder as well as a box for the holder’s signature that must be completed upon entry into Canada under the direction of a BSO.

The Confirmation of Permanent Residence by itself is not a prescribed document as per section R259 of IRPR to board a means of transportation to Canada. Confirmation of Permanent Residence holders will be issued a visa counterfoil [IMM 1346] bearing the coding “IM” in order to facilitate their boarding.

Once the Confirmation of Permanent Residence has been completed at the port of entry, the BSO at CBSA Secondary will counsel the permanent resident as to their rights and obligations under the IRPA and IRPR, as well as the procedures involved in obtaining their permanent resident card.

When a foreign national applies to become a permanent resident at a POE and is in possession of a Confirmation of Permanent Residence [IMM5292B], the BSO at Immigration Secondary should adhere to the following procedures:

- ensure that the bio data recorded on the Confirmation of Permanent Residence form [IMM5292B] matches the information in the applicant’s passport or travel document. In cases where a clerical error has been made, the IMM5292B should be corrected to bring it into agreement with the bio data in the passport or travel document. The correction should be made by placing an asterisk beside the error and notating the correction in the remarks section of the IMM5292B. Any corrections made should also be reflected in FOSS;

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Hand written changes should not be made to the text of IMM 5292B and should be limited to the remarks section.

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- in some cases, the future adoptive or married name differs from the one used by the visa office. Some visa officers may also indicate a preferred or alternative name in the remarks section of the IMM 5292B. However, this practice, which is inconsistently used, does not change the procedures followed by the BSO. Adoptive parents or other persons who wish to have their permanent resident (PR) card issued in a name that is different from what appears on the IMM 5292B or passport must apply for a new PR card by submitting the appropriate supporting documentation and a fee in accordance with the corrections procedure outlined in ENF 27 section 5.5. Amendment kits (IMM 5218E/IMM 5218F) are available through the CIC call centre;

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Copies of adoption/marriage certificates should **not be** attached to Part 1 of the IMM5292B and mailed to the CPC-PRC by the BSO.

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- ensure that the Confirmation of Permanent Residence has a photograph affixed to copy 1;
- ensure that the photo meets the specifications; between 25 mm (one inch) and 30 mm (1.181 inches) from the chin to the top of the head and an overall size of 35 mm (1.375 inches) by 45 mm (1.75 inches); if it does not, re-take photographs (refer to the photograph section below for more details on photograph specifications);
- ensure that the photograph on the passport or the travel document bears a clear resemblance to the photograph on the Confirmation of Permanent Residence;
- if there is no photograph affixed to the confirmation of Permanent Residence or the photo does not bear a clear resemblance to the photograph on the passport or travel document, retake the photograph.
- affix the photograph to the Confirmation of Permanent Residence form to copy 1 and ensure that both photos are a likeness of the person under examination;
- complete the appropriate fields on the Confirmation of Permanent Residence form;
- update FOSS, ensuring that the permanent resident's height and eye colour are properly recorded as well as any clerical corrections the BSO has made in the remarks section;
- update the client's complete address in Canada in FOSS, including postal code;
- if they have no address, advise the client that they have 180 days to provide CIC with their address;
- stamp the travel or identity document as required;
- counsel the client that they will receive their permanent resident card in approximately three weeks and that if they have not received it within four weeks, to contact the CIC Call Centre at 1-888-242-2100;
- distribute the four-part Confirmation of Permanent Residence form as follows:
  - copy 1, with photograph affixed, is to be sent to the CIC CPC to be scanned for production of the permanent resident card;
  - copy 2 will be forwarded to National Headquarters (NHQ), Document Management, to be microfilmed;
  - copy 3 of the Confirmation of Permanent Residence form will be retained by the client for information purposes;
  - copy 4 will be forwarded to National Headquarters (Revenue Accounting) in Ottawa, in accordance with standard batching instructions.

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### Photographs

- The background must be white (use screens provided with camera to take photos);
- There must not be any objects in the background;
- The photograph should show full front view of the person with the head and shoulders centred in the photograph;
- There must be no staples, stamps, pen marks, holes or tape on the photograph;
- Eyeglasses in photos are acceptable if they are a normal feature of a person's appearance, as long as the glasses do not hide the eyes;
- Head coverings on photographs, other than those worn for religious reasons are not acceptable;
- Torn photos are not acceptable.

### Signatures

- A child 14 years of age and over must sign their own form;
- A parent or legal guardian signs for a child under the age of 14. The parent must sign their name and not the child's name;
- Only one signature goes in the box and the signature must be inside the box;
- The signature must match the name on the form except in the case of a child under the age of 14 whose parent or legal guardian has signed on their behalf;
- The BSO should not place an X beside the client's signature on the client's behalf and must ensure that the signature box is filled in by the client;
- If the person is illiterate or cannot make a mark for a physical reason,, a thumbprint should be placed on the form.

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### 12.7. Changes in marital and family status

R51 requires a foreign national who has been issued a permanent resident visa as a single person to advise an officer if their marital status has changed since the visa was issued.

A report under A44(1) for A41(a) for R51 is not necessary, if the non-declaration of a marriage or common-law relationship to the visa officer does not affect the grant of permanent residence to the person in the following cases:

- In the case of refugees and protected persons, a BSO should grant permanent resident status to these classes of persons and provide counselling regarding the sponsorship of a spouse or common-law partner; and
- A foreign national who marries their sponsor after the visa is issued, but before the grant of permanent residence. This change in circumstance is not material to admissibility.

The BSO should assume the truthfulness of voluntary statements relating to marital status and proceed as though the person seeking to become a permanent resident were married, whether or not there is documentary proof of the marital status. The BSO should usually defer the examination pursuant to A23 in order to consult the visa office and obtain more information and evidence about the person's marital status. In some cases, the BSO may ask the visa officer to interview a non-accompanying spouse or common-law partner outside Canada to determine if they meet the requirements of the Act and Regulations and can be issued a permanent resident visa.

The procedure for authorizing permanent resident status to the person seeking to become a permanent resident and the spouse will vary from case to case, depending on the applicant's and

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the spouse's particular circumstances. The BSO should provide a full case summary to accompany the file, so that the receiving inland CIC office can follow up appropriately.

The BSO should bear in mind that the applicants' and their family members' medical examination, security check and travel document may need to be updated while the spouse or common-law partner is being examined and before permanent residence can be granted.

If, after the investigation, there is sufficient evidence to proceed with enforcement action, a BSO may write the appropriate A44(1) report against the person seeking to become a permanent resident as well as an accompanying spouse or common-law partner.

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### 12.8. Common-law partners

R1(1) states that:

“common-law partner” means, in relation to a person, an individual who is cohabiting with the person in a conjugal relationship, having so cohabited for a period of at least one year.

Section R(2) defines:

“common-law partner” as “an individual who has been in a conjugal relationship with a person for at least one year but is unable to cohabit with the person, due to persecution or any form of penal control, shall be considered a common-law partner of the person.”

Tact and diplomacy should be exercised when conducting an interview about personal relationships as questions could be embarrassing to both BSO and client.

All persons seeking to become a permanent resident should be asked if their marital or common-law status has changed to include either a spouse or common-law partner.

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### 12.9. Dependent sons and daughters with common-law partners

When verifying the marital status or common-law partnership status of dependent sons and daughters during an examination, the situation may arise whereby a son or daughter is unmarried, but may have a common-law partner. If so, as in the case of a married dependent son or daughter, the son or daughter may no longer be a dependent according to the established definition of a dependent son and daughter. Children over 21 years old in married and common-law relationships may still be dependent sons and daughters if they have remained full-time students and financially supported by their parents since they became spouses or common-law partners, provided that that relationship started before the age of 22.

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### 12.10. Procedure for dealing with children whose marital or family status has changed

A BSO at Immigration Secondary who determines that the marital status of a dependent child has changed should:

- determine whether, despite the change in marital or common-law status, the person is still considered a dependant (i.e., are they a full-time student and supported by their parents since age 19 or earlier). If so, the BSO should grant permanent resident status. If not, and the consequence of a change in marital status or common-law partnership status cannot be readily determined, the BSO should defer the examination pursuant to A23;
- create an NCB on FOSS giving case details as well as the person's complete address and telephone number; and
- send an e-mail to the visa office outside Canada that issued the permanent resident visa explaining the case details, including the visa office B file number, FOSS identification number and NCB information.

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### 12.11. Imposing conditions on permanent residence applicants

The purpose of imposing conditions on a person seeking to become a permanent resident at the time of granting permanent residence is to ensure that the permanent residence applicant complies with entry requirements.

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Under the *Immigration and Refugee Protection Act*, certain conditions may be imposed by a BSO at Immigration Secondary while other conditions are automatically imposed by legislation on certain classes of permanent residents (for example, on entrepreneurs and their family members). Visa officers may also impose medical conditions abroad, as is the case with medical surveillance.

The BSO will, in some cases, impose conditions on a person seeking to become a permanent resident at the time of granting permanent residence and, in other cases, they will need to explain conditions that have been imposed or that are automatically imposed by the Regulations on a class of permanent residents.

### **Medical Examinations and Medical Surveillance:**

Applicants who have been issued a Confirmation of Permanent Residence document **IMM 5292B** have already had their immigration medical examination abroad. If follow-up medical surveillance is required, this condition is imposed by the visa officer abroad who completes a Medical Surveillance Undertaking **IMM 0535**. The applicant should have the IMM 0535 form with them when they arrive at the POE.

The BSO must:

- confirm the name, sex and date of birth [section 1,2, 3 and 4];
- confirm the destination address in [section 7], ensuring that it is complete;
- complete item 10 (and when possible complete item 9 as well);
- update address information in section 12 if there has been a change. If no address is available, the officer will counsel the applicant concerning the conditions imposed and the need to contact the CIC office closest to the destination, with an address, as soon as one has been established;
- have the person concerned sign and date the form [section 11];
- stamp, date and sign all copies in [sections 13 and 14];
- return copy 2 to the person concerned;
- If the applicant does not have an IMM 0535 but has a surveillance code on the top left corner of the Client History Screen in FOSS or has conditions listed on their Confirmation of Permanent Residence document IMM 5292B, fill out a new IMM 0535 for the applicant;
- If the applicant does not have the appropriate Medical Surveillance Handout, supply them with a copy and counsel them to contact the appropriate Public Health Authority within 30 days;
- courier copies 1 and 3, in the pre-addressed Purolator envelopes supplied by Medical Services. Otherwise mail to Medical Services at 219 Laurier Ave W, 3rd Floor, Ottawa, ON K1A 1L1; and
- If the IMM 0535 is marked as urgent and has a "Watch For in FOSS" follow the above-mentioned procedures and fax a copy of the IMM 0535 immediately to 613-952-3891. The BSO should counsel the person concerned that they must contact the appropriate Public Health Authority within 7 days.

For more information on medical surveillance see IR 3.3. Medical Surveillance Handouts are found in Appendix A and B of IR 3.

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### **12.12. Conditions that may be imposed at a port of entry**

When imposing conditions of entry or explaining conditions of entry, it is important to use the precise wording of the Regulations and to use the appropriate corresponding forms.

#### **1) Medical Examinations and Medical Surveillance**

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An officer may impose, vary or cancel a condition requiring an applicant for permanent residence to:

- report at the specified times and places for medical examination, surveillance or treatment pursuant to R32(a); or
- provide proof, at the specified times and places, of compliance with the conditions imposed pursuant to R32(b).

Medical examinations and medical surveillance are imposed abroad for permanent residence applicants. See section 12.11 for more information on medical surveillance.

### 2) Mandatory conditions for common-law opposite-sex and same-sex relationships

See IP 8, Spouse and Common-law partner in Canada Class, regarding procedures relating to mandatory conditions to be imposed on common-law, opposite-sex and same-sex partners.

### 3) Mandatory conditions imposed on entrepreneurs

The *Immigration and Refugee Protection Act* (IRPA) came into force in June 2002, but a large number of entrepreneurs selected under the 1976 *Immigration Act* will continue to appear at ports of entry in the coming years. Consequently, the BSO at Immigration Secondary must pay close attention to the codes on the entrepreneurs' confirmation of permanent resident documents and, when in doubt, refer to the CAIPS notes to confirm the legislation that governed the visa office's selection of the entrepreneur. Officers should note that entrepreneurs selected under the 1976 *Immigration Act* and those entrepreneurs selected under IRPA are to be processed differently at the port of entry. These procedures are outlined in section 12.13 below.

For more information on imposing conditions on Entrepreneurs, see section 12.13 below.

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## 12.13. Procedures for imposing conditions on entrepreneurs

### Entrepreneurs selected under the 1976 *Immigration Act*

In the case of entrepreneurs selected under the *Immigration Act, 1976*, the BSOs at Immigration Secondary must bear in mind that they are responsible for imposing the conditions written on the landing forms by the visa offices. **Codes 70, 72 and 73** indicate that the entrepreneur and their accompanying dependants must meet the requirements of this class, as well as medical conditions, in some cases. The conditions imposed on entrepreneurs were set out in section 23 of the *Immigration Regulations, 1978*.

Section 23.1(1) states:

- (1) Entrepreneurs and their dependants are prescribed as a class of immigrants in respect of which landing shall be granted subject to the condition that, within a period of not more than two years after the date of an entrepreneur's landing, the entrepreneur
  - (a) establishes, purchases or makes a substantial investment in a business or commercial venture in Canada so as to make a significant contribution to the economy and whereby employment opportunities in Canada are created or continued for one or more Canadian citizens or permanent residents, other than the entrepreneur and the entrepreneur's dependants;
  - (b) participates actively and on an on-going basis in the management of the business or commercial venture referred to in paragraph (a);
  - (c) furnishes, at the times and places specified by an immigration officer, evidence of efforts to comply with the terms and conditions imposed pursuant to paragraphs (a) and (b); and
  - (d) furnishes, at the time and place specified by an immigration officer, evidence of compliance with the terms and conditions imposed pursuant to paragraphs (a) and (b).

The entrepreneurs selected under the *Immigration Act, 1976* will appear at the port of entry with two copies of the "Acknowledgement of Terms and Conditions (Entrepreneurs)" [IMM 5458B] to be signed when status is granted. Each family member included in the immigration file for status

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will also have to present copies attached to the Confirmation of Permanent Residence. BSOs must advise the entrepreneur and their family members that they must meet the conditions outlined in the document attached to the Confirmation of Permanent Residence. BSOs must ensure that the holder of the Confirmation of Permanent Residence signs each attachment, FOSS should be updated, and a copy of each signed attachment should be forwarded to the QRC so that the file may be completed. This procedure will remain in place for all entrepreneurs selected under the former legislation.

These entrepreneurs must use the *Entrepreneur Counselling and Monitoring Guide, 1976 Immigration Act*, available at [www.cic.gc.ca/english/immigrate/business/index.asp](http://www.cic.gc.ca/english/immigrate/business/index.asp), to find out how to contact the local immigration centres and satisfy the imposed conditions. If they do not already have a hard copy of this Guide, BSOs should advise them to print a copy of the document and the forms as soon as possible.

### Entrepreneurs selected under IRPA

Entrepreneurs selected under IRPA will present a Confirmation of Permanent Residence with **code 74, 75 or 76** (codes 75 and 76 indicate that medical conditions have also been imposed). The entrepreneurs and their family members included in the application for permanent residence will not have to sign any attachments or forms listing the conditions for entrepreneurs because these conditions were acknowledged and imposed as part of the application process. Conditions also apply to all accompanying family members.

R98 states:

**(1)** Subject to subsection (2), an entrepreneur who becomes a permanent resident must meet the following conditions:

(a) the entrepreneur must control a percentage of the equity of a qualifying Canadian business equal to or greater than 33 1/3 per cent;

(b) the entrepreneur must provide active and ongoing management of the qualifying Canadian business; and

(c) the entrepreneur must create at least one incremental full-time job equivalent in the qualifying Canadian business for Canadian citizens or permanent residents, other than the entrepreneur and their family members.

**(3)** The entrepreneur must meet the conditions for a period of at least one year within the period of three years after the day on which the entrepreneur becomes a permanent resident.

**(4)** An entrepreneur who becomes a permanent resident must provide to an officer evidence of compliance with the conditions within the period of three years after the day on which the entrepreneur becomes a permanent resident.

**(5)** An entrepreneur must provide to an officer

(a) not later than six months after the day on which the entrepreneur becomes a permanent resident, their residential address and telephone number; and;

(b) during the period beginning 18 months after and ending 24 months after the day on which the entrepreneur becomes a permanent resident, evidence of their efforts to comply with the conditions.

**(6)** The family members of an entrepreneur are subject to the condition that the entrepreneur meets the conditions set out in this section.

In such cases, no additional documents accompany the Confirmation of Permanent Residence forms, and only code 74, 75 or 76 will be indicated on the forms of the entrepreneur's family members.

If the entrepreneur does not have a hard copy of the *Entrepreneur Counselling and Monitoring Guide: Immigration and Refugee Protection Act*, BSOs must recommend that the entrepreneur print a copy from the Citizenship and Immigration Canada Web site at



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<http://www.cic.gc.ca/english/immigrate/business/index.asp> in order to find out how to contact the immigration centres and obtain the forms required for monitoring their landing.

If there is any doubt regarding the legislation under which the entrepreneur was selected, the BSO at the port of entry should consult the CAIPS notes.

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### 12.14. Family members arriving before the principal applicant

Occasionally, a BSO at Immigration Secondary will encounter a family member who arrives before the principal applicant and is seeking permanent residence. R51(b) requires a permanent resident visa holder to establish that they and their family members, whether accompanying or not, meet the requirements of the Act and Regulations. For a family member to meet these requirements, it is usually incumbent on the principal applicant being admissible at the port of entry. This also holds true for the principal applicant arriving before their family members.

A BSO encountering this situation should obtain the following information from the family member or principal applicant:

- why the family member or principal applicant is preceding the rest of the family (for example, to seek accommodation or employment, lack of a seat on the aircraft carrying the principal applicant, etc.);
- when the rest of the family is due to arrive; and
- the person's means of support.

The BSO should complete the verification process but should not grant permanent resident status to the family member. If the person has a valid permanent resident visa and the BSO is satisfied that the rest of the family intends to come to Canada, the BSO may wish to defer the examination pursuant to A23 in order to obtain more information or wait until the rest of the family arrives so they may be examined.

The BSO should enter the information into FOSS by means of an NCB, which indicates that the granting of permanent residence has been deferred pending the arrival of the rest of the family.

If the BSO has reasonable grounds to believe that the rest of the family will not be coming to Canada, the BSO should initiate enforcement action unless the person qualifies in their own right for permanent resident status.

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### 12.15. Arrival of the principal applicant prior to family members

A principal applicant may have decided to proceed to Canada in order to commence employment or to confirm that adequate settlement arrangements, such as accommodation and educational facilities prior to the arrival of their family members. A BSO at Immigration Secondary must confirm that the family members meet the requirements of the Act and its Regulations before granting permanent resident status to the principal applicant. In most instances, the BSO can assume that persons listed on the principal applicant's permanent resident visa meet the requirements of the Act and Regulations and can grant permanent resident status to the principal applicant. If the BSO has reason to believe the family members may not have been examined, the BSO may defer the examination pursuant to A23 pending confirmation from the visa office that they have been examined.

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### 12.16. Expired or cancelled permanent resident visas

A person who presents an expired or cancelled permanent resident visa cannot be authorized to enter Canada as a permanent resident. The person may be reportable under A41 by R6 for non-compliance with the Regulations as a foreign national may not enter Canada to remain on a permanent basis without first obtaining a permanent resident visa.

If the examination of a holder of a permanent resident visa is deferred pursuant to A23, the person may be granted permanent residence at a later date provided they initially appeared for examination and presented their permanent resident visa within its period of validity.

### 12.17. Counselling new permanent residents

The BSO at Immigration Secondary should counsel each new permanent resident on the following matters:

- the conditions of permanent resident status that have been imposed, how to comply with the conditions and how to apply for the removal of these conditions;
- the residency obligation;
- the procedure for obtaining a permanent resident card;
- the procedure for obtaining a social insurance number (address of the nearest Citizenship and Immigration Centre);
- the procedure for applying for provincial health coverage; and
- settlement assistance, where applicable. If it is apparent that the Citizenship and Immigration Centre is unaware of the arrival of a permanent resident who is a Convention refugee or a person in similar circumstances (CR1, CR5, DC1, DC5) who may need assistance, the BSO should notify the Citizenship and Immigration Centre closest to the destination of the person concerned. For information on CR and DC coding, see the coding aids in the CAIPS System User Guide.

The BSO should give the person a "*Welcome to Canada*" package, if available.

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## 13. Examination of foreign nationals at ports of entry

Foreign nationals are authorized to enter Canada as temporary residents by privilege. Section A22(1) provides that:

A foreign national becomes a temporary resident if an officer is satisfied that the foreign national has applied for that status, has met the obligations set out in paragraph 20(1)(b) [of the act] and is not inadmissible.

Temporary residents include visitors, students, workers, and permit holders

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### 13.1. Visa requirements for temporary residents

A visa is a document issued or a stamped impression made on a document by a visa officer. All persons who are approved for temporary residence in Canada will be issued a Temporary Resident Visa [IMM 1346] in accordance with the procedures outlined in chapter IC 3. See 13.2 below for exemptions to this requirement.

A temporary resident visa indicates that the foreign national has been pre-screened by a visa officer and that this officer is satisfied that the visa holder meets the requirements for entry into Canada at the time of the issuance of the visa.

A11(1) requires foreign nationals to apply for a visa before entering Canada. R7 also provides that a foreign national may not enter Canada to remain on a temporary basis without first obtaining a temporary resident visa.

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### 13.2. Exemptions from visa requirement

R7(2) exempts certain foreign nationals from the requirement to obtain a visa. These include:

- foreign nationals who hold a temporary resident permit issued under A24(1);
- foreign nationals who are authorized under the Act or its Regulations to re-enter Canada to remain in Canada; and
- foreign nationals exempt under R190.

See R190 for a complete list of temporary resident visa exemptions for foreign nationals. This section includes:

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- the list of visa-exempt countries [R190(1)];
- other document holders who are exempt from the temporary resident visa requirement [R190(2)];
- special categories of persons who are temporary resident visa exempt [R190(3)];
- persons entering Canada to become crew members of a means of transportation other than a vessel [R190(3)(a)(i)];
- foreign nationals in transit for refuelling destined to or originating from the US [R190(3)(b)];
- Transit Without Visa (TWOV) program [R190(3)(c)]. For more information on the TWOV program, refer to Appendix D;
- members of armed forces coming to carry out duties under of the *Visiting Forces Act* [R190(3)(d)];
- U.S. immigrant visa seekers [R190(3)(e)];
- persons seeking re-entry into Canada, after visiting only the U.S. or St. Pierre and Miquelon, within the authorized period of stay granted upon initial entry into Canada R190(3)(f);
- persons conducting inspections on flight operation procedures or cabin safety on commercial air carriers. Note: this visa exemption does not apply to In Flight Security Officers (IFSO), also known as air marshals. They are not to be considered as members of a crew;
- temporary residents seeking re-entry to Canada from the U.S. or St. Pierre and Miquelon, after applying to renew their status, remain under their original status until a decision is made and they are notified [R183(5)]. These people are considered to have implied status.

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### 13.3. Re-entry into Canada on original visa

Foreign nationals who require a temporary resident visa and who seek to re-enter Canada must be in possession of a multiple-entry temporary resident visa **unless**:

- since leaving Canada after being authorized to enter as a temporary resident, they have only visited the U.S. or St. Pierre and Miquelon, and are returning within the initial period authorized by a BSO [R190(3)(f)];
- they have only visited the U.S. or St. Pierre and Miquelon and they are in possession of a valid visitor record work permit, study permit, or a temporary resident permit (authorizing re-entry) and are returning within the initial period authorized by a BSO, [R190(3)(f)]; or
- they are seeking entry on implied status. A temporary resident with implied status that leaves Canada is exempt from obtaining a temporary resident visa pursuant to R190(3)(f)(ii) if they are returning from a visit solely to the United States or St. Pierre and Miquelon. Their status as a temporary resident is extended until a decision is made and they are notified in accordance with R183(5). They are not authorized to work or study until their application for a renewal on their work or study permit has been approved. To emphasize these conditions, BSOs may consider documenting these foreign nationals on a visitor record. For guidelines on when to issue a visitor record see section 13.21.

These foreign nationals must comply with all other entry requirements. If they visit any country other than those stated above, they are not exempt from the requirements of this provision.

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### 13.4. Examples of visa requirements

- A foreign national in possession of a temporary resident visa valid for one year, who is subsequently issued a four-year student permit at a port of entry, may leave and return to Canada after the expiry of the visa as long as they have only visited the U.S. or St. Pierre and Miquelon and the student permit is still valid.

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- A foreign national in possession of a one-entry temporary resident visa may travel in and out of Canada without the issuance of a new or multiple-entry visa as long as they return to Canada within the initial period (or any extensions) authorized and have only visited the U.S. or St. Pierre and Miquelon

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### 13.5. Diplomatic visa exemption

R190(2)(a) exempts foreign nationals who are holders of a passport that contains a diplomatic acceptance, a consular acceptance, or an official acceptance issued by the Chief of Protocol for Foreign Affairs Canada. They must be a properly accredited diplomat, consular officer, representative or official of a foreign country, of the United Nations or any of its agencies or an international organization in which Canada is a member.

On the first arrival in Canada of a foreign representative or family member whose passport bears a foreign representative acceptance counterfoil, the BSO (normally the BSO at PIL) should stamp the passport giving them status in Canada for six months. During the six-month period, the official's embassy or consulate will forward their passport to the Diplomatic Corps Service, Office of Protocol, Foreign Affairs Canada. The Office of Protocol will issue a diplomatic (D), consular (C), official (J) or international (I) acceptance, which indicates that the person is accredited to Canada and entitled to remain in Canada for the duration of their official status.

Dependent children of diplomats, consular officers, representatives or officials who are under 19 years of age and considered to be "members of the family forming part of the household" will be issued acceptances. Children over 19 years of age will be issued acceptances only if they are registered as full-time students. After 25 years of age, family members are no longer eligible to receive official acceptances, and must change their official status to a temporary resident status.

For more information on procedures related to diplomatic and official visas refer to OP 11 Section 17.

If a BSO has concerns regarding persons accredited to or employed by foreign missions, they should forward any concerns through Regional management to:

Director, Case Analysis and Coordination  
Case Management Branch  
Inland Services  
National Headquarters

The director will consult the Office of Protocol, Foreign Affairs Canada. For urgent cases, the BSO may contact the immigration advisor at the Office of Protocol (tel. 613-992-0889). The immigration advisor is available for urgent cases during regular business hours, Monday to Friday. For after hours service, contact the Watch Office at 613-944-1294.

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### 13.6. Affirmations for visas

An Affirmation for Visa [IMM 1281B] is issued to holders of diplomatic or special passports of special-category countries. When a person presents an IMM 1281B, a BSO at Immigration Secondary must apply the port stamp in the lower left corner of the visa (partly on the visa, partly on the page).

When the diplomat or consular official leaves Canada, they are required to surrender copy 1 of the IMM1281B at the port of departure. The receiving BSO at Immigration Secondary should compare it with copy 3 (or copy 2 where applicable), endorse it where indicated, and immediately send it to the issuing visa office.

Ports of entry and ports of departure may destroy their copies following their respective actions.

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### 13.7. U.S. government officials

The following official U.S. government personnel assigned to temporary postings in Canada are not issued diplomatic or official acceptances in Canada:

- United States Customs and Border Protection officers;

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- International Joint Commission employees;
- U.S. Federal Grain Service inspectors of the U.S. Department of Agriculture; and
- other U.S. government officials in possession of official U.S. government passports and assigned to temporary postings in Canada.

U.S. government personnel arriving in Canada for the first time will be issued a work permit (fee exempt as per IR 8 Coding Manual, FOSS coded E09), on presentation of a "letter of introduction" from the appropriate agency, identifying the assignment, its location and the number of years the employee will be assigned in Canada. For more information on the documentation of U.S. government employees, refer to FW 1, section 13.7, United States government personnel, which deals with temporary foreign workers applications at ports of entry.

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### 13.8. Courtesy visas

Visa officers may issue courtesy visas to persons who, although not entitled to diplomatic privileges and immunities, warrant a visa to facilitate their entry because of their position or because their reason for coming to Canada is considered sufficiently important.

Courtesy visas may be issued to:

- persons of diplomatic rank coming to Canada for tourism purposes;
- members of a trade mission visiting Canada; and
- well-known visiting professors coming to Canada to attend conferences.

Courtesy visas may be issued in any type of passport to foreign nationals who require visas or who are normally visa-exempt. The visa should draw a BSO's attention to the fact that the individual is considered by the visa office abroad to warrant particularly expeditious and courteous treatment at the port of entry. Such foreign nationals are subject to normal documentation requirements and are not exempt from regular examination procedures.

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### 13.9. Examination of temporary resident visas

For information on examining temporary resident visas, including security features, see the Immigration Control IC3, section 5.

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### 13.10. Expired temporary resident visas

A person seeking to enter Canada with an expired temporary resident visa is inadmissible and should be reported pursuant to section A41(a) for A20(1)(b).

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### 13.11. Notification to visa office if a visa holder is refused entry

A BSO at Immigration Secondary who refuses entry to the holder of a temporary resident visa should send full details of the refusal by e-mail to the issuing visa office. This allows the visa office to review the decision to issue the visa and to deal with future representations that the person may make to the visa office.

The BSO must begin the message with the phrase: "As requested: ENF 4," and include the following information in the following order:

- (a) the name and nationality of the subject of the A44(1) report; or a person allowed to withdraw their application;
- (b) the person's date and place of birth;
- (c) the visa number, date and office of issue;
- (d) the date and port of entry where the person sought to enter Canada;
- (e) the reason for refusal, using the code letter for the reason for refusal:
  - A: seeking permanent residence;

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- B: claims Convention refugee status;
- C: intends to seek or take employment;
- D: intends to follow a course of study;
- E: has insufficient funds to maintain themselves and their family members;
- F: medical inadmissibility;
- G: criminal inadmissibility;
- H: expired temporary resident's visa; or
- I: other;

(f) the name and file number of the office responsible for follow-up enforcement action, if the office differs from the port of entry; and

(g) the visa office file number (some visa offices include the number on the visa).

The BSO should not provide any other details in the e-mail report. This procedure allows the BSO to transmit the report as an unclassified message.

If the reason for refusal was code "I" (other), the CIC must send a report by mail to the issuing visa office giving further details of the reason for the refusal. In the case of a statesman or special category foreign national, the report should be mailed under secret cover.

This reporting system gives visa offices abroad immediate feedback on their decisions for issuing temporary resident visas and assists in monitoring the effectiveness of the temporary resident visa program.

For citizens of "Special Category" countries, the BSO may also need to send another e-mail report. Refer to Immigration Control chapter IC 1, section 54 for full instructions.

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### 13.12. Document requirements for foreign nationals

R52(1) provides that a foreign national seeking to become a temporary resident of Canada must possess a valid passport, identity or travel document. The purpose of this requirement is to ensure adequate identification of the foreign national and to guarantee that person's re-entry either into the country that issued the passport, identity or travel document or into another country.

R 52(1) provides a list of acceptable passports or travel documents for foreign nationals seeking to enter Canada as temporary residents.

Visa officers should ensure that a travel document is acceptable for travel to Canada before issuing a visa. A BSO can normally assume that a document containing an authentic visa is acceptable for travel to Canada, unless there is some reason to question its acceptability.

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### 13.13. Passport and travel document exceptions

R 52(2) provides a list of persons who are exempt from the requirement to have a passport or travel document to enter Canada as temporary residents:

- U.S. citizens;
- Permanent residents of the U.S. seeking to enter Canada from the United States or St. Pierre and Miquelon. *Note: U.S. Alien Resident Cards are only acceptable upon presentation on contiguous territory and not valid for international flights from outside Canada unless accompanied by a valid and subsisting passport or travel document;*
- Residents of Greenland seeking to enter Canada from Greenland;
- Citizens of France and residents of St. Pierre and Miquelon seeking to enter Canada from St. Pierre and Miquelon;
- Military personnel seeking to enter Canada under the *Visiting Forces Act*;

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- Persons seeking to enter as or in order to become air crew members and who hold an airline flight crew licence or crew member certificate; or
- Persons seeking to enter Canada as crew members who hold a seafarer's identity document and are crew members of the vessel that carries them to Canada.

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### 13.14. Examining passports

The purpose of examining a passport is to verify information that has been provided by the holder or that appears on any immigration document issued to the person. A BSO should examine each passport to confirm:

- the name of the holder;
- the date of birth of the holder;
- other data such as the person's physical description, place of birth, marital status and profession;
- the country of citizenship;
- the photograph of the holder;
- the date of expiry; and
- visa pages (to determine previous trips to Canada or other recent trips that may be relevant to the overall examination of the person).

If a more in-depth examination of the passport is required, see the Immigration Control (IC) manual for information on reviewing fraudulent or altered passports. This manual is classified and therefore not available electronically.

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### 13.15. Valid visas in expired passports

If an expired passport contains a valid visa counterfoil, the counterfoil can still be used since the expiration of the passport has no effect on the visa's validity. Holders of a valid visa may continue to use their visa until the date it expires even if the visa is in an expired passport. Visitors can fulfil the visa and passport requirements by presenting both the renewed and expired passports containing the valid visa counterfoil to a BSO when seeking entry into Canada. The Regulations state that visas should not be issued longer than the validity of the passport. However, due to pre-IRPA cases, it is possible to encounter visas in expired passports.

It is not possible to "transfer" a valid visa into a new passport. If the holder of a valid visa wishes to have a visa placed in their new passport or if the passport is deemed 'not valid' for political or security concerns, visitors must apply for a replacement visa by submitting a new application and paying the replacement document fee in accordance with R311(2).

If the applicant wishes to obtain a visa valid for a longer period in the new document, this will constitute a new temporary resident visa application and any applicable fees resulting from this new application will be collected. The previous visa will subsequently be cancelled.

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### 13.16. Evidence of U.S. citizenship

The following documents may be satisfactory evidence of U.S. citizenship:

- A U.S. passport, U.S. passport card, or a Certificate of Citizenship and Naturalization are considered *prima facie* evidence and are acceptable proof of U.S. citizenship.
- A U.S. birth certificate, when accompanied by another document bearing a picture of the holder, is considered an indicator and may be an acceptable proof of U.S. citizenship.

A U.S. military identification card, although a good supporting document, is not *prima facie* evidence of U.S. citizenship. The U.S. military accepts recruits who are not U.S. citizens.

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Sometimes, a verbal declaration may be sufficient to satisfy a BSO that a person is a U.S. citizen. For example, driver's licenses, health cards, U.S. Voter's Registration card, school records, credit cards are not prima facie evidence of citizenship, but they are often used along with a verbal declaration to satisfy the BSO of U.S. citizenship. In other circumstances, the BSO may require better documentary evidence for persons claiming to be U.S. citizens. BSOs should also familiarize themselves with the Enhanced Drivers Licence/Enhanced Identification Cards as well as the trusted traveller cards, such as FAST, NEXUS and CANPASS.

To assist the travel industry, airlines and travel agents have been supplied with the following information:

- a U.S. passport constitutes the best form of identification for U.S. citizens travelling to Canada; and
- U.S. citizens may travel to Canada without passports if they have other means of establishing their citizenship, such as a U.S. birth certificate or naturalization papers.

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### 13.17. Conditions imposed on temporary residents

R183 (1) provides for the following general conditions that are automatically imposed on all temporary residents:

- to leave Canada by the end of their authorized period of stay;
- to not work, unless they have been issued a work permit or are exempt from the requirement to obtain a work permit pursuant to R186 and R187; and
- to not study, unless they have been issued a study permit or are exempt from the requirement to obtain a study permit pursuant to R188 and R189.

A BSO does not need to document these conditions for every person authorized to enter Canada as a temporary resident as they are automatically imposed. However, if the BSO believes that a document is necessary as a control measure or as an aid in counselling the person regarding the conditions of their entry, they may generate a Visitor Record [IMM1097B] and attach it to their passport or travel document.

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### 13.18. Duration of temporary resident status

R183(2) states that the period authorized for the stay of a temporary resident is six months or any other period that an officer imposes based on the following criteria:

- the temporary resident's means of support in Canada;
- the period for which the temporary resident applies to stay; and
- the expiry of the temporary resident's passport or other travel document.

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### 13.19. Six-month entry

In most cases, a BSO should routinely authorize entry for a period of six months to a foreign national requesting entry as a temporary resident, even when the person requests entry for a very brief period. Six months are adequate for most purposes of travel and preclude the need for the person to request an extension.

The BSO should also stamp the foreign national's passport or travel document, inscribe a date of expiry based on a calculation of six months from the date of entry and initial the notation. The BSO should counsel the foreign national on the need to comply with general obligations for the visit and of any extension, should one become necessary.

For the procedures for stamping a passport, see the Immigration Control chapter IC3.

In instances where the principal applicant of, the family is traveling with their family members, BSOs should generally authorize entry to all members of the family for the same length of time as



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indicated on the work or study permit of the principal applicant. More information on study and work permits is available in OP12 and FW1.

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### 13.20. Entry for more or less than six months

Based on the information presented during an examination, a BSO at Immigration Secondary may decide to limit a temporary resident's stay to less than six months despite the length of time requested by the foreign national. If requested by the applicant and the BSO is satisfied that the foreign national is a temporary resident, is able to support themselves and accompanying family members financially, and is not inadmissible for reasons of health or security, the granting of entry for more than six months may be considered.

In no case should the BSO impose a period of time for a temporary resident's stay greater than the validity of the foreign national's passport or travel document. This will not be applicable to U.S. citizens and other foreign nationals exempted under R52(2) from the requirement to be in possession of a passport or travel document.

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### 13.21 When to document a temporary resident on a Visitor Record [IMM 1442B]

A BSO at Immigration Secondary who limits a temporary resident's stay to a period of less than six months has in essence decided that there is a need to exercise an element of control over the foreign national's length of stay; therefore, a Visitor Record [IMM 1442B] is to be issued in order to document this decision. The BSO should record suppressed remarks noting the reasons why a period of less than six months is being imposed. An exception to this circumstance could be a person in possession of a temporary resident visa that indicates a stay of less than six months, in which case, the BSO could stamp and annotate the passport accordingly.

Similarly, the BSO should issue a Visitor Record [IMM 1442B] when authorizing a period of stay greater than six months and indicate in the "Remarks" why the greater period of time is being granted. If FOSS is down the Visitor Record may be completed manually on an IMM 1097B. Family members travelling together may be listed on one document or cross referenced on separate documents at the discretion of the BSO.

A BSO at Immigration Secondary should document a foreign national on a Visitor Record [IMM 1097B] if, in the BSO's opinion, a foreign national should be documented for control purposes regardless of the length of stay. This could include:

- a seafarer who is signing off or seeking entry to join a crew;
- a foreign national entering for medical treatment;
- a person extradited to Canada who is being allowed forward as a temporary resident;
- any temporary resident on whom other conditions pursuant to R185 are being imposed;
- foreign workers entering Canada to perform after-sales service and intending to remain in Canada for longer than two days, except workers performing continuing after-sales service whose entry has already been documented on a Visitor Record, the validity of which covers the period for which the person is seeking entry; or
- military personnel and their accompanying family members entering Canada under the *Visiting Forces Act*. For further information and instructions on issuing visitor records under these circumstances, please refer to Appendix F in FW1.

Creating a document and noting remarks in FOSS will assist other BSOs in the event a person applies for an extension or if enforcement action is required.

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### 13.21. Imposing, varying or cancelling conditions on temporary residents (please correct numbering sequence)

R185 authorizes a BSO at Immigration Secondary to impose, vary or cancel the following conditions individually concerning a temporary resident:

- the period authorized for their stay;
- the work that they are permitted to engage in, or prohibited from engaging in, including:
  - ◆ the type of work;
  - ◆ the employer;
  - ◆ the location of work; and
  - ◆ the times and periods of work;
- in the case of a member of a crew, the period within which they must join the means of transportation;
- the studies that they are permitted to engage in, or prohibited from engaging in, including:
  - ◆ the type of studies or course;
  - ◆ the location of the studies; and
  - ◆ the times and periods of the studies;
- the area within which they are permitted or prohibited to travel in Canada; and
- the times and places at which they must report:
  - ◆ for medical examination, surveillance or treatment; or
  - ◆ the presentation of evidence of compliance with applicable conditions.

When conditions of entry are imposed, it is not necessary to state on the Visitor Record the conditions precisely as they are worded in the Regulations. An attempt to reflect the substance and spirit of the conditions in the Regulations and, whenever possible, the wording of [R183] and [R185] should be used. When a BSO at Immigration Secondary completes a Visitor Record on a FOSS Full Document Entry [IMM 1442B], they may select the appropriate conditions from the list that appears automatically on the screen.

The BSO should not use conditions as a means of discouraging a foreign national from coming into Canada. The reasons for imposing conditions on a temporary resident are to ensure that the person complies with the period and purpose for which they sought entry into Canada and to make the temporary resident aware of the need for formal authorization before extending that period or varying the purposes of the visit.

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### 13.22. Situations where specific conditions may be considered

Situations where specific conditions may be considered include:

- for a foreign national seeking entry to join a crew of a vehicle already in Canada, a BSO at Immigration Secondary should impose a condition that would require them to join the means of transportation within a specified period of time [R184]. This is a control measure and the time the BSO allots should be a reasonable period within which the person can join the vehicle;
- R185(d) authorizes a BSO to impose a condition that limits the area within which a temporary resident may travel in Canada. For example, the BSO might want to use the condition to limit the travel of a person in transit through Canada to another country (perhaps limiting the person to the airport and surrounding area), or the travel of a person coming to Canada to stand trial or to be a witness in legal proceedings;

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- R185(e) authorizes the BSO to impose a condition on a temporary resident who otherwise complies with the Act and Regulations, but who has a dormant health condition that could be a danger to public health if it became active. The condition should name the time and place where the temporary resident must report for medical observation and treatment while in Canada; and
- if the BSO imposes conditions on a temporary resident concerning attendance at a school, work, or medical examination, surveillance or treatment, the BSO should, as a control measure, also impose a condition requiring the person to present evidence of compliance with the conditions imposed (as authorized by R185(e)(ii)).

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### 13.23. Payment of deposits or posting of guarantees

R45 authorizes a BSO at Immigration Secondary to require, with respect to a person or group of persons seeking to enter Canada, the payment of a deposit or the posting of a guarantee, or both, to the Minister to guarantee compliance with the conditions imposed on the person or group.

The payment of a deposit or the posting of a guarantee is a control measure in cases where the BSO believes that a temporary resident or group of temporary residents may not comply with one or more conditions being imposed. The deposit or guarantee should specify an amount adequate to guarantee compliance and therefore alleviate doubt regarding a temporary resident's intentions in Canada.

R45(2) provides that the amount of the deposit or the guarantee is fixed by the officer on the basis of:

- (a) the financial resources of the person or group;
- (b) the obligations that result from the conditions imposed;
- (c) the costs that would likely be incurred to locate and arrest the person or group, to detain them, to hold an admissibility hearing and to remove them from Canada; and
- (d) in the case of a guarantee, the costs that would likely be incurred to enforce it.

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### 13.24. Situations that may warrant the imposition of a deposit or guarantee

A deposit or a guarantee may be warranted under R45:

- if a foreign national indicates an intention to visit Canada for a short period, yet the BSO is concerned that they actually intend to remain permanently;
- if a foreign national presents themselves as a tourist and the BSO believes that their true intention is to work or study in Canada. The BSO could impose appropriate conditions set out in R183(1) and require a deposit or a guarantee; or
- if the BSO informs a foreign national who was originally seeking entry to work or study that such activities are not allowed and the foreign national agrees to come in as a tourist.

The decision to report the individual under A41(a) for A20(1)(b) (as a person who is unable to satisfy the officer that they will leave Canada by the end of the period authorized for their stay) would depend on the degree of doubt in the BSO's mind and the evidence that would support a report. For more information on writing A44(1) reports, refer to ENF 5, Writing 44(1) Reports. For more information on determining inadmissibility, refer to ENF 2, Evaluating Inadmissibility.

The BSO cannot use payment of a deposit or the posting of a guarantee to overcome an obvious ground for inadmissibility to Canada. If the BSO determines that a ground for inadmissibility exists, they should write an A44(1) report.

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### 13.25. Situations where a deposit or guarantee is not appropriate

A deposit or guarantee is not appropriate in the following situations involving serious grounds of inadmissibility:

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- A34: security;
- A35: violation of human or international rights;
- A36(1): serious criminality;
- A36(2)(d): offences committed on entering Canada;
- A37: organized crime;
- A38(1)(a) and A38(1)(b): health grounds where the public's health or safety is likely to be in danger;
- Where the person posting the payment or guarantee does not have the ability to pay should the traveller not comply with conditions imposed; or
- Where no reasonable sum of money would compel a person to comply with conditions imposed.

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### 13.26. Persons who may pay a deposit or post a guarantee

Pursuant to R47(1), a person who pays a deposit or posts a guarantee:

- must not have signed or co-signed another guarantee that is in default; and
- must have the capacity to perform a contractual relationship in the province where the deposit is paid or the guarantee is posted.

R47(2) states that a person who posts a guarantee must:

- be a Canadian citizen or a permanent resident, physically present and residing in Canada;
- be able to ensure that the person or group of persons in respect of whom the guarantee is required will comply with the conditions imposed; and
- present to an officer evidence of their ability to fulfil the obligation arising from the guarantee.

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### 13.27. Deposits and guarantees on inadmissible persons

A44(3) provides the BSO at Immigration Secondary with the authority to impose any conditions, including the payment of a deposit or the posting of a guarantee (for compliance with the conditions), where the BSO does not authorize entry to a foreign national and subsequently prepares an A44(1) report.

The BSO may decide that a deposit or guarantee is necessary for control purposes pending:

- a determination by the Minister on the validity of the A44(1) report;
- the scheduling of an admissibility hearing; or
- removal from Canada.

For more information on deposits and guarantees, refer to ENF 8 Deposits and Guarantees.

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### 13.28. Issuing visitor records

Visitor records can be generated by FOSS and printed on the FOSS Full Document Entry – Generic form [IMM 1442B]. If the FOSS system is not operational, a BSO at Immigration Secondary can complete the IMM 1097B [Visitor Record] and enter the information in FOSS as soon as the system is available. For detailed information on completing and coding the [IMM 1097B] manually, see IR 8.

There are no cost-recovery fees for documenting temporary residents unless a permit is granted under A24 or A25.

### 13.29. Counselling temporary residents

A BSO should attempt to answer any questions a temporary resident has concerning their status. When a BSO at Immigration Secondary counsels a temporary resident, they may wish to cover the following points:

- the expiry date of the visit;
- any conditions imposed;
- procedures for applying for an extension;
- cost-recovery requirements should the person seek an extension to their status; and
- information about cancellation of conditions imposed and a refund if the person has paid a deposit or posted a guarantee (see chapter [ENF 8]).

The sections to follow provide more detailed procedures for the examination of specific classes of persons seeking to enter Canada.

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### 13.30. Recovering missing, abducted and exploited children

See ENF 21, Recovery Missing, Abducted and Exploited Children, for more information on policies and procedures relating to examining children seeking to enter Canada.

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### 13.31. Examining foreign students

See OP 12, Students, for more information on policies and procedures relating to the examination of foreign students.

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### 13.32. Maritime procedures

See ENF 17, Maritime Procedures, for information on the examination of persons seeking entry as crew members or wanting to become a member of a crew.

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### 13.33. Examining foreign workers

#### Remarks on Visitor Records allowing people to work in Canada

Service Canada is asking that visible remarks be entered on Visitor Records when a Visitor Record is issued to a person who is exempt of the need for a work permit. Service Canada needs to know that the person is allowed to work in Canada and is exempt from the need for a work permit so a social insurance card may be issued. BSOs at Immigration Secondary should clearly enter in the "Remarks" section of the Visitor Record that the temporary resident is exempt from the need to obtain a work permit under R186.

#### Seasonal agricultural workers

Like all other temporary foreign workers, seasonal agricultural workers require social insurance numbers (SIN cards) while working in Canada. As of April 1, 2003, all SIN cards issued to temporary residents have expiry dates on them, coinciding with the end of the validity period of the work permit.

Current holders of a "900 Series" SIN card, without an expiry date, had until April 1, 2004 to re-apply for a new SIN card. It is important that the expiry date matches the last date of the validity of the temporary resident's work permit.

Temporary residents who require a SIN card may find the application form at the Service Canada site at the following address:

<http://www.servicecanada.gc.ca/cgi-bin/search/eforms/index.cgi?app=prfl&frm=nas2120&ln=eng>.

#### Role of sending countries

Agencies of sending countries must make sure that the following takes place prior to arrival in Canada:

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- SIN card applications are properly filled out for each worker;
- For Caribbean workers: At least two weeks in advance, accurate departure lists of workers are sent to the Canadian High Commissions in order to be checked and forwarded to the CBSA airport offices in Canada at least 48 hours in advance. This is to ensure that the work permits can be prepared before the arrival of each flight; and
- For Mexican workers: At least 48 hours in advance, accurate departure lists of workers are sent directly to the CBSA airport office in Canada to ensure that the work permits are prepared before the arrival of each flight.

### At the airport in Canada

Each worker arrives before a BSO in Immigration Secondary and presents their own:

- valid passport;
- work permit introduction letter, issued by a visa office overseas; and
- SIN card application (attached to the worker's passport).

### Role of BSOs at Immigration Secondary

BSOs at Immigration Secondary must make sure of the following:

- the worker's passport is stamped;
- copy # 1 of the work permit is issued to the worker;
- copy # 2 is sent to CIC's Records Services in Ottawa;
- the SIN card application is stamped (in "certification stamp" box, bottom right-hand corner);
- if SIN card application is not attached to the passport, or not presented by the worker, the CBSA immigration officer must ask for it; and
- copy # 4 of the work permit is attached to the SIN card application.

For Caribbean workers:

- copy # 3 is given by hand to consulate officials present at the airport, for provincial health coverage; and
- copy # 4 and the SIN card application are given by hand to consulate officials present at the airport.

For Mexican workers:

- in Toronto: Copy # 3 is mailed to Consulate officials for provincial health coverage;
- In Montreal and Vancouver: Copy # 3 is given by hand to Consulate officials present at the airport, for provincial health coverage; and
- copy # 4 and the SIN card application are mailed directly to Insurance Registration, P.O. Box 7000, Bathurst, New Brunswick, E2A 4T1 every Tuesday and Friday of the week.

If the worker, after being asked, does not present the SIN card application, the BSO will give copy # 4 of the work permit to the worker. This will assist the worker to apply for the SIN card at the local Service Canada office.

However, if properly presented by the workers, it is crucial for BSOs at Immigration Secondary to properly stamp and follow the above instructions for the SIN card applications. Otherwise, great inconvenience is caused to both the foreign workers and the Canadian employers, e.g. the employers must transport the workers off the farms and into the local Service Canada to apply for their cards. Given the remote location of many of these farms, this can be a time-consuming and costly process for the farmers and the workers.

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BSOs will not process SIN card applications for workers who are late additions to flights or who do not appear at the Canadian airport with a completed card application. Then, it is the responsibility of the worker and the employer to ensure that a S.I.N. card application is submitted within three days of the start of employment.

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### 13.34. Refugee Claimants

For information on processing refugee claimants refer to PP 1. For instructions on handling possible claims for refugee protection see section 8 of ENF 6.

For information on the United Nations High Commissioner for Refugees, visit the UNHCR Web site at <http://www.unhcr.ca/contact.htm>.

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### 13.35. Vulnerable Persons

As a general principle, all offices must be flexible to provide priority processing to refugee claimants who are identified as vulnerable persons. For additional information on identifying and processing vulnerable persons see section 14 of PP1.

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## 14. Dual intent

A22(2) states that the intention of a foreign national to become a permanent resident does not preclude them from becoming a temporary resident if the BSO is satisfied that they will leave Canada by the end of the period authorized for their stay.

A person's desire to await the outcome of an application for permanent residence from within Canada may be legitimate and should not automatically result in the decision to refuse entry. A BSO at Immigration Secondary should distinguish between such a person and an applicant who has no intention of leaving Canada if the application is refused.

In rendering a decision, the BSO should consider:

- the length of time required to process the application for permanent resident status;
- the means of support;
- obligations/ties in home country;
- the likelihood of the applicant leaving Canada if the application is refused; and
- compliance with the requirements of the Act and Regulations while in Canada.

In some cases, the BSO may wish to issue a Visitor Record [IMM 1097B] documenting the details of the trip for control purposes and provide thorough counselling regarding the conditions of entry. In cases where the applicant has already received a favourable recommendation for permanent resident status, the duration of time authorized at the port of entry should match the time required to complete the processing of the application

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## 15. Temporary resident permits

A BSO at Immigration Secondary has discretion, pursuant to A24(1), to issue a temporary resident permit to an inadmissible person seeking entry to Canada if satisfied that entry is justified in the circumstances.

The foreign national does not become a temporary resident until they have been examined on arrival in Canada [A24(2)].

### Process at POE for persons approved for a temporary resident permit by a visa office

- **Background:** As of April 30th, 2005, visa offices no longer issue temporary resident permits (TRP) on IMM 1442B documents. Visa offices that approve TRP applications will generate the permit electronically through CAIPS for issuance at the port of entry through FOSS. This

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process is similar to the present process being used when a study permit or work permit is issued abroad. The applicant arrives at the POE with a letter of introduction produced by the visa office for presentation at the POE to facilitate the issuance of the TRP on the IMM 1442B.

- **Letter of introduction:** When a foreign national is processed at a visa office and approved for a TRP, the visa officers will provide a letter of introduction rather than the TRP [IMM 1442B] document. Persons approved by the visa office must present this letter at the port of entry where they will be directed to secondary examination by the BSO at PIL.
- The document number generated by CAIPS, which provides access to the appropriate document in FOSS, is printed at the top right-hand corner of the letter and begins with the letter M.
- **Facilitation counterfoil:** A TRP issued on an IMM 1442B is no longer considered valid to board a commercial carrier to Canada. Visa offices abroad issue a facilitation counterfoil [IMM 1346] to foreign nationals who are from a country where a visa is required and have been approved abroad for TRPs. This counterfoil allows the foreign national to board a commercial carrier bound for Canada.
- **Assessment by BSO at Immigration Secondary:** When a foreign national approved for a TRP arrives for examination at a POE with the required documentation issued by the visa office, BSOs should determine whether the foreign national is still eligible for the permit by assessing whether there is any material change in circumstances and ascertaining whether any further inadmissibility has arisen since being issued the visa office documentation.

### Issuing the temporary resident permit

In the case of foreign nationals approved by a visa office, the BSO at Immigration Secondary will:

- retrieve the information from FOSS using the document number indicated on the letter of introduction; and
- enter the required information into FOSS, print the TRP on an IMM 1442B and stamp the foreign national's passport.

The letter of introduction instructs the foreign national to present a passport-size photograph to the BSO at the POE; this photograph should be affixed to the IMM 1442B. Should the foreign national not provide a photograph, it should be taken at the POE.

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No fee should be taken as the fee for the TRP has been paid abroad.

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In the case of foreign nationals approved at the POE, the BSO at Immigration Secondary will:

- issue a temporary resident permit and affix the photograph to the IMM 1442B, as outlined in IP 1 Temporary Resident Permits.

If authorization is granted to leave and re-enter Canada, foreign nationals who are from a country where a visa is required must be counselled to obtain a facilitation counterfoil abroad to re-enter Canada should they leave. This facilitation counterfoil is fee exempt, but is required to board a commercial carrier to Canada.

### Types of facilitation counterfoils

There are 2 types of facilitation counterfoils that can be issued to TRP holders:

- Where a foreign national who is from a country where a visa is required has been approved abroad to receive a TRP, a counterfoil coded PA-1 will be issued. If the TRP is valid for multiple entries, the PC-1 facilitation counterfoil will also be valid for multiple entries and have the same validity period as the TRP; and
- Should a foreign national, from a country where a visa is required, be the holder of a TRP issued at a POE or inland authorizing re-entry leave Canada, the foreign national must apply



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at a visa office abroad for a facilitation counterfoil prior to returning to Canada. This counterfoil will be provided at no cost and be coded PC-1.

BSOs at Immigration Secondary must counsel the foreign national in this scenario that, should they leave, they require a counterfoil prior to returning to Canada.

### Validity of temporary resident permits

Pursuant to R63, a temporary resident permit is valid until any one of the following events occurs:

- the permit is cancelled by an officer under A24(1);
- the permit holder leaves Canada without obtaining prior authorization to re-enter Canada;
- the period of validity specified on the permit expires; or
- a period of three years elapses from its date of validity.

### Prior authorization to enter Canada

BSOs should be aware that a TRP holder from a country where a visa is required with prior authorization to re-enter Canada may seek entry to Canada without having obtained a facilitation counterfoil [IMM 1346 counterfoil, coded PA-1 or PC-1] from a visa office. In these cases, the permit holder is to be granted entry to Canada following a favourable examination for identity and admissibility. The fact that they obtained passage to Canada without the facilitation counterfoil (PA-1 or PC-1 counterfoil) does not render the foreign national inadmissible. However, a foreign national permit holder, if not exempt under R52(2), will be inadmissible if they fail to produce a valid passport or travel document.

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For more information on temporary resident permits, see IP 1 and OP 20, Temporary Resident Permits.

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## 16. Persons allowed into Canada by law

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### 16.1. Persons under removal order who are refused entry to another country

Persons under removal orders who leave Canada, but are not granted legal permission to be in any other country and subsequently are returned to Canada, by force of circumstances, shall be allowed to enter Canada pursuant to R39.

Although a BSO at Immigration Secondary shall allow these persons to enter Canada, they continue to be subject to removal as the removal order remains unenforced as per R240(1)(d). The BSO should ensure that the person is in possession of documentation confirming that they have been refused entry to the country to which they were seeking entry. If there has been a lengthy delay between the person's departure and return, the BSO should investigate to ensure that the person has not been authorized to legally enter another country. It is reasonable to expect that the person should be returning to Canada on the next available flight from the country in which they had attempted to enter.

If the BSO is satisfied that the person was not legally authorized to enter another country, the BSO should counsel the person that they are still under a removal order and that the payment of a deposit, the posting of a guarantee or any conditions imposed remain in effect.

The BSO may impose new conditions or, without a warrant, detain the person, other than a protected person, [under A55(2)] for removal if the BSO is satisfied that the person is a danger to the public or would be unlikely to appear for removal.

If the person had been in detention prior to departure, it may be appropriate to detain them again pending further removal arrangements.

For more information, see ENF 11, Verifying departure.

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### 16.2. Persons with certificates of departure who are refused entry to another country

If a person has been issued a Certificate of Departure [IMM 0056B] or a FOSS Full Document Entry – Generic [IMM 1442B] on departing Canada and is not granted entry to another country, the BSO at Immigration Secondary should delete the Certificate of Departure from FOSS and create an NCB indicating that that the person was refused entry to that country and was allowed back into Canada pursuant to R39(a). The FOSS Remarks should state that the person was not authorized to legally enter another country and has not met the requirements of the departure order. The order remains outstanding and the person is still required to leave Canada. If the 30-day period has not lapsed, the BSO may consider whether detention is appropriate or whether the person can and will voluntarily effect their departure.

For guidelines on Certificate of Departure cases, see ENF 11, Verifying departure.

#### Seizure of documents

If the person is in possession of any travel or identity documents, the BSO should consider whether it is appropriate to seize the documents to facilitate their future removal from Canada. The documents would be forwarded to the office handling the removal. See [ENF 12, Search, Seizure, Fingerprinting and Photographing], section 9.4 for procedures relating to the seizure of documents.

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### 16.3. Mutual Legal Assistance in Criminal Matters Act (MLACM Act)

Under R39(b), persons returning to Canada under a transfer order made under the *Mutual Legal Assistance in Criminal Matters Act* shall be allowed to enter Canada. This applies only to persons who, immediately before being transferred to a foreign state under the transfer order, were subject to an unenforced removal order.

The *MLACM Act* and treaties implemented under its authority are used by prosecutors, police agencies and other government investigative agencies responsible for the investigation and prosecution of criminal offences. Assistance provided on a reciprocal basis may include activities such as locating and questioning witnesses, obtaining search warrants, locating suspects and fugitives from justice, obtaining evidence, and transferring persons in custody for the purposes of assisting in investigations or testifying in criminal proceedings.

The *MLACM Act*, proclaimed on October 1, 1988, enables Canada to implement treaties, signed with foreign states that oblige Canada to provide legal assistance in the investigation, prosecution and suppression of criminal offences. The Minister of Justice is responsible for the implementation of treaties and for the administration of the *MLACM Act*.

The provisions of the *MLACM Act* prevail over those of the *Immigration and Refugee Protection Act*, except for statutes limiting or prohibiting the disclosure of information. The effect of the *MLACM Act* and any treaties that flow from it on the CBSA's operations are limited to three areas:

- facilitating the transfer of persons at ports of entry;
- taking enforcement action against persons who are allowed to enter Canada for the purposes of mutual legal assistance and who violate any of the conditions of an authorization to enter Canada granted by the Minister of Justice; and
- exchanging information.

The *MLACM Act* allows for testimony, in a foreign state, by officers who, during the performance of their duties, encounter persons wanted for crimes in a foreign state or involved in criminal activity. Requests for officers to testify in the United States are usually made by the Office of International Affairs, which is a branch of the US Department of Justice, to the Canadian Department of Justice. The appropriate course to follow in these cases is set out in the *Mutual Legal Assistance in Criminal Matters Act*, the Canada-United States treaty implementing this Act and the related government policies and procedures.

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Officers who are called to testify should be aware of the *Privacy Act*, which prohibits the disclosure of personal information unless an international agreement or arrangement exists. There is also a Statement of Mutual Understanding on Information Sharing among The Department of Citizenship and Immigration Canada (CIC) and The U.S. Immigration and Naturalization Service (INS) and The U.S. Department of State (DOS) (SMU) (<http://www.cic.gc.ca/english/department/laws-policy/smu/smu-ins-dos.asp>) which allows participants to assist each other in the administration and enforcement of their respective immigration laws by providing information, that might otherwise be prohibited under the *Privacy Act*.

Whenever possible, the Minister of Justice will provide notice to the responsible immigration representative, of the place, date and time of arrival of a person coming to Canada for the purposes of mutual legal assistance. The representative will in turn notify the port of entry concerned to ensure that a BSO is present to facilitate that person's movement through the port of entry.

### **Authorizations to enter Canada**

Under section 40 of the MLACM Act, the Minister of Justice has the authority to authorize an inadmissible foreign national to enter Canada.

A BSO at PIL must refer for a secondary examination, any person seeking to come into Canada under the authority of an Authorization to Enter Canada, issued by the Minister of Justice of Canada.

Persons arriving at ports of entry and seeking to come forward under an authorization signed by the Minister of Justice do not come within the jurisdiction of the CBSA. Such persons are not subject to normal passport and visa requirements, nor can a BSO examine them to determine admissibility or detain them.

Law-enforcement officers will always escort incarcerated persons from one institution to the other. Persons who are not incarcerated in a foreign state and who are coming to Canada in compliance with a request made by a Canadian investigative or prosecuting authority will be met at the port of entry by a police officer.

In both cases, the escorting officer or the police officer will present a BSO at Immigration Secondary with a copy of the authorization issued by the Minister of Justice. The authorization will indicate the person's name, citizenship, the destination, the specific period of time during which the person is authorized to remain in Canada and any additional conditions that the Minister of Justice deems appropriate [MLACM Act, s. 40(1)].

The conditions may include reporting to a BSO at Immigration Secondary during the person's stay and may be varied by the Minister of Justice, particularly with respect to the granting of any extension of the time period for which the person is authorized to remain in Canada.

When a BSO at Immigration Secondary receives a copy of the authorization to enter Canada granted by the Minister of Justice, the BSO must forward it directly to the regional representative responsible for enforcement. The regional representative will ensure that the authorization is sent on for monitoring purposes to the responsible CBSA office in whose area the person concerned is authorized to stay.

A person who comes into Canada under an authorization of the Minister of Justice, and who fails to comply with the conditions set out in the authorization is deemed, for the purposes of the *Immigration and Refugee Protection Act*, to be a person who entered Canada as a temporary resident and remains after the period authorized for their stay [MLACM Act, s. 40(3)]

In such a case, a BSO at Immigration Secondary has jurisdiction to report the person concerned under A44 and to proceed with removal action.

### **Assistance and information**

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An inadmissible foreign national who is unescorted may approach a port of entry claiming to be coming to Canada for mutual legal assistance purposes. If so, and if no police officer is on site to meet the person, the BSO should immediately contact the International Advisory Group, Department of Justice, Ottawa, to request confirmation and advice before proceeding with the case (telephone: 613-957-4758 or 613-957-4768).

Information regarding persons arriving in Canada under the MLACM Act is considered sensitive. Interception by unauthorized persons may endanger the safety of the escort officer, inmate or other persons. It is imperative that all information regarding these cases be transmitted through secure channels.

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### 16.4. Court transfer orders

A Canadian court can make a transfer order at the request of a foreign state. The Minister of Justice may approve the transfer of a sentenced inmate from a Canadian prison to a foreign jurisdiction where the inmate is required to testify in a foreign court or to assist otherwise in the investigation of a crime. The transfer order specifies the name and citizenship of the detainee, the place in Canada at which the term of imprisonment is being served and the date on or before which the detainee is expected to be returned to the original place of confinement in Canada.

A BSO at PIL must refer for a secondary examination any person seeking to come into Canada on a transfer order of a Canadian court.

Persons returning to Canada under the authority of a transfer order who are not the subject of an unexecuted removal order are subject to examination. The examining BSO should complete an Order for Detention [IMM 0421B], indicating the person's place of confinement before they left Canada. The transfer order will provide this information. A copy of the [IMM 0421B] should be given to the escorting officer.

In the case of a non-Canadian detainee who is a sentenced prisoner in Canada, the escorting officer will give the BSO at Immigration Secondary a copy of the transfer order on the person's return to Canada. The BSO must forward this copy of the order to the regional representative of Enforcement, who will ensure that it is forwarded to the responsible CBSA inland enforcement office for monitoring and follow-up as necessary. The CBSA inland enforcement office maintains the copy of the transfer order on file in case evidence is required in the future to the effect that any subsisting removal order at the time of a detainee's transfer to a foreign state was not executed by reason only of the person's transfer.

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### 16.5. Persons extradited to Canada from countries other than the U.S.

When examining a person who is coming to Canada under extradition proceedings from a country other than the U.S., a BSO should obtain (at a minimum) the following information for control purposes, either from the person being extradited or from the person's escort:

Status	Required Information
Canadian citizen	person's name proof of citizenship
Permanent resident	person's name date of birth country of citizenship date permanent resident status in Canada was obtained place where the trial is to be held
Foreign national	person's name date of birth country of citizenship place of permanent residence place where the trial is to be held

If the extradited person is not a Canadian citizen, a BSO should forward a memorandum containing all information relevant to the person's entry requirements (including a copy of a

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temporary residence permit, if applicable) to the CBSA inland enforcement office nearest the place where the trial is to be held, with a copy to the Director of Enforcement in that region.

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### 17. Examining persons who may be medically inadmissible

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#### 17.1. Foreign nationals seeking entry for medical treatment

Persons coming to Canada for medical treatment are expected to produce evidence of an agreement with the treating physicians and institutions that clearly indicates the medical condition being treated, the proposed course of treatment and arrangements for payment.

The person must satisfy the BSO at Immigration Secondary that all associated expenses, including travel and accommodations costs, will be discharged without resulting in any cost to Canadian health or social services.

Applicants who provide satisfactory evidence that they will pay the costs of their treatment (usually through an agreement with the Canadian treating physician and medical institution) and who meet all other requirements for temporary residence, do not require a temporary resident permit (TRP) to enter Canada.

Where it is determined that the applicant's circumstances and ability to pay have changed since the letter of agreement was issued, the officer may ask for evidence that the care-provider in Canada is aware of the new circumstances and that payment arrangements are not affected.

Pursuant to section 22 of the Canada/Quebec Accord, Quebec's prior consent is required with respect to foreign visitors entering that province to receive medical treatment.

A foreign national who cannot satisfy the BSO that they will be able to pay for medical services and treatment may be inadmissible pursuant to one of the following allegations:

Section	Explanation
A38(1)(c)	Might reasonably be expected to cause excessive demand on health or social services
A39	Financial reasons
A41(a) & A16(1)	Non-compliance; unable to produce all relevant evidence and documents that an officer reasonably requires

See ENF 5, Writing A44(1) Reports for more information on procedures for dealing with section 44(1) reports on inadmissible persons. See also ENF 2, Evaluating Inadmissibility for more information on determining inadmissibility.

Foreign nationals who are assessed as likely to be a danger to public health or safety are inadmissible under A38. They do not need to be offered an opportunity to demonstrate that they can meet the costs of treatment unless consideration is being given to issuing a temporary resident permit to allow entry to Canada despite the potential danger to public health or safety.

A person suffering from active tuberculosis would remain inadmissible even if they had made all the necessary arrangements for the treatment of a medical condition unrelated to their tuberculosis.

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#### 17.2. Foreign nationals who appear ill

The following is an appropriate line of questioning when dealing with a foreign national who appears unwell:

- Are you unwell?
- Have you been treated by a physician recently?
- What were you treated for?
- When were you treated?

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- Will you require further treatment during your visit?
- Will you be seeing a physician in Canada?

If the BSO is satisfied that the person will not require treatment in Canada, the foreign national may be authorized to enter Canada provided there are no other grounds for inadmissibility.

If the BSO is not satisfied with the responses and the foreign national insists that they are well, the BSO may want to consult with a health specialist. Where appropriate and with prior consultation with a health official, a BSO may refer the individual for medical assessment or provide an opportunity for the person to withdraw their application. Where a medical examination is performed in Immigration Secondary, a medical officer will provide an assessment under A38(1) to the BSO.

BSOs can access a health specialist by telephone at one of the quarantine operations centres listed in Appendix B.

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### 17.3. Foreign nationals living with HIV/AIDS and the excessive demands criteria

It is CIC's policy that persons with HIV/AIDS do not represent a danger to public health. Therefore, a foreign national with HIV/AIDS seeking entry into Canada would not, in the absence of contrary evidence, be inadmissible pursuant to A38(1) and the BSO would not normally request a medical examination based on concerns about danger to public health or safety. However, persons living with HIV/AIDS may be medically inadmissible if they have an associated medical condition that is considered a public health risk such as active tuberculosis.

Another concern is the excessive demand that may be placed on health or social services by any applicant experiencing severe or chronic illness. As with any other foreign national making application to enter Canada, persons with HIV/AIDS would not normally be expected to place a demand on health services. It is therefore departmental policy that a diagnosis of HIV/AIDS is not in itself a barrier to visiting Canada. When making a determination, BSOs should only consider whether it is likely that the person will require hospitalization during their visit. The carrying of medication used in the treatment of HIV/AIDS is not grounds for denying temporary residence.

Where the applicant is obviously very ill, the BSOs should get the information needed to determine the likelihood of hospitalization during their visit and any medical arrangements that have been made. If required, the CIC Health Programs Division can be contacted for advice or information. It would be rare that an applicant living with HIV/AIDS would need to be referred to a medical examination in Immigration Secondary and rarer still that such a person would be assessed as medically inadmissible. If the officer follows the line of questioning outlined above, there should be no need to examine directly any foreign national on their HIV/AIDS status.

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## 18. Options for dealing with inadmissibility and incomplete examinations

A BSO at Immigration Secondary has a variety of options available when an examination cannot be completed or when a person is believed to be inadmissible.

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### 18.1. Further examination

Situations or circumstances may arise where an adjournment is necessary to ensure a proper examination by a BSO in Immigration Secondary. For example, a BSO may require an interpreter or additional documents, information or evidence to determine admissibility. The facilities may be inadequate or personnel may not be readily available to deal with volumes.

A23 authorizes a BSO to allow a person to enter Canada for the purpose of further examination. R43(2) clarifies that persons who are authorized to enter Canada for further examinations do not acquire temporary resident or permanent resident status.

#### **Mandatory conditions to be imposed**

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Where the BSO adjourns an examination under A23, R43(1) requires that mandatory conditions be imposed. These are:

1. to report in person at the time and place specified for the completion of the examination or the admissibility hearing;
2. to not engage in any work in Canada;
3. to not attend any educational institution; and
4. to report in person to an officer at a port of entry, if the person withdraws their application to enter Canada.

Persons whose examination has been deferred and who fail to report as required for continuation of their examination are reportable for non-compliance under A41(a).

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### 18.2. Direction to leave Canada

R40 states that an officer who is unable to examine a person who is seeking to enter Canada at a port of entry shall direct the person in writing to leave Canada. This does not apply to protected persons or refugee claimants. The decision to direct a person to leave is applicable in cases where a person cannot be properly examined due to circumstances within their control (such as physical impairment due to alcohol or drugs).

The BSO must serve a copy of the Direction to Leave [IMM 1217B] on the person concerned and on the transporter who brought them to Canada. This document is completed manually and can be input into FOSS using NCB code 22-Background Information.

The direction ceases to have effect when the person appears again at a port of entry and a BSO proceeds to examine the person.

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### 18.3. Direct back

R41 authorizes an officer to direct a foreign national seeking to enter Canada from the U.S. to return to the U.S. if:

- no officer is able to complete an examination;
- the Minister is not available to consider, under A44(2), a report made with respect to the person; or
- an admissibility hearing cannot be held by the Immigration Division.

(See section 18.4 on how and when to use the direct back policy for refugee claimants at land ports of entry under exceptional circumstances)

The foreign national would be issued a Direction to Return to the United States [IMM1237B] document. The date and location of the examination, the Minister's consideration of the Section 44(1) report or admissibility hearing are specified on the document.

A person who has been directed to return to the U.S. pending an admissibility hearing by the Immigration Division and who seeks to come into Canada for reasons other than to appear at that hearing, is considered to be seeking entry. If such a person remains inadmissible for the same reasons, and if a member of the Immigration Division is not reasonably available, the person may be again directed to return to the U.S. to wait until a member of the Immigration Division is available. In these circumstances it is not necessary to write a new A44(1) report.

The BSO at Immigration Secondary should bear in mind that time may be required by the person, to allow for travel to the location where they must appear before a member of the Immigration Division and that the circumstances may warrant authorizing the person entry, at an appropriate time in advance of the scheduled date.

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### 18.4. Direct back and refugee claimants arriving at the land ports of entry from the United States

All efforts should be made to process refugee claimants at the time of arrival. Refugee claimants may only be directed back to the U.S. under exceptional circumstances. In cases where a direct back must occur for an exceptional circumstance, approval must be obtained from Operations Branch, National Headquarters and the Record of Direct Back must be completed and e-mailed to the Admissibility Branch at NHQ pursuant to the instructions provided below. It should be noted that lack of interpretation services should not be considered “exceptional” or used as the basis for directing refugee claimant back to the U.S. See section 8.5 for guidelines on telephone interpretation.

#### **Procedures to be followed before directing a refugee claimant back to the U.S.**

Before directing back a refugee claimant to the U.S., BSOs are to fully consider and invoke options in 1 and 2 below:

1. Have the claimant wait at the POE until a BSO is available. In order to reduce the wait times for claimants, the following arrangements should be considered: invoking overtime hours, and calling in a BSO from another nearby POE;

Consider detaining the refugee claimant, if grounds exist to detain. If arrangements cannot be made to conduct the front-end security screening examination and grounds exist, the claimant may be detained according to current detention procedures.

#### **Decision to direct a refugee claimant back to the U.S. under exceptional circumstances**

Exceptional circumstances are defined as situations where all the procedures outlined in 1 and 2 above have been considered and where an examination still cannot be conducted. Exceptional circumstances could also include sudden or unexpected surges of people or a situation where the health, security or well-being of the refugee claimant would be significantly impacted and it would not be appropriate to have the person wait at the port of entry or to place the person in detention.

The direct back procedure should not be used in the case of an unaccompanied minor.

#### **Direct back procedure for refugee claimants under exceptional circumstances**

Once a BSO has determined that an exceptional circumstance applies, the instructions for directing the claimant back to the U.S., pursuant to R41, are as follows:

The senior officer at the port of entry must obtain headquarters approval from DG, Programs and Operations Services Directorate, Operations Branch, before allowing a direct back to occur. For more information on the reporting requirement, refer to the memorandum that was sent to the field in August 2006: [http://atlas/ab-dga/tools-outils/pol/ppd-dpp/hrd-dprf/memos/28-08-06/28\\_08\\_06\\_eng.asp](http://atlas/ab-dga/tools-outils/pol/ppd-dpp/hrd-dprf/memos/28-08-06/28_08_06_eng.asp).

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### 18.5. Detention for examination

Pursuant to A55(3)(a), a permanent resident or foreign national may, on entry into Canada, be detained if the BSO at Immigration Secondary considers it necessary to do so in order for the examination to be completed.

Persons being detained for examination must be informed of the reason for detention and of their right to counsel and their rights under the Vienna Convention. See ENF 20, Detention, for more information on the procedures to be followed when detaining a person seeking entry to Canada.

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### 18.6. Allowing the withdrawal of an application to enter Canada

Allowing a person to withdraw their application to enter Canada is frequently used where a BSO at Immigration Secondary believes a foreign national is inadmissible to Canada.

Under R42, the officer who examines a foreign national who is seeking to enter Canada and who has indicated that they want to withdraw their application to enter Canada shall allow the foreign national to withdraw their application, unless R42(2) applies.



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R42(2) provides that a foreign national shall not be allowed to withdraw their application to enter Canada where a report under A44(1) is being prepared or has been prepared, unless the Minister does not make a removal order or refer the report to the Immigration Division for an admissibility hearing.

R42(3) provides that foreign nationals who are allowed to withdraw their application to enter Canada must appear without delay at a port of entry to verify their departure from Canada.

Sometimes a person who is being allowed to withdraw their application to enter Canada is authorized to enter Canada pursuant to A23 when a flight is not immediately available to effect their departure.

R37(c) provides that the examination of the foreign national ends only when the officer verifies their departure from Canada.

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### 19. Examinations that may lead to prosecution

Immigration examinations relate to admissibility and, for the most part, the infractions identified during this process result in enforcement actions leading to removal. Serious offences may also be encountered. However, examinations should not be used to gather information for possible prosecution. The examination should be terminated once the officer has formed the opinion that an offence may have been committed under IRPA, the *Customs Act*, or the *Criminal Code*. Failure to recognize the distinction between the administrative and criminal process may seriously jeopardize the prospect of a successful prosecution.

Except in exigent circumstances, the officer should immediately advise a supervisor of the situation. The supervisor should contact the Criminal Investigations Division (CID) or local police of jurisdiction to pursue potential prosecution.

Subject to the limitations set out in subsection 495(2) of the *Criminal Code*, the person may be arrested under subsection 495(1) if there are reasonable grounds to believe he or she has committed an offence. The individual must then be promptly informed of the reasons for their arrest and of their right to retain counsel as well as be cautioned regarding making statements. Permanent residents and foreign nationals must be informed of the rights conferred to them under the Vienna Convention. When the right to enter and remain in Canada has not been established, the person must also be notified that the examination will be completed at a later time. BSOs should refrain from further questioning until guidance has been provided by the CID or police agency. It should be noted that in the past, CIC and the CBSA have been unable to prosecute several cases because the person was not advised of his or her right to counsel.

As officers may be required to provide testimony in court proceedings, detailed notes are to be made in their CBSA issued notebook. These notes should include, but not be limited to, the events leading to the referral to the CID, the time when the subject was placed under arrest, advised of their rights and cautioned. Comments and statements made by the subject must be recorded verbatim. Notes must also identify the officers and supervisor involved in the case, including those implicated in the chain of custody.

The chain of custody, also known as continuity of evidence, must be ensured in order to meet the rigorous evidentiary standards applied in criminal courts. Material evidence should be removed from the subject's possession and taken into custody immediately upon detection. The seized evidence must be kept in view and under the control of the officer. When an assisting BSO watches over goods or evidence, this officer becomes part of the chain of custody and could be called as a witness.

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For further information, please refer to EN Part 9, Chapter 3, Evidence and Statements, EN Part 6, Chapter 1, Arrest and Detention, and EN Part 6, Chapter 7, Criminal Code Offences.

IRPA offences are listed at A117 to A131, *Customs Act* offences are listed in section 160 and the more common *Criminal Code* offences are listed in Appendix B of CBSA Enforcement manual (EN) Part 6, Chapter 1, Arrest and Detention.

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As per A133, a person who has claimed refugee protection may not be charged with certain offences under IRPA and the *Criminal Code* pending disposition of their claim or if refugee protection is conferred.

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### 19.1. IRPA and Customs Act offences

A BSO may uncover evidence that an IRPA or *Customs Act* offence has occurred before the examination under IRPA is completed. In this situation, the immigration examination should cease once reasonable grounds to believe that the person has committed an offence have been detected. A supervisor should consult with the CID immediately for guidance.

The person may be arrested in accordance with section 495 of the *Criminal Code*. They must be promptly informed of the reasons for their arrest and of their right to retain counsel. In addition, they must be cautioned regarding making statements. Permanent residents and foreign nationals must be informed of the rights conferred to them under the Vienna Convention. The administrative process under IRPA is temporarily suspended in order to initiate the criminal proceedings. It resumes once the person is released and taken to a CBSA officer. (For further information on the resumption of the administrative process, refer to sections 19.4 and 19.5 below).

### 19.2. Criminal Code offence discovered by a designated officer

'Designated officer' refers to a BSO who is empowered under subsection 163.4(1) of the *Customs Act* to enforce provisions of the *Criminal Code* and other federal statutes. As soon as a designated officer has reasonable grounds to believe that a person has committed an offence under the *Criminal Code*, the examination under IRPA is to be temporarily suspended.

A supervisor should be consulted immediately. The CID, the police agency of jurisdiction or the RIO must also be contacted for further guidance as soon as possible. The officer may arrest the individual in accordance with section 495 of the *Criminal Code*. The detainee must be immediately advised of their right to retain counsel and cautioned regarding making statements. Permanent residents and foreign nationals are also to be informed of their right to have the nearest representative of their government notified of their arrest and detention as per the Vienna Convention.

The immigration examination resumes once the person is released and taken to a CBSA officer. (For further information, refer to sections 19.4 and 19.5 below).

### 19.3. Criminal Code offence discovered by a non-designated officer

When officers who are not designated pursuant to subsection 163.4(1) of the *Customs Act* discover that a *Criminal Code* offence may have been committed, they must immediately call upon a designated officer to intervene. Once satisfied that an offence has been perpetrated, the designated officer may arrest the person and proceed with informing them of the reason for the arrest and of their rights, and cautioning them against making statements. A supervisor should be consulted for guidance. The police agency of jurisdiction, the CID or the RIO should also be contacted as soon as possible. The administrative process under IRPA is suspended and will resume once the person is released and taken to a CBSA officer. (For further information, refer to sections 19.4 and 19.5 below).

### 19.4. Completing the examination of Canadian Citizens, Registered Indians and Permanent Residents

Canadian citizens, registered Indians and permanent residents have the right to enter Canada. Once a BSO is satisfied of the person's status, the examination ends and admission to Canada must be granted. The administrative process is concluded at this point. However, as previously stated in sections 19.1 to 19.3, where reasonable grounds to believe an offence has been committed under IRPA (or other Act of Parliament) exist, the subject may be placed under arrest in accordance with section 495 of the *Criminal Code*, regardless of their citizenship or status. Complete arrest and detention procedure must be adhered to.

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Permanent Residents may be deemed inadmissible following a conviction. It is therefore essential that the information pertaining to the case be communicated to Inland Enforcement - Investigations to ensure effective follow up.

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### 19.5. Completing the examination of foreign nationals

Once a foreign national has been placed under arrest, advised of their rights and cautioned against making statements, BSOs must issue a warrant for arrest pursuant to A55(1) as well as an Order of Citizenship and Immigration to Deliver Inmate [IMM 0419] (as per A59) in order to ensure that the examination is completed once the person is released after the criminal proceedings. Inland Enforcement – Investigations must be informed to ensure effective follow up.

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The IMM 0419 is to be used pending the development of a CBSA form.

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## 20. Unauthorized border crossings

A BSO who becomes aware that a person is attempting an unauthorized border crossing should first notify the RCMP. The primary responsibility for patrolling the border rests with the RCMP. The CBSA Investigations Division should **also** be notified.

The BSO should also notify a BSO at Customs Secondary who may wish to investigate whether smuggled and/or inadmissible goods may be involved. Ports of entry should work out local action plans with law-enforcement agencies if not already in place.

If no law-enforcement agency is available to assist, the superintendent or officer-in-charge must decide whether to conduct an investigation outside the port. The operational requirements of the port of entry retain priority, but if BSOs are available, they may be sent to investigate. This would be considered an inland investigation and the policies and procedures relating to in-Canada investigations would apply. See IC 3 for more information relating to in-Canada investigations.

Some points to remember are:

- A BSO should not attempt to investigate an unauthorized border crossing and should refer the unauthorized crossing to Investigations;
- BSOs who are trained in the use of control and defensive tactics (CDT) and in possession of defensive equipment are expected to manage situations up to such point that the BSO believes that the limit of their training and personal abilities has been attained. Where these limits have been reached, the BSO shall permit the individual to proceed into Canada and immediately notify the police force of jurisdiction. For more information see: [http://atlas/initiatives/ai-ia/pol/force\\_eng.asp](http://atlas/initiatives/ai-ia/pol/force_eng.asp);
- BSOs should use communication equipment to keep in contact with the port of entry, should they require assistance; and
- BSOs may consider requesting that CBSA Investigations lay charges under A124 if an investigation determines that a person has eluded examination or entered Canada by improper means.

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## 21. The Reciprocal Arrangement

As of October 30, 2009, the Reciprocal Arrangement is no longer in effect. For more information on removals, please refer to ENF 10.

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## 22. Disembarkation and Roving Teams (DART)

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### 22.1. Disembarkation and Roving Team (DART) overview

Disembarkation screening refers to the rapid verification by BSOs that airline passengers possess travel documents. Under A15(3) an officer has authority to board and inspect a vehicle and to examine and record documents carried by a person on board a vehicle.

The purpose of screening disembarking passengers is to identify and segregate persons not in possession of passports or travel documents from the normal flow of passengers. In addition, inadmissible travellers who may pose a risk or who are otherwise inadmissible can be identified through intelligence-based indicators such as identified trends, lookouts and Advanced Passenger Information/Passenger Name Record (API/PNR) information received from Passenger Analysis Units (PAU).

Disembarkation screening also enables a BSO to identify which airline has carried an improperly documented passenger to Canada and ensures that the CBSA can levy administration fees and removal costs against a liable transporter. When two international flights arrive within a brief period of time, for example, passengers from each flight may intermingle at the Primary Inspection Line (PIL). This can make it difficult to determine which carrier brought an improperly documented passenger to Canada and to properly assess liability.

On-board inspections, disembarkation screening, pre-PIL roving and post-PIL activities are part of the examination continuum. At these preliminary checks, the DART officer does not do a full examination and does not make a decision to authorize or deny entry. Instead, the officer verifies that a passenger has the necessary documentation and refers undocumented and suspected inadmissible persons to Immigration Secondary for an in-depth examination. This does not usurp the authority of PIL as DART referrals do not bypass PIL.

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### 22.2. DART mandate and objectives

As a part of the CBSA's mandate to manage access to Canada, the mandate of Disembarkation and Roving Teams (DART) is to increase CBSA's capacity to:

- identify improperly documented or otherwise inadmissible foreign nationals;
- associate improperly documented foreign nationals to commercial transporters to promote compliance with the CBSA's administrative programs;
- identify and interdict individuals who pose a threat to the health, safety and security of Canada including persons who pose a security threat, serious criminals, human smugglers, human and international rights violators, and persons engaged in trans-national organized crime; and
- analyze and contribute to the intelligence pool on illegal migration trends and patterns.

The objectives of DART teams are to:

- use intelligence, trend and statistical analysis and other innovative passenger assessment techniques (i.e., API/PNR referrals) to improve secondary referrals;
- identify, intercept and control passengers who pose a danger, security threat, or are a flight risk;
- monitor and promote transporter compliance by linking undocumented persons with transporters;
- assist in the collection of evidence for immigration admissibility reports and prosecutions;
- assist in the collection, analysis and dissemination of intelligence related to travel routes used by illegal migrants and smuggling networks;
- promote cooperation, coordination and the exchange of information with partner agencies;

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- maintain a professional, responsive and visible presence to deter inadmissible persons from entering Canada; and
- remove fraudulent documents from circulation thereby preventing their future fraudulent use.

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### 22.3. DART activities

DART activities can vary from one port of entry to another due to operational requirements, differing priorities and other considerations. Specific DART activities can include:

- inspection of airline passengers for possession of passports and travel documents and required visas;
- searches of aircraft for discarded or hidden documentation;
- searches of Canadian Inspection Services (CIS) area for discarded or abandoned documentation;
- seizure of documents;
- roving in CIS area to detect human smugglers and persons discarding documents;
- completing certain examinations and case files on high-risk cases such as suspected human smugglers;
- compilation and maintenance of intelligence data, statistics and daily logs;
- internal information-sharing within the CBSA (local office, other ports of entry, Criminal Investigations intelligence offices, overseas migration integrity officers (MIO));
- external information-sharing (Royal Canadian Mounted Police (RCMP), Foreign Affairs Canada (FAC), Office of the Solicitor General, airlines);
- targeting and passenger assessment of flights;
- establishing transporter liability;
- interviewing passengers at Immigration Secondary;
- collection and analysis of officer case notes;
- FOSS queries;
- use of internal communications systems; and
- analysis of statistical and other relevant records.

Although DART officers are BSOs, their primary function is to perform DART activities. When circumstances permit, however, or when a manager/supervisor requires emergency support, DART officers should offer their assistance to the on-site manager/supervisor.

#### **Minimal delay to travelling public**

Disembarkation screening by DART teams should be completed as quickly and efficiently as possible. To ensure that the bona fide travelling public is not unduly disrupted or delayed, the port-of-entry manager/supervisor should ensure that an appropriate number of officers are assigned to screen passengers, taking into consideration the different sizes of aircraft and passenger volumes.

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### 22.4. Intelligence-based targeting of airline flights

DART officers propose and confirm flights to be screened with their on-site manager/supervisor based on tactical intelligence identifying flights and persons of interest to the CBSA. Determining which flights to target for disembarkation screening is based on the following:

- lookouts and intelligence information;

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- advance passenger information received from the Passenger Analysis Unit;
- trend analysis;
- flights of heightened interest to the CBSA;
- point of embarkation;
- number of passengers on board;
- size of the aircraft;
- estimated time of arrival of the next flight to be monitored; and
- number of officers available to conduct disembarkation checks.

While all carriers should be the target of periodic disembarkation screening, those carriers with a history of carrying undocumented passengers may be subject to more frequent screening.

Specific case information is received and analyzed by DART teams through:

- in-person client interviews at Immigration Secondary;
- officer case notes;
- FOSS checks and SSI reports;
- reports provided by the CBSA's Immigration Intelligence Branch;
- statistical reports;
- migration integrity officers located around the world who provide information on illegal migration and smuggling trends;
- Passenger Analysis Units that provide API and PNR information on arriving passengers; and
- other agencies such as the RCMP.

In a reciprocal manner, DART officers contribute to the intelligence pool with trend and illegal traffic information that is used by the migration integrity officer network to interdict inadmissible travellers abroad and deny them boarding on flights to Canada. Information gathered from DART intercepts is entered in the SSI system which is used by CBSA intelligence officers in Canada and abroad to monitor and analyse illegal migration and human-smuggling trends. Additionally, DART officers ensure that suspected human smugglers and others in possession of fraudulent documents are referred to the CID. Cases of potential human trafficking should be referred to the CID and Intelligence for further investigation and liaison with partners.

### Intelligence support

The DART officers provide an integral operational link within the CBSA's intelligence and migration integrity officer networks overseas. These are major resources for DART teams and can provide valuable assistance in identifying human smuggler routings. The two-way exchange of information also provides the opportunity to interdict inadmissible persons abroad and deny them the opportunity to board flights to Canada.

Regional intelligence officers can provide a variety of services, which may include:

- document examination training;
- document analysis;
- emerging trend information; and
- SSI analytical reports.

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Migration integrity officers are located in key locations around the world and play an integral part of the screening, identification and interception of improperly documented persons trying to enter Canada. Together with DART officers, they form part of the continuum of the passenger assessment process that begins abroad and continues on arrival in Canada. They are both key elements in Canada's multiple-border strategy.

### **API/PNR liaison**

Passenger Analysis Units use advanced passenger information to identify known inadmissible persons and passenger name records analysis to assess individuals who may pose a potential risk prior to their arrival in Canada. This enables DART officers to use their limited resources more strategically to target flights and persons of interest.

This is key to the intelligence-based targeting of flights by DART officers. While Passenger Analysis Units provide strategic information about the arrival of persons linked to terrorist organizations, criminal activity and other inadmissibilities, DART acts on this intelligence information to intercept inadmissible persons immediately on arrival. Passengers who pose security or flight risks can be quickly intercepted and maintained in a controlled environment pending their examination.

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## **22.5. DART procedures**

### **Notification to partners**

With as much lead time as possible and in accordance with local procedures, DART officers should notify partners such as Transport Canada and the RCMP officials of the flights they intend to screen and of other pre-PIL roving activities.

### **Pre-disembarkation procedures**

DART officers should verify that proper communication (i.e. radio contact) has been established with the on-site manager/supervisor before leaving the office to perform disembarkation checks. Managers/supervisors should remain in continuous contact for updates, emergencies and requests for assistance.

### **Boarding flights and gate checks**

DART officers should, whenever possible, be gate-side at least five minutes before the flight's scheduled arrival time.

DART members will then make a final decision as to which level of disembarkation check is to be performed. The airline representative must be advised of the level of disembarkation.

Furthermore, a request should be made to the airline to ensure that an announcement is made on board the flight to prepare the passengers (levels I and II only). This announcement should clearly indicate to passengers that the CBSA will be doing a check to ensure that they possess the necessary documentation to enter Canada and that they should have their documentation ready for presentation. Only then will the disembarkation screening proceed.

Document screening is conducted on board the aircraft, at a point as close to the exit of the aircraft as possible, or wherever else deemed appropriate by the DART officer. Normally, officers will proceed down the aisle and allow passengers whose documents have been verified to leave the aircraft.

When boarding flights and conducting gate checks, DART officers should be mindful of the fact that they are in an excellent position to pass information along to the officers at the Primary Inspection Line. If a DART check of a passenger does not turn up any immigration concerns, but strong indicators are present that the particular traveller may be of interest to Customs, DART officers should make every effort to inform the officer at the Primary Inspection line or an officer at Customs Secondary examination of these indicators to assist them in completing their examination.

**Level I (Boarding the flight)** A minimum of two officers are required to do a check at this level.

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DART members will conduct level-one disembarkation checks in the following manner:

- in a two-aisle aircraft, officers should stay parallel in their respective aisles while doing document checks;
- in a single aisle aircraft, at least one officer checks documents on the left side of the aircraft and another officer completes the right side of the aircraft, while remaining in single file; and
- in a Boeing 747, at least one officer proceeds to “the bubble,” while another officer confirms the passengers in first class. Once those sections have been completed officers may then proceed to economy class. It is preferable that at least three officers check this type of aircraft.

The officers inspect passports, travel documents and visas for authenticity. If any concerns arise regarding a particular document, it may be held for further examination. If a person is suspected as improperly documented, without documentation or otherwise inadmissible, they will be instructed to remain seated and their documents will be held. In this instance, the flight attendant should be approached to determine if the passenger is travelling alone. If confirmed, the disembarkation check can be resumed. If another person accompanied the passenger, the documents of that passenger should be held as well. A request can be made to the flight attendant to ensure that the passenger and their travelling companion(s) remain seated until the completion of the check.

(Airlines may be requested to hold persons on board an aircraft under the authority of A148(1)(b) and R261).

After the disembarkation check has been completed, the officer will:

- search the improperly documented passenger’s seat, any companion’s seat and the immediate vicinity, including washrooms, to locate any documentation that may be hidden or discarded;
- determine if the passenger is sitting in their originally assigned seat. If the person is not in their originally assigned seat, search that area as well;
- complete an IMM 1445B confirming the passengers’ presence (see section on improperly documented passengers below for procedures on completing the IMM 1445B); and
- inform the flight director or crew of the conclusion of the check and thank them for their assistance.

Upon completion of the disembarkation check, DART members will;

- escort the improperly documented arrival (IDA) to the crew counter in the Primary Inspection Line area so that the BSO at PIL can complete the primary examination;
- once the primary examination is complete, escort the IDA to Immigration Secondary; and
- surrender any documentation and provide details of the case to the on-site manager/supervisor.

DART members will not be obligated to report any individuals, but when circumstances allow, DART officers will offer their assistance to the manager/supervisor.

If no passengers require an escort, but documents have been held, DART officers will proceed to the Immigration Secondary examination area as soon as practicable to explain the rationale for the seizure. If no documents have been held and there is no one to be escorted, team members can proceed directly to the next flight.

**Level II (Gate screening)** *A minimum of two officers are required to do a check at this level.*

DART members will conduct level-two disembarkation checks in the following manner:



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- stand facing each other in the area where the boarding finger meets the terminal building so that the disembarking passengers must pass between the officers; and
- confirm that each person has a passport, or other required documentation.

If a passenger presents satisfactory documentation, the officer will allow the passenger to proceed to the Customs hall.

If one of the following situations occurs:

- a passenger is not in possession of any travel documents; (in this instance, the flight attendant should be approached to determine if the passenger is travelling alone and to confirm their seat number. A document search should be conducted as in level I).
- the officer is not satisfied with documents presented; or
- the officer suspects the person to be inadmissible for any other reason.

Depending on the circumstances, the officer may instruct the passenger to wait in an area in plain view of at least one officer, or continue to the primary inspection line. DART members will hold the document and, in the latter case, the passenger may be given a receipt. If required, officers may ask for the assistance of airline personnel to maintain visual contact with those persons instructed to wait.

Upon completion of a disembarkation check, DART members will;

- escort the IDA to the crew counter in the primary inspection line area so that the BSO at PIL can complete the primary examination;
- once the primary examination is complete, accompany the IDA to Immigration Secondary; and
- surrender any documentation and provide details of the case to the on-site manager/supervisor.

DART members will not be obligated to report any individuals but, when circumstances allow, DART officers will offer their assistance to the manager/supervisor.

If no passengers require an escort, but documents have been held, officers will proceed to Immigration Secondary as soon as practicable to explain the rationale for the seizure.

If no documents have been held, and there is no one to be escorted, team members can proceed directly to the next flight.

**Level III (Flight observation)** *A check at this level is performed when only one officer is available.*

This type of disembarkation screening is usually completed for low-risk flights, or when flight-arrival times are scheduled close together. This level of screening should also be considered when staffing levels prohibit officers from doing a level I-, or level II-disembarkation check or, in a special circumstance, where surveillance is required.

DART members will conduct this level of disembarkation check in the following manner:

1. Arrive at the gate five minutes prior to the estimated time of arrival of the flight;
2. Inform the airline representative at the gate that an officer will be observing the flight and will not be requiring passengers to present their passports as they disembark the aircraft. Also, they should specify that no announcement to the passengers should be made;
3. Position themselves at a suitable distance, while ensuring that there is a clear view of the passenger flow from only the targeted flight;
4. While observing the passengers, officers make suitable notes with regards to passengers who may be of interest to Immigration Secondary, and those accompanying them;

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5. Officers may ask individual passengers for documentation if there is a strong suspicion that they may have improper documents, or no documents at all;
6. Generally, it is most beneficial to follow the passengers down to the Primary Inspection Line area. This will allow officers the opportunity for further observation and may prevent the destruction or discarding of documentation in garbage containers or washrooms;
7. If DART members are not proceeding directly to the Immigration Secondary area, they should inform the on-site manager/supervisor of the outcome of the disembarkation. If required, DART members should relay any observations, their location and, if required, request assistance;
8. At the earliest convenient break in disembarkation checks, go to the Immigration Secondary area to link any identified improperly documented arrivals with the carrier used to convey them to Canada, referring to the notes taken while observing the disembarkation, and
9. If an undocumented passenger who the DART officer observed disembarking a flight is encountered in the Immigration Secondary area, the DART officer should complete an IMM 1445B in accordance with procedures. If it is not practical to complete an IMM 1445B, the DART officer shall complete a statutory declaration as soon as possible.

Upon completion of all necessary paperwork, DART members may now advise the on-site manager/supervisor and proceed to the next flight planned for disembarkation.

### **Roving DART activities**

In addition to boarding flights and conducting gate checks, DART officers conduct roving exercises in the Canadian Inspection Services (CIS) area to identify other irregular activities such as the destruction or handing of documents to an escort or smuggler. DART officers engaged in pre-PIL roving may ask a BSO at PIL for a specific person to be referred to Immigration Secondary. All DART referrals must pass through PIL before being sent to Immigration Secondary. DART officers may engage in post-PIL activities when they have targeted suspected human smugglers or other suspected inadmissible persons when new information has come to light after the passenger has cleared PIL.

### **Improperly documented passengers**

If an improperly documented passenger is encountered, the officer should complete a "Confirmation by Transporter Regarding Passenger(s) Carried" [IMM 1445B] at the earliest opportunity, either during disembarkation screening or as soon as the passenger has been escorted to PIL and to the Immigration Secondary area. The local airline representative is also required to sign the form. If the representative refuses to sign, the DART officer should place a note on the form accordingly. If it is not practical to complete an IMM 1445B, the DART officer shall complete a statutory declaration stating which flight the IDA disembarked and outlining details about the lack of documentation.

Since passengers normally have documents at the time of boarding, it is possible that improperly documented passengers have hidden or destroyed their documents en route. Undocumented and other inadmissible passengers identified by DART must be presented at PIL for completion of Customs' procedures and then escorted to the Immigration Secondary area for a complete examination.

Once IDAs have been identified, the DART member must ensure that:

1. The appropriate areas of the aircraft are searched for documentation;
2. The flight attendant and IDA have been queried as to any accompanying travellers;
3. An airline representative has signed a "Confirmation by Transporter Regarding Passenger(s) Carried" form [IMM 1445B], when possible, for the passenger's arrival on their airline, and thanked for their assistance;
4. Should a disembarkation check be performed and IDAs not be identified until their arrival in Immigration or Customs Secondary, a request can be made to the airline staff to visually identify that person and sign the IMM 1445B confirming their presence on their flight. Airline personnel cannot be compelled to sign an IMM 1445B. If airline personnel refuse to

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sign the IMM 1445, a note should be made on the form accordingly. If it is not practical to complete an IMM 1445B, the DART officer shall complete a statutory declaration;

5. The passenger is escorted, if necessary, to the Immigration Secondary area only after they have cleared PIL and the on-site manager/supervisor is informed; and
6. The CIS area is checked for possible smugglers.

See link below for the IMM 1445B and statutory Declaration [IMM 1392B]  
<http://cicintranet.ci.gc.ca/cicexplore/english/form/imm1000/index-eng.aspx>.

### Reporting improperly documented passengers

In all cases where an improperly documented person has been detected, a BSO should:

1. Create a physical file ensuring that all secured documents are placed on the file;
2. Take a photograph of the person and place it on the file;
3. Place copies of any documents found in the person's possession on the file;
4. Ensure that the passenger, their carry-on luggage and their checked luggage are searched for documentation; this can usually be done by a BSO at Customs Secondary;
5. Obtain a flight manifest when possible;
6. Clearly make a note on the file to indicate whether disembarkation screening has been done so that the person entering SSI data may check "yes" in the disembarkation-screening field; and
7. When entering SSI, mark in the comments field "**IMM 1445B Completed and on File**" if applicable or advise person entering SSI to do so.

### Seizure of documents

All document seizures made by DART officers must be in accordance with the CBSA's seizure policy. For more information on this, see chapter ENF 12, Search, Seizure, Fingerprinting and Photographing.

### Note-taking

DART officers should make note of the date, time and flight number in their notebooks or DART logs and record any information that may be relevant to the examination or prosecution of passengers. Keeping a written record of this information may be useful if the officer is later called to testify in court. More information on officer note-taking is available in section 14 of ENF 7, Investigations and Arrests.

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## 22.6. Communication and cooperation with partners

### Within the CBSA

The CBSA airport staff should keep one another, as well as their regional and national headquarters, informed of DART developments. All such communications should be maintained on the master regional and/or national headquarters' file.

### With partners

The CBSA should consult Transport Canada, the RCMP and airline representatives at the port of entry regarding any changes to disembarkation screening procedures that affect the configuration or operation of local facilities. Good communication among partners is essential to ensure cooperation and to minimize disruption of airport operations and delays to passengers.

DART officers should provide feedback to agencies and individuals who have initiated a DART action, while keeping in mind privacy legislation. This would include timely updates and outcomes from referrals, lookouts or general information that was provided to the DART team. DART officers are encouraged to participate in orientation sessions with partners to further their understanding of the requirements of the *Immigration and Refugee Protection Act* and its Regulations and to promote cooperation and the exchange of information. DART officers should

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be vigilant for opportunities to engage partners and participate in joint activities that would promote understanding and cooperation.

### **With the CBSA Integrated Compliance and Enforcement Team (ICET)**

The CBSA has Integrated Compliance and Enforcement Teams (ICET), formerly Flexible Response Teams (FRTs), that occasionally operate pre-PIL in a manner similar to the CBSA's DART teams. Both DART and ICET teams report to the Enforcement Division which is run by the Chief of Enforcement Operations. DART and ICET teams should make every effort to communicate on a daily basis to enhance the understanding of each other's activities and to coordinate the targeting of flights whenever possible. While DART and ICET teams have different mandates and often target different flights, occasionally it will be operationally beneficial for both teams to target the same flights. In these instances, both teams are required to coordinate their activities to enhance effectiveness and to minimize delays to the travelling public. Among other things, ICET officers can assist with document verification and the search for documents aboard aircraft.

### **With airlines**

It is essential that carriers understand and support disembarkation screening. Port-of-entry managers/supervisors should initiate and maintain frequent communications with local airline managers and clearly explain the purpose, procedures, and legislative foundation for disembarkation screening.

### **With the Media**

When high-profile, contentious or sensitive cases are identified or are in the national media, BSOs must follow the **procedures** outlined below to inform NHQ:

1. Inform and consult your immediate manager/supervisor once it is suspected that the case meets the criteria of a high-profile, contentious or sensitive case. More information on the types of cases which are potentially high-profile is available in section 15 of OP 1, Procedures at <http://www.cic.gc.ca/english/resources/manuals/op/op01-eng.pdf>.
2. Inform NHQ by sending an e-mail which includes:
  - **"High-Profile Case"** in the subject line;
  - The name, date of birth, file number and/or client identification number (if applicable) of the applicant;
  - A case chronology, including case-specific details and a summary of the reason(s) the case is, or has the potential to be, high-profile;
  - Any action taken or recommendations to resolve the case (if applicable);
  - The following **distribution list**:
    - Immigration Program Manager (overseas cases) or manager/supervisor (inland cases);
    - [NHQ-NAT-High-Profile-Haut-profil@cic.gc.ca](mailto:NHQ-NAT-High-Profile-Haut-profil@cic.gc.ca) (which includes [NHQ-Communications-Cases@cic.gc.ca](mailto:NHQ-Communications-Cases@cic.gc.ca); the current Director General and Senior Director of Case Management Branch and the Office of the Assistant Deputy Minister);
    - [Nat\\_National\\_Security\\_Coordination@cbsa-asfc.gc.ca](mailto:Nat_National_Security_Coordination@cbsa-asfc.gc.ca);
    - Regional Director General and/or relevant geographic IR desk (if applicable).
3. Prepare an initial report and follow up, as necessary, to keep information up to date; ensure case notes are detailed and able to feed into briefing documents, if required.
4. After consultation (if necessary), render a decision on the application.

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5. Refer any communication-related responsibilities to NHQ Communications. Any cases that have implications in Canada (including those cases that initiate overseas) also need to be coordinated with Communications in the affected region.

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### 22.7. Suspected human smugglers

DART officers shall accompany any suspected human smugglers to PIL and then to the Customs Secondary area for a thorough search. DART officers should identify themselves to the BSO at PIL and have the suspected smuggler referred to both Immigration and Customs Secondary areas.

If evidence of human smuggling is discovered, the DART officer should immediately contact the Criminal Investigations Division. The DART officer should then escort the person to Immigration Secondary for an immigration examination to determine citizenship and admissibility.

If no evidence of human smuggling is discovered, the DART officer should accompany foreign nationals to Immigration Secondary for examination to determine admissibility. Where the person provides satisfactory verbal or documentary proof that they are a Canadian citizen, the BSO shall authorize the person to enter Canada at that point. It is not necessary to refer Canadian citizens to Immigration Secondary if the BSO is satisfied that they have that status. Documentation may be photocopied at Customs Secondary if necessary for further investigation or intelligence purposes.

DART officers should notify their manager/supervisor of all cases of suspected human smuggling and forward the case information to their Criminal Investigations office and regional intelligence office.

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### 22.8. Potential prosecutions

DART officers are instrumental in identifying and gathering evidence to prosecute human smugglers and traffickers of women and children. DART officers can play a key role in identifying, documenting, assessing, referring and assisting the RCMP or CBSA Criminal Investigations (depending on the charge) in the laying of charges under the *Immigration and Refugee Protection Act* and the *Criminal Code*.

When there is a concern that charges should be considered, the BSO and/or CBSA Enforcement Division should ensure that the CBSA Criminal Investigations and Intelligence are contacted and provided the details of the case. If the RCMP/CBSA Investigations conducts an investigation, the BSO and/or Enforcement Division should notify their manager/supervisor immediately.

BSOs must be familiar with the heightened evidentiary requirements for prosecutions. Documents for a criminal charge must be transferred and secured in a manner that is consistent with the *Canada Evidence Act*. To review the *Canada Evidence Act*, see <http://laws.justice.gc.ca/en/C-5/>.

Chronicled statements must comply with the *Canadian Charter of Rights and Freedoms*. See chapter ENF 12, Search, seizure, fingerprinting and photographing, section 7.1 relating to seizure. To review the *Canadian Charter of Rights and Freedoms*, see <http://laws.justice.gc.ca/en/Charter/index.html>.

Written declarations should be completed and confirmed with the CBSA Investigator or the investigating RCMP officer. In situations where a statement is taken from a passenger, the responsible officer should make every attempt to make the passenger available for the CBSA Investigator or the RCMP to interview. To access a declaration form, refer to IMM1392B.

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### 22.9. Interviewing Canadian citizens and permanent residents

DART officers must be cognizant of the change in the legal obligation of the individual when dealing with permanent residents and Canadian citizens and conduct the interview accordingly. Any statement made in response to an officer's question may be inadmissible in court if the person has not been given the proper cautioning prior to making the statement.

DART officers should utilize these opportunities to inform partner agencies of Immigration Secondary's role with respect to the specific case and the reasons for the actions taken. This may include instances where no action is taken at that specific time. In these instances, DART officers

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must use the utmost care to ensure that the partner agency does not perceive Immigration Secondary as unwilling to act, but rather understands the inability to proceed due to legal restrictions.

When examining Canadian citizens and permanent residents, DART officers must:

1. confirm that the person concerned is in fact a Canadian citizen, or permanent resident;
2. receive permission from the person to conduct an interview, or to examine any documentation in their possession;
3. collect any evidence that may link the person to an improperly documented arrival;
4. if no evidence exists, then conclude the interview and thank them for their cooperation. If evidence of aiding and abetting exists, contact the CID immediately regarding the possible laying of charges. If the investigator attends, properly transfer all evidence relating to the charge to them. If the investigator does not wish to attend, then conclude the interview and thank the person for their cooperation; and
5. in all cases where evidence exists, an NCB should be entered in FOSS detailing the occurrence. Also, all pertinent details should be relayed to Immigration Intelligence.

Evidentiary requirements may place DART officers in the best position to complete reports of this nature.

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### 22.10. Training

All DART officers are required to be certified in Control and Defensive Tactics (CDT) training. In addition, DART officers should generally have a minimum of one year's experience as an examination officer at the POE. This is to ensure that the officers are fully aware of the CBSA's mandate, objectives, and policies and have a good working knowledge of operational procedures, internal communication systems, statistical analysis and have recent experience in interviewing clients.

DART officers also need to be aware of the principles and dynamics underlying and motivating human behaviour, the influences of cultural differences, attitudes and behaviour and of departmental interviewing techniques. DART officers are usually required to complete up to two-weeks' training that may include courses on:

- DART orientation;
- Airline responsibilities;
- Fraud document detection;
- Immigration intelligence orientation;
- Jetway training;
- Evidence and criminal charges;
- CSIS profiles and interviewing techniques;
- Cross-cultural awareness;
- Anger management;
- First Aid/CPR; and
- Note-taking.

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### 22.11. Uniforms and OSAD equipment

DART officers are required to wear their uniform while on duty in accordance with the Uniform Code. DART officers are also required to wear officer safety and disengagement (OSAD)

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equipment including protective vests, baton and handcuffs when working outside of the secure office setting.

Any divergence from the standard uniform or equipment complement must be approved by local management and must be consistent with national guidelines.

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### **22.12. Statistical and intelligence reports**

For audit purposes, ports of entry must keep an accurate record of the flights where a disembarkation screening has taken place. The daily Action Reports should reflect the reason the flights were selected and the number of improperly documented passengers that were identified. These reports may be used as evidence by the Transportation Unit when assessing the fees to be levied on carriers.

DART managers/supervisors are responsible for compiling (from the daily Action Reports) a monthly report of DART activity during the previous month. The monthly reports should contain statistics on the number of disembarkations performed, the number of improperly documented foreign nationals intercepted, as well as other DART actions initiated through referrals by Intelligence, Passenger Analysis Units, the RCMP, the airlines or other sources. The reports should be sent by the DART manager/supervisor on a monthly basis to their regional headquarters and to the managers of the Transportation Unit, Enforcement Branch and the Air and Marine Division of the People Programs Directorate, Admissibility Branch at NHQ. All statistical reporting on DART is standardized at the local, regional and national levels to ensure consistency throughout the CBSA.

Every 6 months, the Transportation Unit at NHQ will provide feedback to the airport DART managers/supervisors and regional headquarters regarding the number of fees they have assessed and/or maintained as a result of disembarkation screenings and the associated dollar amounts.

NHQ Intelligence Branch will provide regular Intelligence reports to NHQ Ports and Border Management, regional headquarters and airport DART managers/supervisors about overseas interceptions by Migration Integrity Officers. The Intelligence Branch also provides trend analysis reports through the Weekly Intelligence Digest.

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## **23. Alternate means of examination (AME)**

### **23.1. Alternate means of examination systems**

Alternate inspection systems are tools that enhance the orderly flow of large volumes of persons seeking entry into Canada. Pre-screening programs such as CANPASS, NEXUS, FAST, and CDRP are increasingly available to low-risk pre-approved foreign nationals. Programs currently in operation benefit U.S. and Canadian citizens and permanent residents, but technological advances may soon make advanced screening more widely available. Successful applicants are issued entry documentation such as photo identity cards. Persons holding these documents are still applying for entry, but their examination may be expedited as background checks regarding criminality and previous immigration and customs infractions have been completed.

More information on AME programs can be found at

[http://atlas/ab-dqa/tools-outils/man/ppd-dpp/ppm-mtp/p3\\_c1\\_eng.asp](http://atlas/ab-dqa/tools-outils/man/ppd-dpp/ppm-mtp/p3_c1_eng.asp).

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## **24. Advance passenger information (API) and passenger name record (PNR)**

### **24.1. API information**

R269(1) requires a commercial transporter, upon a BSO's request, to provide on departure of their commercial vehicle, advance passenger information (API) on all passengers and crew members carried. The information is sent electronically or by fax upon departure of the vehicle from the last point of embarkation, prior to arrival in Canada. This enables the Passenger

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Analysis Unit (PAU) analysts to conduct security, criminality and FOSS checks on the passengers prior to their arrival in Canada.

Advanced passenger information consists of the following bio-data elements contained in the machine-readable zone (MRZ) of most passports and travel documents:

- surname, first name and initial;
- date of birth;
- country of issue of passport or travel document or citizenship or nationality;
- gender;
- passport or travel document number; and
- reservation record locator or file number (found in PNR portion).

The API data elements are captured at the time of check-in when the machine-readable zone of the passport or travel document is swiped or entered manually. All other information is contained in the PNR portion.

The API is sent, upon “wheels up” (actual departure time of the inbound flight) to a central database where names are matched against FOSS. Various security and FOSS checks are then conducted by the PAU analysts.

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### 24.2. PNR information

Section R269(2) requires a commercial transporter to provide a BSO access to its reservation system or, upon the BSO's request, to provide in writing all reservation information held by the commercial transporter on passengers (including crew members where applicable such as the repositioning of flight crews) to be carried to Canada.

The PNR information available in a transporter's reservation system is extensive, and the data elements captured will vary for each transporter.

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### 24.3. Disembarkation and Roving Team (DART)

Prior to a commercial vehicle's arrival in Canada, the PAU will analyse the API and PNR information, enter required lookouts in FOSS, and ensure that the BSOs and the Disembarkation and Roving Teams receive detailed information on persons who may be inadmissible to Canada. The PAUs have the decision-making ability to flag a person, prior to their arrival at the Primary Inspection Line (PIL), for referral to Immigration Secondary.

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## 25. Entering data on previously deported persons into CPIC

Since March 30, 2003, data on previously deported persons (PDP) are downloaded onto the Canadian Police Information Centre (CPIC) database.

The primary objective for entering data on previously deported persons into CPIC is to enhance public safety and security by providing peace officers with the necessary information to form reasonable grounds that the person may be arrested without a warrant, as per A55(2)(a). The CPIC-PDP database will equip peace officers across Canada with information that a foreign national has been deported from Canada, has returned to Canada without authorization as required by A52(1) and, at the time of the person's removal, there were reasonable grounds to believe that the person is a danger to the public and/or is unlikely to appear.

After a name is queried in CPIC and it is a direct match to a person found in the PDP database, the information on CPIC will instruct law enforcement partners to contact the Warrant Response Centre (WRC) for further assistance. For the purposes of arrests made without a warrant under IRPA, peace officers as defined by section 2 of the *Criminal Code* have the authority under



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A55(2)(a) to arrest and detain a foreign national without a warrant. For further information on the arrest and detention by peace officers under IRPA, see section 16, ENF 7.

Information on individuals in the CPIC-PDP database originates from the FOSS-PDP database. For more information on who will be added:

- to the FOSS-PDP database, (see section 17.1 in [ENF 11, Verifying Departure]); and
- to the CPIC-PDP database, (see section 17.2 in ENF 11 Verifying Departure).

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### 25.1. Adding a person to the CPIC-PDP database

Adding a previously deported person to the CPIC-PDP database is a two-step process. For information on the completion of the "Certificate of Departure" screen in FOSS and the completion of the "PDP" screen in FOSS, see section 17.2 of ENF 11.

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### 25.2. Completion of the "Previously Deported Person" (PDP)

To the extent that local resources will permit, managers are encouraged to authorize the addition of previously deported persons removed prior to March 30, 2003. For further information on determining which cases should be included, see section 17.3, ENF 11.

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### 25.3. Removing a person from the Previously Deported Persons (PDP) database

The previous deport (PREV.DEP) flag in FOSS will be automatically disabled and will electronically remove the information from the CPIC-PDP database only after a BSO at Immigration Secondary:

- completes an Authority to Return to Canada (ARC) screen in FOSS or CAIPS and an Authorization to Return to Canada under A52(1) has been granted; or
- a subsequent A44 (1) report has been printed in final form in FOSS.

By removing such persons from the CPIC-PDP database, CPIC will provide peace officers with accurate information and ensure that the reasons for an arrest remain valid. The removal of CPIC records will provide a safeguard against the possibility of wrongful arrest and the unnecessary use of valuable law enforcement resources.

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### 25.4. POE procedures for completing an ARC

The completion of the ARC screen is normally the responsibility of visa offices outside Canada through CAIPS. However, on occasion, the POE is required to deal with individuals where completion of an ARC is necessary. Therefore, the ARC screen on FOSS is accessible at ports of entry and the authority to grant or deny the Authorization to Return to Canada has been designated at the POE to the managerial level (see IL 3, module 9, item 70).

The ARC screen is used to record the processing and disposition (approval or denial) of an authorization to return to Canada, regardless of the type of removal order (i.e., exclusion order cases where written authority is required). When granting an authorization to return to Canada to a previously deported person, an ARC document must be completed in FOSS.

Before a physical copy of the *Authorization to Return to Canada Pursuant to Section 52(1) of the Immigration and Refugee Protection Act* [IMM1203B] is issued, the applicable cost recovery fees must be collected. There are currently no exemptions to the cost recovery fee for an ARC. When authorization to return to Canada has been denied, the officer must indicate the denial in the ARC screen in FOSS and issue a *Denial of Authorization to Return to Canada Pursuant to Subsection 52(1) of the Immigration and Refugee Protection Act* [IMM1202B].

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### 25.5. Completing the ARC screen in FOSS

A new option "AR-AUTH.RET TO CANADA" has been added to the Full Document Entry (FDE) menu.

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The ARC screen is accessible from the FDE menu in FOSS by choosing the option AR. The person must be an existing client on FOSS and the value entered in the IF EXISTING CASE – IDENTIFY CASE SERIAL NO must be the original serial number for the case (20, 27, NA, NO, 44) and a removal order or PDP document must exist. Once the document number has been entered, the client's personal information will be pre-filled as well as the type of order and inadmissibility. For more information on completing the ARC screen in FOSS, refer to the FOSS User Guide.

The following fields on the ARC screen are mandatory:

### **ARC Decision (4 values):**

- 01 = A52 (1) authority granted for permanent residence
- 02 = A52 (1) authority granted for temporary entry to Canada from time to time
- 03 = A52 (1) authority denied
- 04 = application abandoned/withdrawn

### **Removal Fees Recovered (4 values):**

- 0 = N/A (removal costs paid by client or airline)
- 1 = No [to be selected only when ARC application is denied]
- 2 = Yes - \$750 (Repayment of Removals USA/St. Pierre & Miquelon)
- 3 = Yes - \$1500 (Repayment of Removals Other Destinations)

### **Fee Code [cost recovery fee] (3 values):**

- FPA = fee paid abroad
- FPE = fee paid at port of entry
- FPC = fee paid in Canada

- Decision Date - Enter the date on which the ARC decision was rendered
- CIC/POST - Enter the CIC code for the office that created the ARC
- Officer - Enter the name or Initials of the BSO who rendered the ARC decision
- Date Signed - Enter the date on which the ARC was signed

An ARC can be completed by a BSO designated by the responsible manager to have FOSS access to create ARC documents, including completion of the "DECISION" field when the decision is to DENY (value 3) or the application is abandoned/withdrawn (value 4).

When the decision is to GRANT (value 1 or 2), the "Decision" field on an ARC screen must be entered by a designated BSO at a managerial level (see IL 3, Module 9 Inadmissibility, item 70).

*Note: The rationale for the decision to GRANT or DENY must be fully explained in the "REMARKS" field.*

The completed ARC document will be recorded in the Client History as GRANTED or DENIED.

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### **25.6. Amending an ARC decision in FOSS**

In exceptional circumstances, there may be occasions where a BSO has issued an ARC and information is later revealed that the document was issued in error. BSOs should take note that once the "Decision" field has been completed and the document finalized, the ARC cannot be re-opened and amended. This is because a positive decision will have electronically removed the person's record from CPIC-PDP. It is therefore imperative for BSOs to be sure of their decision before completing the screen. The document can be edited until the "Decision" field has been filled. Should unanticipated circumstances occur requiring that the decision be changed after the ARC has been finalized, the following protocol must be followed:

#### **To reverse a positive decision:**

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An e-mail must be sent to Warrant Response Centre (WRC) with a short explanation requesting to re-enable the PREV.DEF flag. A new ARC must be created, choose Value 3 (negative decision), copy and paste the e-mail sent to WRC into the "Remarks" field of the new ARC.

### **To reverse a negative decision:**

A new ARC must be created, choose Value 1 or 2 (positive decision), explain the reason for the reversal in the "Remarks" field. There is no need to advise the WRC.

If the "Decision" field shows "Application abandoned/withdrawn," a new ARC must be created. There is no need to advise the WRC.

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### **25.7. Effect of ARC decisions on the PDP database**

Where there is a PREV.DEF flag enabled in FOSS, the effect of the ARC will be as follows:

- a decision to GRANT an ARC will disable the PREV.DEF flag in FOSS, remove the person from PIL 'Hit List' and automatically remove the record from CPIC; or
- a decision to DENY an ARC will maintain the PREV.DEF flag in FOSS, cause the client to remain on the PIL 'Hit List' and maintain the record in CPIC.

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### **25.8. Remedial action at ports of entry**

#### **Person is in possession of a valid visa or ARC but PREV.DEF flag still enabled**

BSOs at Immigration Secondary must be prepared to deal with a person who is referred from PIL because a PREV.DEF flag appears against the person's name when queried. When a referred individual is in possession of a valid visa or ARC and is still flagged as PREV.DEF in FOSS, the following remedial action must be taken:

If an examination of the CAIPS notes satisfies the BSO at Immigration Secondary that a positive ARC decision was made and the fees collected, but the visa officer neglected to create an ARC document in CAIPS on which to record the decision, the officer, upon authorizing entry into Canada, must create an ARC document in FOSS in order to disable the PREV.DEF flag and remove the record from CPIC-PDP; and

If an examination of the CAIPS notes indicates that the visa officer issued a visa or ARC in error, without considering the need for written authorization to return to Canada, the decision to grant or deny such authorization rests with the BSO at Immigration Secondary.

#### **Entry denied on other inadmissibility grounds**

There may be circumstances where a BSO at Immigration Secondary will deny entry to Canada on new inadmissibility grounds to a previous deportee who has been authorized to return to Canada by a visa officer (and therefore the PREV.DEF flag will have already been disabled by the ARC). In such circumstances, BSOs should understand that the requirement to obtain authorization to return to Canada has been overcome by the granting of the ARC and they should not be exploring ways in which they can re-enable the PREV.DEF flag.

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### **25.9. Judicious use of A44(1) reports in support of the PDP initiative**

BSOs at Immigration Secondary should carefully consider whether the PDP information should remain on CPIC in the exercise of their discretion when writing an A44 (1) report. It must be recognized that the only way to disable the PREV.DEF flag and remove a previous deportee from the CPIC-PDP database is by writing an A44 (1) report, except in cases where the disposition is "*returned to the US*" or "*allowed to leave*."

Appropriate grounds, in addition to any other reason(s) for inadmissibility, would be A41(a) for A52(1). For more information, see, ENF 5 Writing 44(1) Reports, section 8.

If an A44(1) report has to be deleted from FOSS in order to correct an error [e.g., the A44 (1) report was completed against the wrong client ID], it is important that BSOs double-check to ensure that they have not disabled an existing PREV.DEF flag that needs to be restored. Where

the PREV.DEP flag has been disabled in error, an e-mail should be sent to the WRC immediately with a full explanation of what occurred and requesting that the flag be re-enabled.

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### 26. Foreign Missions and International Organizations Act

The *Foreign Missions and International Organizations Act* (FMIOA) extends privileges and immunities to foreign missions and certain international organizations that operate and/or hold meetings or conferences in Canada. Section 5 of the FMIOA provides that an order in council (OIC) can be signed by the Governor in Council with respect to certain international organizations. The OIC accords international organizations and their representatives privileges and immunities outlined in certain sections of the *Convention on the Privileges and Immunities of the United Nations* and the *Vienna Convention on Diplomatic Relations*. The OIC can remain permanently in force [such as the OIC that grants privileges and immunities to the International Civil Aviation Organization (ICAO) headquarters in Montreal] or can be signed to cover a specific meeting or conference of an international organization held in Canada (such as G8 meetings). Finally, the OIC can be signed to encompass all of the provisions in section 5 of the FMIOA, or can limit which privileges and immunities will be accorded.

On April 30, 2002, a new subsection of section 5 of the FMIOA came into force. Subsection 5(4) states that "In the event of an inconsistency or conflict between an order [OIC] made under subsection (1) and any of sections 33 to 43 of the *Immigration and Refugee Protection Act*, the order [OIC] prevails to the extent of the inconsistency or conflict." This means that representatives of international organizations covered by an OIC of the Governor in Council are not subject to the inadmissibility provisions of IRPA. These representatives are not to receive any additional documentation such as temporary resident permits. They shall be granted temporary resident status in the normal manner. If officers feel there is a need to further document the arrival of one of these representatives, a general information NCB can be entered into FOSS.

NHQ will receive advance notification of all OICs of the Governor in Council, the regions and ports may be given alternate directions when applicable.

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### 27. Removing enforcement flags from FOSS so that they are no longer displayed at the Integrated Primary Inspection Line

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#### 27.1. Background

An enforcement flag is generated when there is an entry in FOSS that automatically tells the BSO at the Primary Inspection Line that a particular traveller is of interest. The enforcement flag will show up as a hit on the IPIL database and will ensure that the traveller is referred to Immigration Secondary each and every time they seek entry into Canada. Types of FOSS entries that currently trigger enforcement flags include enforcement entries (such as watch-for NCBs, A44 reports and persons allowed to leave) and voluntary relinquishments of status NCBs (NCB type 10). As FOSS is a permanent record of a particular traveller's immigration history in Canada, enforcement flags remain on a traveller's file indefinitely, regardless of how frequently the traveller seeks entry into Canada.

Although FOSS will always retain a traveller's enforcement history, it is possible to turn these enforcement flags off so that a traveller is not automatically referred to Immigration Secondary. The enforcement history will remain intact in FOSS, but the traveller will not appear as a hit on the IPIL database. Furthermore, only past enforcement flags will be removed ensuring that if any enforcement action were to take place in the future, the enforcement flag would automatically get turned on once again.

Currently, the delegated authority to remove an enforcement flag in FOSS lies with the appropriate Director of the People Programs Directorate Admissibility Branch, at NHQ. These guidelines will clarify when it is appropriate to request the removal of an enforcement flag and will detail the proper procedure to follow to make this request.

### 27.2. Guidelines

The objective of these guidelines is twofold; first of all, the CBSA would like to ensure that travellers to Canada are not unduly referred to Immigration Secondary for a past enforcement action that has now been resolved and secondly, the CBSA would like to maintain the integrity of the program by ensuring that enforcement flags remain on for those travellers who have wilfully attempted to circumvent immigration legislation and procedures in the past.

Although these guidelines are not all encompassing, they will help to provide guidance on when it may be appropriate to request that an enforcement flag be removed from PIL and when it would be inappropriate that an enforcement hit be removed.

There are several broad factors that must first be considered when deciding whether or not an enforcement flag should remain:

- **Frequency** with which an individual seeks entry into Canada. Does an individual travel to Canada on business every week, or is this the first time that the traveller has sought entry since the enforcement action took place?
- **Intent** of traveller at time the enforcement action took place. Did the traveller wilfully intend to circumvent immigration legislation, or was the enforcement action the result of a misunderstanding on the part of the traveller?
- **Seriousness** of the enforcement action. Does the previous enforcement action continue to make the traveller inadmissible, or has the inadmissibility been resolved (i.e., criminal convictions that continue to make a traveller inadmissible versus the lack of a work permit that has been overcome)?
- **Number of enforcement actions** present in FOSS. Was the event a one-time mistake on the part of the client, or does it represent a pattern?
- **Purpose of present and future** trips to Canada. Does client have a valid reason for entry into Canada?
- **Time passed** since the enforcement action took place.
- **Age** of client at time of enforcement action versus their age now.

Once again, these are only some of the broad factors to consider when determining whether or not the enforcement flag should be removed, each traveller should be evaluated on a case-by-case basis. There are, however, specific instances when it may be appropriate or inappropriate to remove an enforcement hit.

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### 27.3. Instances when it may be appropriate to request the removal of an enforcement flag:

- Former permanent residents who have voluntarily surrendered their status;
- In cases where enforcement action exists for past criminal convictions, but the traveller now qualifies for deemed rehabilitation. For more information, see ENF 14/OP 19, Criminal Rehabilitation. The rationale is that although the traveller has been convicted of certain minor criminal offences and has had enforcement action for these convictions, the inadmissibility no longer exists. CPIC and NCIC checks should be performed to ensure that there are no additional convictions;
- Cases where persons may be allowed to leave: Examples of these cases include where U.S. citizens and permanent residents seek entry into Canada, but are unaware of the documentary requirements (i.e., they are unable to satisfy the BSO of their status in the US) providing that they are now aware of the requirements, or travellers who are allowed to leave for not having a work permit and have since obtained the work permit;
- Where a removal order has been quashed upon appeal. These situations should be assessed on a case-by-case basis;

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- Where an A44 report has been overturned by the Minister's delegate or at an admissibility hearing. Once again, these situations should be assessed on a case-by-case basis; and
- Clients who are enforcement hits on PIL, but no enforcement action exists in FOSS.

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### 27.4. Instances where it may be inappropriate to request the removal of an enforcement flag:

- Clients who have multiple enforcement actions against them in FOSS;
- Clients who wilfully attempted to mislead the BSO at Immigration Secondary;
- Clients who continue to be inadmissible due to the enforcement action;
- Clients who are likely to be the subject of future enforcement action; or
- Clients who have previously had an enforcement flag removed and subsequently had other enforcement action taken against them.

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### 27.5. Procedure for requesting the removal of an enforcement flag

Individual officers should not contact FOSS - QRC directly for the purpose of a flag removal; BSOs should follow the procedures outlined below for these requests:

- If a BSO encounters a traveller who they feel should not be automatically referred to Immigration Secondary due to an enforcement flag, the BSO should first take the appropriate action to ensure that the traveller is admissible to Canada (i.e. interview, NCIC and CPIC checks, etc.);
- The BSO should then write an e-mail justifying why they believe the traveller should not be automatically referred to Immigration Secondary. The BSO should clearly demonstrate in the e-mail that the above guidelines have been taken into consideration; and
- This e-mail should then be forwarded to their manager.

If the manager agrees that the enforcement flag should be removed from the PIL, the office manager will forward the e-mail along with their comments to the Flag Removal Mailbox. All requests of this nature should be forwarded to the following address: [flags-indicateurs@cbsa-asfc.gc.ca](mailto:flags-indicateurs@cbsa-asfc.gc.ca), using the template below. An e-mail must be submitted for each individual flag removal request; group flag removal requests (families, spouses, team members, etc.) will not be processed. The global address quick keys for this e-mail address are: CBSA-ASFC\_Enforcement Flags-Indicateurs d'execution de la loi.

#### Flag Removal E-mail Format

SURNAME Given Name FOSS ID XXXXXXXX (subject line)

Family Name:	
Given name:	
DOB:	XX-XXX-XXXX
COB:	XXX
FOSS ID#	XXXXXXXX

#### Reason for Change:

This person is a (foreign national, permanent resident or Canadian citizen). Example: In 1996 he was allowed to leave (as a 16-year-old) for failing to have sufficient funds and proper identification (proof of citizenship). He has since become a commercial pilot for Bob's Airline. There are no impediments to admissibility.

#### Description for Change:

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Please turn off the enforcement flag caused by: [one or more of the following: Allowed to Leave, 44 Report, 20 Report, 27 Report, NCB, Removal order, TRP] so that the client is no longer an AUTOMATIC referral to Immigration Secondary. This flag removal request was submitted by (Name/Position/Office).

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### 27.6. Enforcement flags on Canadian citizens

Normally, once a permanent resident of Canada receives citizenship, a type 11 non-computer based entry (NCB) is entered into FOSS. This NCB will automatically remove any enforcement flags that the person may have. Occasionally, BSOs will encounter travellers with enforcement flags who have become citizens, but for which no NCB type 11 has been entered into FOSS. Providing that the BSO is satisfied, through documentary evidence and/or a system check, that the traveller is in fact a Canadian citizen, the officer can enter a type 11 NCB. This NCB should be valid for 100 years and contain remarks outlining the date citizenship was granted and the citizenship number.

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## 28. *Open Skies Treaty*

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### 28.1. Background

The *Open Skies Treaty*, signed by Canada in 1992, did not come into effect until 2002. The Treaty allows overflight of one signatory country by another for the purpose of collecting imagery. Under the Treaty, only Russia and Belarus have quotas to carry out inspections in Canada.

Signatory countries may commence their overflight of Canada 72 hours after notifying the Canadian government. CBSA personnel at the POE will be notified by the Temporary Resident Assessments and Intelligence Section (TRAIS) immediately after the CBSA NHQ has been informed of an impending inspection.

On occasion, military personnel will enter Canada via a commercial aircraft in order to join a military aircraft already in Canada. Military personnel may also enter Canada in order to witness the development of film at the end of a Canadian inspection flight or to inspect a Canadian aircraft designated for overflights.

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### 28.2. Temporary resident visa

Temporary resident visas (TRVs) issued for purposes of the *Open Skies Treaty* will usually be issued in Moscow. Russia, Ukraine and Belarus have been advised that TRVs issued under the *Open Skies Treaty* are only to be used for that purpose. Referral to secondary is no longer required and as such, the use of the Immigration Secondary stamp overseas can be discontinued.

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### 28.3. Visa office

Upon receipt of applications under the Treaty, the visa office shall provide a referral to the TRAIS and CSIS for security screening via the Screening Referral Request system (SRR) containing the information required for visa vetting according to the IC2 manual (i.e. names, DOBs, position, and the expected date of travel, if known). In addition, CIC NHQ and DND can be notified of the visa applications at [open.skies@cic.gc.ca](mailto:open.skies@cic.gc.ca) and [caopenskies@forces.gc.ca](mailto:caopenskies@forces.gc.ca).

### 28.4. Procedures – BSOs at Immigration Secondary / Designated Immigration officers

BSOs will no longer be required to inform either CIC or CBSA of the arrival of military personnel who have been authorized entry into Canada under the *Open Skies Treaty*.

If a BSO encounters military personnel seeking entry into Canada under the *Open Skies Treaty* and TRAIS has not notified the POE, the BSO shall immediately contact the TRAIS manager at 613-957-3515 during business hours or the CBSA duty phone officer at 613-795-8192 for after hours queries. NHQ will then contact DND to confirm if an inspection has been scheduled.

If it is determined that no inspection has been scheduled, BSOs should examine the military personnel closely to assess their admissibility.

#### **Persons found inadmissible**

When a foreign national seeking entry into Canada using an “Open Skies” TRV has been found to be inadmissible, the BSO should follow regular inadmissibility procedures. Also, the BSO shall contact the following individuals:

- The local CSIS liaison officer;
- The Warrant Response Centre at 613-954-2344 requesting the CBSA Immigration Intelligence duty cell-phone number; and
- The Manager of TRAIS at 613-957-3515 or the CBSA duty phone officer at 613-795-8192 for after hour queries.



**Appendix A – Memorandum of Understanding between CIC and the CBSA**

[http://cicintranet.ci.gc.ca/transition/memorandum/mou\\_e.htm](http://cicintranet.ci.gc.ca/transition/memorandum/mou_e.htm).

## Appendix B – Quarantine Operations Centres

**Note:** Outside regular business hours, call the 24-hour phone line, which can be found within the People Processing Manual.

### **Public Health Agency of Canada**

#### **Quarantine Operations Centres**

##### **Halifax International Airport**

Box 1624 Bell Boulevard

Enfield, NS B2T 1K2

(902) 873-7656 (Office)

(902) 872-7657 (Fax)

Office Hours: 8:30-16:30, Mon.-Fri.

Jurisdiction: All ports in Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador

##### **Pierre-Elliott-Trudeau Airport Montreal**

975 Romeo Vachon Nord

Suite T.2.128

Dorval, QC H4Y 1H1

(514) 633-3024 (Office)

(514) 663-3031 (Fax)

Office Hours: 8:00-Midnight, Mon.-Fri., and 9:00-19:00, Sat./Sun.

Jurisdiction: All ports in Quebec

##### **Ottawa International Airport**

1000 Airport Parkway

Room 1481

Ottawa, ON K1V 9B4

(613) 780-7784 (On Call Pager)

(613) 959-2050 (Office)

(613) 949-1566 (Fax)

Office Hours: 8:30-16:30, Mon.-Fri.

Jurisdiction: All ports in Eastern Ontario

##### **Lester B. Pearson International Airport (Toronto)**

P.O. Box 6045

Toronto, AMF, ON L5P 1B2

(905) 612-5397 (Office)

(416) 812-5615 (Pager)

(905) 612-7987 (Fax)

Office Hours: 8:00-Midnight, Mon.-Sun.

Jurisdiction: All ports in Ontario, west of Kingston

##### **Calgary International Airport**

## **ENF 4 Port of Entry Examinations**

Box 79

2000 Airport Road NE

Calgary, AB T2E 6W5

(604) 317-1730 (QO Back-up line – Western Zone)

(403) 221-3068 (Office)

(403) 250-9271 (Fax)

Office Hours: 8:30-16:30, Mon.-Fri.

Jurisdiction: All ports in Alberta, Saskatchewan, and Manitoba, and the Northwest Territories

### **Vancouver International Airport**

YVR P.O. Box 23671

Richmond, BC V7B 1X8

(604) 317-1730 (Marine, and QO Back-up line – Western Zone)

(604) 666-2499 (Office)

(604) 666-4947 (Fax)

Office Hours: 8:00–Midnight, Mon.-Sun.

Jurisdiction: All ports in British Columbia and the Yukon

**Appendix C – Record of Direct Backs for Refugee Claimants at the Land Border**

**Record of Direct Backs for Refugee Claimants at the Land Border**

	1	2	3
Name of the Refugee Claimant (Last Name, Given Name)			
FOSS ID (xxxx-xxxx)			
Port of Entry (POE)			
Name of the Superintendent who Approved the Direct Back			
Reason for Directing Back under Exceptional Circumstances*			
Date and Time of Direct Back dd/mm/yy – 00h00			
Scheduled Date of Return dd/mm/yy			
Remarks			

**Have you considered the following arrangements before directing the refugee claimant back?**

Making arrangements to reduce the waiting time for the refugee claimant by:

- Invoking overtime hours for border services officers to process a claim
- Calling in border services officers from a nearby POE
- Using the telephone translation service
- Detaining the claimant, if grounds to detain exist, to complete the examination

\*Exceptional circumstances are defined as situations where all the procedures outlined above have been considered and an examination still cannot be conducted. The well-being of the claimant should be considered in conjunction with the impact on POE operations. When it has been determined that a case can be substantiated as an exceptional circumstance, the border services officer must obtain approval from the POE superintendent before directing a refugee claimant back to the United States.

## Appendix D – Transit Without Visa (TWOV)

R190 exempts certain foreign nationals from the requirement to obtain a temporary resident visa. R190(3)(c) and R190(4) outline other provisions for transit without visa and provide the legislative basis for the Transit Without Visa (TWOV) program and the China Transit Trial (CTT).

- TWOV became a national program on July 30, 2009. Subject to the TWOV eligibility criteria, approved nationals who hold a valid U.S. visa and are in transit through the Vancouver International Airport on their way to and from the United States on one of the approved airlines do not require a temporary resident visa.

The participants of the TWOV program must comply with all other eligibility criteria. Air carriers and airport authorities eligible to participate in the program are required to sign a Memorandum of Understanding with the CBSA and CIC at the HQ level.

- Nationals eligible to participate in TWOV:
  - Indonesia
  - Philippines
  - Taiwan
  - Thailand
- Airlines approved for participation in TWOV:
  - Cathay Pacific
  - Philippine Airlines
  - China Airlines
- Airport participating in TWOV:
  - Vancouver International Airport
- A one-year CTT was introduced on July 30, 2009.

Subject to the CTT eligibility criteria, nationals of the People's Republic of China will be visa exempt under R190(3)(c) if they:

- are arriving on a direct, non-stop flight originating in Beijing, Hong Kong, Shanghai, Guangzhou, Manila or Taipei;
- hold a valid U.S. visa and are in transit through the Vancouver International Airport on their way to and from the United States; and
- are travelling on one of the approved airlines (Cathay Pacific, Philippine Airlines or China Airlines).