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Regulations Amending the Immigration and Refugee Protection Regulations (Emergencies Act and Quarantine Act): SOR/2020-91

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IMMIGRATION AND REFUGEE PROTECTION ACT

P.C. 2020-261 April 20, 2020

Whereas, pursuant to subsection 5(2) ^a of the *Immigration and Refugee Protection Act* ^b, the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness have caused a copy of the proposed *Regulations Amending the Immigration and Refugee Protection Regulations (Emergencies Act and Quarantine Act)*, substantially in the annexed form, to be laid before each House of Parliament;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness, pursuant to subsection 5(1) and sections 26 ^c, 32 ^d, 43 and 53 ^e of the *Immigration and Refugee Protection Act* ^b, makes the annexed *Regulations Amending the Immigration and Refugee Protection Regulations (Emergencies Act and Quarantine Act)*.

Regulations Amending the Immigration and Refugee Protection Regulations (Emergencies Act and Quarantine Act)

Amendments

1 Section 2 of the *Immigration and Refugee Protection Regulations* ¹ is amended by adding the following in alphabetical order:

COVID-19 means coronavirus disease 2019. (*COVID-19*)

2 The are amended by adding the following after section 22:

Application of paragraph 41(a) of the Act

22.1 For the purpose of determining whether a foreign national is inadmissible under paragraph 41(a) of the Act for having failed to comply with the condition set out in paragraph 43(1) (e) or 183(1)(d) of these Regulations, if the foreign national has been convicted for having contravened an order or regulation made under the *Emergencies Act* or the *Quarantine Act*, the facts on which the conviction is based shall be considered to be conclusively established.

3 Subsection 43(1) of the Regulations is amended by striking out “and” at the end of paragraph (c), by adding “and” at the end of paragraph (d) and by adding the following after paragraph (d):

(e) to comply with all requirements imposed on them by an order or regulation made under the *Emergencies Act* or the *Quarantine Act*.

4 Subsection 183(1) of the Regulations is amended by striking out “and” at the end of paragraph (b.2), by adding “and” at the end of paragraph (c) and by adding the following after paragraph (c):

(d) to comply with all requirements imposed on them by an order or regulation made under the *Emergencies Act* or the *Quarantine Act*.

5 Subsection 203(1.1) of the Regulations is amended by striking out “or” at the end of paragraph (f), by adding “or” at the end of paragraph (g) and by adding the following after paragraph (g):

(h) an error in interpretation made in good faith by the employer with respect to its compliance with the condition set out in any of subparagraphs 209.2(1)(a)(v) and (vi) or 209.3(1)(a)(vii) to (xi).

6 (1) Subparagraph 209.2(1)(a)(iii) of the Regulations is replaced by the following:

(iii) subject to subparagraph (vii), the employer must provide the foreign national with employment in the same occupation as that set out in the foreign national’s offer of employment and with wages and working conditions that are substantially the same as — but not less favourable than — those set out in that offer,

(2) Paragraph 209.2(1)(a) of the Regulations is amended by striking out “and” at the end of subparagraph (iv) and by adding the following after that subparagraph:

(v) the employer, in the case of an employer who employs a foreign national who is subject to an order or regulation made under the *Emergencies Act* or the *Quarantine Act*, must not do

anything that prevents the foreign national from complying with the requirements of the order or regulation, including requiring the foreign national to do anything that is contrary to those requirements,

(vi) the employer, in the case of an employer who employs a foreign national who is subject to a provincial law that governs public health in response to COVID-19, must not do anything that prevents the foreign national from complying with the requirements of the law, including requiring the foreign national to do anything that is contrary to the law, and

(vii) the employer, in the case of an employer who employs a foreign national who, in accordance with an order made under section 58 of the *Quarantine Act*, is required to isolate or quarantine themselves for a period on entry into Canada, must provide the foreign national with wages during that period that are substantially the same as those set out in the offer of employment; and

(3) Subsection 209.2(2) of the Regulations is replaced by the following:

Period of employment

(2) For the purposes of subsection (1), the period of employment for which the work permit is issued includes any period during which

(a) the foreign national may, under paragraph 186(u), work in Canada without a permit after the expiry of their work permit; and

(b) the foreign national is required to isolate or quarantine themselves on entry into Canada in accordance with an order made under the *Quarantine Act*.

7 (1) Subparagraph 209.3(1)(a)(iv) of the Regulations is replaced by the following:

(iv) subject to subparagraph (xii), the employer must provide the foreign national with employment in the same occupation as that set out in the foreign national's offer of employment and with wages and working conditions that are substantially the same as — but not less favourable than — those set out in that offer,

(2) Paragraph 209.3(1)(a) of the Regulations is amended by adding the following after subparagraph (v):

(vi) the employer, in the case of an employer who employs a foreign national to perform work under an international agreement between Canada and one or more countries concerning seasonal agricultural workers, must provide the foreign national with adequate accommodations,

(vii) the employer, in the case of an employer who employs a foreign national who is subject to an order or regulation made under the *Emergencies Act* or the *Quarantine Act*, must not do anything that prevents the foreign national from complying with the requirements of the order or regulation, including requiring the foreign national to do anything that is contrary to those requirements,

(viii) the employer, in the case of an employer who employs a foreign national who is subject to a provincial law that governs public health in response to COVID-19, must not do anything that prevents the foreign national from complying with the requirements of the law, including requiring the foreign national to do anything that is contrary to the law,

(ix) the employer, in the case of an employer who provides accommodations to a foreign national, must — during any period that the foreign national is required to quarantine themselves in accordance with an order or regulation made under the *Emergencies Act* or the *Quarantine Act* — provide the foreign national with accommodations that are separate from those provided to persons who are not in quarantine and that permit the foreign worker to remain at least two metres away from any other person,

(x) the employer, in the case of an employer who provides accommodations to a foreign national who is subject to an order or regulation made under the *Emergencies Act* or the *Quarantine Act*, must provide the foreign national with cleaning products for the purposes of cleaning and disinfecting the accommodations regularly,

(xi) the employer, in the case of an employer who provides accommodations to a foreign national who becomes infected with or develops any signs or symptoms of COVID-19, must provide the foreign national with accommodations that have a bedroom and a bathroom that are solely for the use of the foreign national while they isolate themselves, and

(xii) the employer, in the case of an employer who employs a foreign national who, in accordance with an order made under section 58 of the *Quarantine Act*, is required to isolate or quarantine themselves for a period on entry into Canada, must provide the foreign national with wages during that period that are substantially the same as those set out in the offer of employment;

(3) Subsection 209.3(2) of the Regulations is replaced by the following:

Period of employment

(2) For the purposes of subsection (1), the period of employment for which the work permit is issued includes any period during which

(a) the foreign national may, under paragraph 186(u), work in Canada without a permit after the expiry of their work permit; and

(b) the foreign national is required to isolate or quarantine themselves on entry into Canada in accordance with an order made under the *Quarantine Act*.

8 Section 209.5 of the Regulations is amended by striking out “or” at the end of paragraph (b) and by adding the following after paragraph (c):

(d) an officer or the Minister of Employment and Social Development is notified that there has been the introduction or spread of a *communicable disease*, as defined in section 2 of the *Quarantine Act*, at any premises or place in which a foreign national performs work; or

(e) the employer employs a foreign national who is or was subject to an order or regulation made under the *Emergencies Act* or the *Quarantine Act*.

9 (1) The Regulations are amended by adding the following after subsection 209.994(1):

Reduced period

(1.1) Despite subsection (1), if the notice of preliminary finding or the corrected notice of preliminary finding is solely in respect of a failure to comply with any one of the conditions set out in the provisions listed in items 18 to 23 of Table 1 of Schedule 2, the employer may make a written submission or request referred to in paragraph (1)(a) or (b) within five days after the day on which the notice or corrected notice is received.

(2) The Regulations are amended by adding the following after subsection 209.994(2):

Reduced period

(2.1) Despite subsection (2), if the notice of preliminary finding or the corrected notice of preliminary finding is solely in respect of a failure to comply with any one of the conditions set out in the provisions listed in items 18 to 23 of Table 1 of Schedule 2, the notice or corrected notice is deemed to have been received five days after the day on which it is sent.

10 The Regulations are amended by adding the following after subsection 209.996(6):

Reduced period

(7) Despite subsection (6), if the notice of final determination is solely in respect of a failure to comply with any one of the conditions set out in the provisions listed in items 18 to 23 of Table 1 of Schedule 2, the notice is deemed to have been received five days after the day on which it is sent.

11 (1) Subparagraph 228(1)(c)(v) of the Regulations is replaced by the following:

(v) failing to comply with subsection 29(2) of the Act as a result of non-compliance with any condition set out in paragraph 183(1)(d), section 184 or subsection 220.1(1), an exclusion order,

(2) Paragraph 228(1)(c) of the Regulations is amended by adding “or” at the end of subparagraph (vi) and by adding the following after that subparagraph:

(vii) failing to comply with the condition set out in paragraph 43(1)(e), an exclusion order;

12 The portion of items 5 to 7 of Table 1 of Schedule 2 to the Regulations in column 3 is replaced by the following:

Item	Column 3
	Classification
5	Type C

6	Type C
7	Type C

13 Table 1 of Schedule 2 to the Regulations is amended by adding the following after item 17:

Item	Column 1 Provision	Column 2 Short-form Description	Column 3 Classification
18	209.2(1) (a)(v) and 209.3(1) (a)(vii)	Not do anything that prevents the foreign national from complying with an order or regulation made under the <i>Emergencies Act</i> or the <i>Quarantine Act</i>	Type C
19	209.2(1) (a)(vi) and 209.3(1) (a)(viii)	Not do anything that prevents the foreign national from complying with a provincial law that governs public health in response to COVID-19	Type C
20	209.2(1) (a)(vii) and 209.3(1) (a)(xii)	Provide, during the period the foreign national must isolate or quarantine themselves on entry into Canada, wages to the foreign national that are substantially the same as those set out in the offer of employment	Type C
21	209.3(1) (a)(ix)	Provide the foreign national with accommodations that are separate from those provided to persons who are not in quarantine and that permit the foreign worker to remain at least two metres away from any other person	Type C
22	209.3(1) (a)(x)	Provide the foreign national with cleaning products for the purposes of cleaning and disinfecting the accommodations regularly	Type C
23	209.3(1) (a)(xi)	Provide a foreign national who develops any signs or symptoms of COVID-19, with accommodations that have a bedroom and a bathroom that are solely for the use of the foreign national while they isolate themselves	Type C
24	209.3(1) (a)(vi)	Provide adequate accommodations to a foreign national employed to perform work under an international agreement between Canada and one or more countries concerning seasonal agricultural workers	Type B

14 Table 5 of Schedule 2 to the Regulations is amended by adding the following after item 5:

Item	Column 1 Criterion	Column 2 Points
6	The violation put the foreign national's health or safety at risk in relation to a communicable disease as defined in section 2 of the <i>Quarantine Act</i>	0 to 10
7	The violation put the public's health or safety at risk in relation a communicable disease as defined in section 2 of the <i>Quarantine Act</i>	0 to 10

Coming into Force

15 These Regulations come into force on the day on which they are registered.

REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the Regulations.)

Executive summary

To support the Government of Canada's response to novel coronavirus disease (COVID-19), the Regulations create new requirements for foreign nationals and employers of temporary foreign workers to comply with federal, provincial and territorial efforts to protect public health. The Regulations also impose consequences on those who breach these new requirements. Amendments also make changes to the inspection process of the employer compliance frameworks.

Issues: While the Government of Canada has implemented a temporary prohibition on the entry of foreign nationals to Canada as part of its response to COVID-19, some foreign nationals, e.g. temporary foreign workers and students, are still permitted to enter Canada. To ensure the entry of these persons to Canada is managed in a way that aligns with the objective of slowing the spread of the COVID-19 virus, the regulatory amendments encourage foreign nationals and employers of temporary foreign workers to respect federal, provincial and territorial measures aimed at protecting public health.

Description: The regulatory amendments require foreign nationals to comply with orders and regulations made under the *Quarantine Act* or the *Emergencies Act*, should it be enacted. The Minister of Public Safety or the Minister's delegate may issue a removal order against a foreign national who breaches this requirement.

The regulatory amendments also impose new conditions and associated penalties on employers who do anything that prevents the foreign worker from complying with their requirements under these Acts, as well as any provincial and territorial laws that regulate public health in response to COVID-19 in the province or territory in which the foreign worker is employed. The amendments create new authorities to inspect employers for compliance, while also providing some flexibility for employers who do not meet their new regulatory conditions to justify their non-compliance.

Rationale: The Government of Canada has restricted entry to Canada of foreign nationals, but made some exceptions to those restrictions. For example, temporary foreign workers, who are vital to Canada's economy, continue to be permitted to enter Canada. To help limit the potential spread of COVID-19 from such persons entering Canada, the regulatory amendments impose consequences on foreign nationals and employers of foreign workers who impede efforts to protect public health. It is expected that these regulatory amendments will present significant costs for both the Government of Canada and employers of temporary foreign workers; however, these costs are offset by benefits to workers, employers, and the public health more broadly.

Issues

The novel coronavirus disease (COVID-19) is a serious health threat that has been assessed as high risk to Canadians by the Public Health Agency of Canada (PHAC). In response, the Government of Canada has taken several measures, including, on March 18, 2020, temporarily restricting the entry of foreign nationals to Canada. On March 20, 2020, exemptions to the restrictions were announced for foreign nationals who had committed to working or studying in Canada, or making Canada their home.

Allowing foreign workers (and other foreign nationals) to enter Canada recognizes their vital importance to the Canadian economy, especially agricultural foreign workers who are critical to the food security of Canadians and the success of Canadian food producers. However, to protect public health, it is essential that all foreign nationals, including foreign workers, comply with any orders or regulations made under the *Quarantine Act* or the *Emergencies Act*, including requirements to undergo health screening protocols before travel and isolation or quarantine upon their arrival in Canada. It is also essential that employers support temporary foreign workers in fulfilling these requirements upon entry and during their stay in Canada.

Background

Canada's temporary foreign worker programs

The *Immigration and Refugee Protection Act* (IRPA) and the *Immigration and Refugee Protection Regulations* (the Regulations) allow foreign nationals to work temporarily in Canada, provided they meet all applicable requirements. In most cases, foreign nationals must obtain a work permit. They can do so under two programs: the Temporary Foreign Worker (TFW) Program and the International Mobility Program (IMP).

The key distinction between the programs is whether employers are required to obtain a Labour Market Impact Assessment (LMIA). Under the TFW Program, employers must request an LMIA from Employment and Social Development Canada (ESDC) to, among other things, determine the effect that the employment of the foreign national will have on the Canadian labour market and to ensure that efforts were made to hire Canadians and permanent residents before attempting to hire a foreign worker. Temporary foreign workers under the TFW Program commonly include, but are not limited to, agricultural workers and caregivers. In 2019, roughly 98 000 work permits were issued under the TFW Program.

Under the IMP, employers are not required to seek an LMIA before issuing an offer of employment to a foreign national, as it is recognized that the broader economic, social or cultural benefits to Canada from the employment of certain foreign nationals outweigh the requirement for this assessment. Foreign workers under the IMP include workers covered by international trade or bilateral agreements, youth taking part in working holiday exchanges, postgraduate students, employees transferred within a company, certain academics, and charitable and religious workers, among others. While the TFW Program is jointly managed by ESDC and Immigration, Refugees and Citizenship Canada (IRCC), the IMP is managed by IRCC alone. In 2019, approximately 307 000 work permits were issued under the IMP.

During an emergency such as the COVID-19 pandemic, the Government of Canada needs to ensure persons authorized to enter Canada from other countries comply with public health measures and orders and regulations, including requirements to isolate or quarantine. In the case of foreign workers, this also means ensuring employers do not take any action that would impede the foreign worker's ability to follow those orders and regulations. Given the serious threat to public health posed by the COVID-19 pandemic, it is imperative that conditions placed on temporary foreign workers and their employers be strictly followed. As such, new measures are required to encourage compliance.

There are employer compliance regimes for employers of temporary foreign workers under both the TFW Program and the IMP. Under these regimes, employers are required to meet conditions set out in the Regulations to help prevent program misuse and promote safe and fair working conditions for foreign workers. Employers can be inspected for compliance with these conditions. Employers found non-compliant can be subject to a range of enforcement actions including warnings, Administrative Monetary Penalties, and bans (from one year to a lifetime) from hiring temporary foreign workers.

Removal orders and removals

A foreign national, including a foreign national already in Canada, can be found inadmissible to Canada for several reasons under the IRPA. For example, a temporary resident (e.g. worker, student or visitor) could be found inadmissible for failing to meet a condition of their temporary immigration status. If a foreign national is found to be inadmissible, a removal order may be issued. Persons who are subject to removal orders may either depart Canada voluntarily or have their removal enforced by the Canada Border Services Agency (CBSA).

The Regulations currently define whether a removal order may be issued by the Minister of Public Safety or the Immigration Division of the Immigration and Refugee Board. There are various types of removal orders including deportation orders, exclusion orders and departure orders. Unless written authorization to return has been provided, deportation orders carry a lifetime bar on re-entry, exclusion orders carry a time limited bar on re-entry, and departure orders do not carry any bar on re-entry.

Travel restrictions and exemptions

On March 18, 2020, in order to slow the spread of COVID-19, a temporary prohibition on foreign nationals entering Canada was implemented. On March 20, 2020, the Government announced that certain foreign nationals would be exempt from this ban. Specifically, exemptions were put in place for foreign nationals who held or are approved for a work permit, international students who held or had been approved for a study permit prior to March 18, 2020, and permanent resident applicants who had been approved for permanent residence prior to March 18, 2020, but who had not yet travelled to Canada.

Canada's temporary foreign worker programs are demand driven, meaning the number of foreign nationals who enter in a given year depends on employer demand, as well as the number of foreign nationals seeking to work here temporarily. While volumes have increased steadily in recent years, driven in part by large volumes of international students who enjoy work privileges after graduation, estimates on the number of foreign workers who are expected to come to Canada this year are not available. Employers are likely to reduce their hiring demands in light of the economic consequences of COVID-19, while many potential foreign workers are unlikely to travel for reasons relating to personal decisions or a lack of commercial airline capacity.

Quarantine Act

On March 24, 2020, the Governor in Council issued an emergency order under the *Quarantine Act*. It requires all individuals entering Canada, including Canadians, permanent residents and temporary residents, to isolate themselves without delay in accordance with instructions provided by a screening or quarantine officer, and remain in isolation for 14 days, during which time they are to monitor for signs and symptoms of COVID-19. If symptoms present, an individual is to follow instructions provided by the public health authority, as specified by a screening or quarantine officer.

On March 26, 2020, two *Quarantine Act* orders came into force prohibiting entry into Canada from the United States and other countries, with exemptions for: foreign nationals holding a valid work permit or a study permit; foreign nationals who received written notice of the approval for a work

permit, but had not yet been issued the permit; foreign nationals who received written notice before noon on March 18, 2020, of the approval for a study permit, but who had not yet been issued the permit, and persons whose presence in Canada, in the opinion of the Minister of Foreign Affairs, the Minister of Citizenship and Immigration or the Minister of Public Safety and Emergency Preparedness, are in the national interest.

On April 15, 2020, the Governor in Council made a subsequent order requiring all persons entering Canada to quarantine or isolate for 14 days, depending on factors such as if they are symptomatic or not.

Objective

The objective of these regulatory amendments is to control and prevent the spread of COVID-19 within Canada by ensuring that foreign nationals and employers of temporary foreign workers comply with measures that protect public health. As such, the amendments ensure foreign nationals, including those with temporary resident status, comply with requirements under the *Quarantine Act* and/or any requirements that may be imposed under the *Emergencies Act*, and that employers of temporary foreign workers do not prevent an employee's compliance with requirements regarding public health protection. Accompanying regulatory tools are in place to hold employers accountable when they prevent or impede a temporary foreign worker's compliance, and to apply immigration consequences to foreign nationals who do not comply with these new requirements.

These regulatory amendments focus on orders and regulations issued under the *Quarantine Act* or any that may in the future be issued under the *Emergencies Act*, including the current mandatory isolation order made under the *Quarantine Act*, which only applies to individuals entering Canada and requires them to isolate or quarantine themselves for the 14 days following their arrival in Canada. If a foreign national gets sick after they have been in Canada for more than two weeks, the relevant provincial and territorial public health requirements apply.

Description

To support this objective, the following amendments to the Regulations are made:

Conditions for foreign nationals: Quarantine Act and Emergencies Act

A temporary resident is a foreign national who is legally authorized to enter Canada for temporary purposes. A foreign national has temporary resident status when they have been found to meet the requirements of the legislation to enter and/or remain in Canada as a visitor, student, worker, or temporary resident permit holder. Only foreign nationals physically in Canada hold temporary resident status. Under the Regulations, an officer can impose, vary or cancel specific conditions on a temporary resident or foreign national authorized to enter Canada. An officer can impose conditions on the period authorized for a foreign national's stay, the type of work in which a temporary foreign worker is permitted to engage, and the times and periods of work. The

Regulations prescribe a new mandatory condition that requires all temporary residents and foreign nationals temporarily authorized to enter Canada to comply with any applicable order or regulation under the *Quarantine Act* or the *Emergencies Act*.

This approach integrates requirements under the *Quarantine Act* and any that may be made under the *Emergencies Act* into standard conditions applied on all temporary residents and persons temporarily authorized to enter Canada for further immigration proceedings. This mandatory condition will help ensure that foreign nationals comply with orders and regulations designed to protect and preserve public health by minimizing the spread of COVID-19.

Consequences for foreign nationals: Inadmissibility and removal orders

Failure to meet conditions imposed on foreign nationals may render them inadmissible to Canada under the IRPA, meaning the person could be removed from Canada and barred from re-entering for a period of time.

To facilitate the assessment of the foreign national's non-compliance with their new condition, the Regulations prescribe that, if a foreign national has been convicted for having contravened an order or regulation made under the *Quarantine Act* or the *Emergencies Act*, the facts on which the conviction was based are considered conclusively established for the purposes of an inadmissibility determination under the IRPA.

The Regulations provide the authority for the Minister of Public Safety or the Minister's delegate to issue a removal order for non-compliance with the new conditions that require compliance with an order or regulation under the *Quarantine Act* or the *Emergencies Act*, once a person has been found to be inadmissible. This exclusion order bars the person from re-entry to Canada for one year, unless a written authorization is provided to return within that timeframe.

It is important to note these amendments are intended to encourage compliance with those requirements in a further effort to protect public health and safety. These amendments do not derogate from any law enforcement and compliance management efforts and obligations by competent authorities who are designated to administer and enforce the *Quarantine Act* or the *Emergencies Act*. Rather, as intended, operationally, determinations of inadmissibility and immigration enforcement would follow findings that a person violated those statutes by the competent authorities who are empowered to enforce them.

Conditions for employers

To help ensure foreign workers have the support of their employers to comply with any requirement imposed in relation to any orders or regulations made under the *Quarantine Act*, the *Emergencies Act*, or other provincial and territorial public health law in response to COVID-19, conditions have also been established under the employer compliance regimes of the TFW Program and the IMP.

A new condition requires that employers not do anything to prevent the foreign worker's compliance with any orders and regulations made under the *Quarantine Act* or the *Emergencies Act*. Employers are also required to pay wages to the foreign worker during any period of isolation or quarantine, as

required by an order made under the *Quarantine Act*, upon arrival in Canada. Those wages must be substantially the same as the wages indicated in the foreign worker's offer of employment. The requirement to pay workers during the period of isolation or quarantine which currently exists in guidance under the TFW Program is now codified in these Regulations. For employers hiring temporary foreign workers through the IMP, there is no current requirement in guidance to compensate workers with wages during the isolation or quarantine period upon entry to Canada; as such, these Regulations introduce this requirement to IMP employers. To that end, the Regulations are amended to clarify that the period of employment for which a work permit is issued includes the period that a foreign worker is required to isolate or quarantine themselves pursuant to the *Quarantine Act*. Another regulatory condition requires employers not to do anything that prevents a foreign worker's ability to comply with provincial and territorial laws that regulate public health in response to COVID-19. This includes requiring the foreign worker to do anything that would be contrary to relevant provincial or territorial law.

Employers of seasonal agricultural workers were previously subject to a policy expectation to provide their workers with adequate accommodations. Regulatory amendments are made to establish a requirement to provide adequate accommodations to workers and to require employers to provide workers under quarantine or isolation with cleaning products for the purposes of cleaning and disinfecting the accommodations regularly. In addition, employers must provide their workers with accommodations that enable them to fully isolate themselves from others if they have or develop any signs or symptoms of COVID-19. Finally, if a worker is subject to quarantine requirements under the *Quarantine Act* or the *Emergencies Act*, these employers must provide the worker with separate accommodations from persons who are not required to quarantine and permit the worker to remain at least two metres away from other people.

Inspections

To further underline the importance of these measures, a regulatory amendment is introduced to enable the authority to launch an inspection to verify compliance in two new relevant circumstances (also referred to as inspection triggers). First, in the event of the introduction or spread of a communicable disease, as defined in section 2 of the *Quarantine Act*, at any place or premises where the foreign worker performs work. Second, where an employer employs a foreign worker who is or was subject to an order or regulation made under the *Quarantine Act* or the *Emergencies Act*. An inspection launched under either of these triggers will enable an officer to inspect an employer for compliance with any of the regulatory conditions applicable to the compliance regimes, but importantly will enable inspections related to outbreaks or potential outbreaks of COVID-19.

In an effort to ensure a timely compliance decision in the context of risk to public health, two additional amendments are made to reduce prescribed times for the communication of results following the inspection process and for the employer's opportunity to respond. First, an amendment narrows the window of time between the sending of a Notice of Preliminary Finding, or a corrected Notice of Preliminary Finding, and the date the Notice of Preliminary Finding is deemed to have been received. The timeframe is reduced from ten days to five days. A second amendment provides that employers have five days, as opposed to 30 days, to make written submissions demonstrating

how they complied, or did not comply, with the new employer conditions. These two amendments reduce the length of time required to render a compliance decision, which minimizes the risk to public health and safety from the potential spread of COVID-19.

Consequences for employers

Endangering foreign national or public health and not complying with an inspection

An employer who is found to have violated the regulatory conditions and is unable to justify their non-compliance can be subject to a series of administrative consequences ranging from warning letters, administrative monetary penalties, and/or bans on hiring temporary foreign workers. Regulatory amendments amend the classification of violations in two ways.

Employers are subject to monetary penalties, bans, or both for violating their conditions not to prevent foreign workers from complying with orders or regulations made under the *Quarantine Act* and/or the *Emergencies Act*. The calculation of points to determine the non-compliance consequences (i.e. the penalty amount or length of ban) can now be increased if the violation involved putting the foreign national's health or safety at risk, or the public's health or safety at risk, in relation to a communicable disease as defined in the *Quarantine Act*. A failure to meet this condition could result in a minimum penalty of \$1,000 and a maximum penalty of \$1 million for multiple violations. The same penalties apply to employers who prevent a temporary foreign worker from complying with provincial or territorial laws that regulate public health in response to COVID-19 in the province or territory in which the foreign worker is employed.

Not cooperating with inspections for both the TFW Program and IMP employer compliance regimes carries a more severe penalty as a result of the regulatory amendments. The regulatory amendments increase the severity of the violation for non-compliance with all three inspection conditions: (i) to report at any time and place to answer questions and provide documents, (ii) to provide documents, and (iii) to attend any inspection, unless the employer was not notified. The changes will deter employers from opting to pay a smaller penalty associated with non-cooperation with the inspection conditions, versus participating in an inspection.

Justification of non-compliance by employers

As previous employer compliance inspections have demonstrated, most employers comply with their conditions. As such, a new regulatory amendment enables an employer who did not comply with the new regulatory conditions to justify that non-compliance in limited circumstances, only in the event of an error made in good faith regarding the interpretation of certain regulatory conditions imposed on them.

Regulatory development

Consultation

The proposal directly supports the Government of Canada's response to COVID-19. To permit a timely and effective response, limited consultation with stakeholders was pursued. ESDC and IRCC officials held meetings with Seasonal Agricultural Worker Program countries, their embassies and liaison services in Canada, and agricultural employers, to inform them of health and quarantine protocols that are in place upon arrival of temporary foreign workers in Canada, as well as employer conditions. Additional guidance and communications products were made available in March 2020 to employers of temporary foreign workers to inform them of the conditions.

Modern treaty obligations and Indigenous engagement and consultation

An initial assessment of modern treaties was undertaken. The assessment did not identify any modern treaty implications or obligations.

Instrument choice

Regulations are needed to ensure that measures taken by the Government of Canada to slow and prevent the spread of COVID-19 are strictly followed by foreign nationals entering Canada; to ensure that temporary foreign workers are properly compensated and accommodated during any period of required isolation or quarantine upon entry to Canada; and to ensure that employers of temporary foreign workers do not do anything to prevent their employees from meeting requirements imposed on them pursuant to federal, provincial and territorial public health laws in relation to COVID-19.

Regulatory analysis

The proposal directly supports the Government of Canada's response to COVID-19 and the analytical requirements for cost-benefit analysis have been adjusted to permit a timely and effective response.

An important first step in developing a cost-benefit methodology is establishing a baseline scenario against which options may be measured. For this analysis, the baseline is a scenario where all workers in the IMP and TFW Program, and other temporary residents and foreign nationals entering Canada are obliged to comply with orders or regulations under the *Quarantine Act* or the *Emergencies Act*, but compliance with these orders or regulations is not a condition of their temporary status in Canada. In addition, employers of workers in the IMP and TFW Program are not subject to new conditions or penalties for preventing their temporary foreign workers from complying with these requirements. While the baseline scenario also includes guidance published in March 2020 regarding the TFW Program, it should be noted that this guidance is not treated as part of the baseline for the purposes of assessing impacts below. The guidance includes measures to ensure that employers who are required to provide accommodations to workers, provide accommodations that are adequate to enable the worker to meet their requirements under the *Quarantine Act* or any that may be imposed under the *Emergencies Act*, and that employers are responsible for paying wages to their temporary foreign workers for the isolation or quarantine period upon entry to Canada. Furthermore, under the baseline scenario, the time between the

government mailing of a Notice of Preliminary Finding, or a corrected Notice of Preliminary Finding, and deemed receipt of these documents is ten days, and the time employers have to make written submissions demonstrating how they complied, or did not comply, with employer conditions is 30 days.

The baseline is then compared with the regulatory changes. First, the Regulations require officers to impose, as a condition of temporary resident status, compliance with any applicable order or regulation made under the *Quarantine Act* or the *Emergencies Act*. Moreover, the regulatory amendments enable the Minister of Public Safety or the Minister's delegate to issue removal orders to foreign nationals who violate their requirements to abide by such orders or regulations, and authorize the CBSA to rely on convictions under those Acts to help inform decisions regarding inadmissibility.

The Regulations also codify the current TFW Program guidance regarding accommodations and employer-paid wages to workers for the isolation or quarantine period upon entry to Canada, and introduce new requirements for IMP employers, who have to pay wages to workers for the quarantine or isolation period upon entry to Canada. Employers who provide accommodations must now provide temporary foreign workers with cleaning products for the purposes of cleaning and disinfecting their accommodations regularly (if the worker is subject to an order or regulation under the *Quarantine Act* or the *Emergencies Act*), and if the worker has or develops any signs or symptoms of COVID-19, the employer must provide accommodations for the worker, which allows the worker to fully isolate themselves from others. If a worker is subject to quarantine requirements under the *Quarantine Act* or the *Emergencies Act*, the employer is required to provide the worker with separate accommodations from those persons not in quarantine.

To further underline the importance of these measures, a regulatory amendment is introduced to enable the authority to launch an inspection to verify compliance in two new relevant circumstances (also referred to as inspection triggers). First, in the event of the introduction or spread of a communicable disease, as defined in section 2 of the *Quarantine Act*, at any place or premises where the foreign worker performs work and second, where an employer employs a foreign worker who is or was subject to an order or regulation made under the *Emergencies Act* or the *Quarantine Act*. An inspection launched under either of these triggers will enable an officer to inspect an employer for compliance with any of the regulatory conditions applicable to the compliance regimes. This will enable for a quick assessment of an employer's compliance with their new requirements, which is of critical importance in an emergency such as COVID-19. This will be of benefit not only to temporary foreign workers and their employers, but to broader public health measures as well.

Moreover, two additional amendments are established by the Regulations to reduce prescribed times regarding the determination process. First, the time between the issuance of a Notice of Preliminary Finding, or a corrected Notice of Preliminary Finding, and deemed receipt of these documents, reduces from ten days, to five days. Second, employers have five days, as opposed to 30 days, to make written submissions demonstrating how they complied, or did not comply, with the new employer conditions outlined above. Note that employers still have 30 days to make written submissions regarding all other employer conditions.

Costs and benefits

Costs

The Regulations impose incremental costs to the Government of Canada to clarify these new conditions. These costs include updates to bulletins and forms, website updates, and training materials for officers. Furthermore, the regulatory changes will impose enforcement costs. First, as the Regulations introduce additional criteria that will trigger inspections, the volume of inspections may increase, representing a cost to the Government of Canada to carry out these inspections. Further, enforcement costs are incurred by the Government of Canada as officers responsible for enforcement are also required to review justifications for non-compliance submitted by employers under the new Regulations, and submit information to inspectors within a shorter timeframe for the determination process.

The Regulations are also expected to impose significant costs to employers in both the IMP and TFW Program. As noted previously, the new regulatory requirements for TFW Program employers are already recommended in ESDC guidance. For example, employers who are already required to provide accommodations under the policy will now be required to provide accommodations that would not prevent the worker from meeting their conditions under the *Quarantine Act* or any that may be imposed under the *Emergencies Act*. Furthermore, TFW Program employers must pay wages to their workers during the quarantine or isolation period upon entry to Canada. However, this guidance is very new, and as such, all costs to employers in both the IMP and TFW Program are treated as incremental costs for the purposes of this analysis.

The incremental cost for IMP employers, who do not have to provide workers with accommodations, is that workers must be paid wages during the period of isolation or quarantine upon entry to Canada. For TFW Program employers, the Regulations impose two primary cost burdens. First, employers face additional costs as they are required to pay wages to employees for the isolation or quarantine period upon entry to Canada. Second, additional costs will be borne by employers required to provide accommodations, as they will have to meet a number of new requirements, as outlined below.

Employers who provide accommodations to their workers are subject to additional costs for cleaning supplies for the purposes of regularly cleaning and disinfecting their accommodations. Moreover, employers may have to pay for additional accommodations, as the new Regulations require that a worker who develops any signs or symptoms of COVID-19 be provided with accommodations that allow them to fully isolate from others. Employers may also incur additional costs to provide foreign workers required to quarantine with separate accommodations from those who are not required to quarantine, and must also permit a quarantining worker to remain at least two metres away from other people.

However, to help offset costs to employers, the Government of Canada has announced that it will provide \$50 million (approximately \$1,500 per worker) to help farmers, fish harvesters, and all food production and processing employers implement the measures necessary to comply with the requirements that all temporary foreign workers must isolate or quarantine upon entry to Canada.

For perspective, in 2018, there were over 50 000 temporary foreign workers employed in the Seasonal Agricultural Worker Program (SAWP) alone. While these volumes will likely be lower in 2020 in light of the circumstances surrounding COVID-19, it is still clear that the new regulatory requirements represent substantial cost impacts for employers, though the financial support from the Government of Canada to assist employers in implementing the new requirements pertaining to wages and accommodations will help to ease this burden.

Note that the new regulatory requirement that employers do not prevent temporary foreign workers from complying with provincial or territorial public health requirements is not expected to impose additional costs for TFW Program and IMP employers, as employers are not required to pay wages for periods of isolation or quarantine beyond the initial isolation or quarantine period upon entry to Canada. Employers and temporary foreign workers in both programs should refer to their employment contracts in cases where provincial or territorial public health measures may prevent workers from performing their work duties after the initial period of quarantine or isolation upon entry to Canada.

Similarly, employers are not expected to incur significant additional costs due to shorter reporting periods for the determination process, as the regulatory change merely requires them to provide the same information to inspectors, within a shorter timeframe.

Benefits

The new Regulations are expected to generate benefits to public health, in that they allow the Government of Canada to limit the spread of disease by making a foreign national's compliance a condition of their temporary status in Canada, establishing non-compliance as grounds for removal, and by simplifying the determination process. These measures are expected to help slow and prevent the spread of COVID-19 by enabling quicker decisions to address immediate COVID-19 risks to workplaces and public health more broadly.

Moreover, the Regulations also provide benefits and protections to workers by requiring the payment of wages during the initial quarantine or isolation period upon entry to Canada, introducing new requirements pertaining to accommodations, and by ensuring that workers are not prevented from meeting the requirements of any order or regulation under the *Quarantine Act*, the *Emergencies Act*, or provincial or territorial public health laws in response to COVID-19.

Furthermore, the new Regulations are also expected to benefit employers by helping to protect the health and safety of their workers, and thereby ensuring the ongoing productivity and success of the economic sectors that employ foreign workers. Overall, the benefits of the proposal to public health and the stability of various economic sectors, especially in the food supply chain, are expected to outweigh the short-term costs that will be incurred as a result of measures taken to prevent and slow the spread of COVID-19.

Small business lens

Analysis under the small business lens has determined the proposal will impact small businesses in Canada.

Employers of temporary foreign workers in both the IMP and the TFW Program incur costs in the form of the wages they are required to pay to workers during the period of quarantine or isolation upon entry to Canada.

Furthermore, employers of workers in the TFW Program who are already required to provide accommodations incur further costs, in that they are now required to ensure that these accommodations do not prevent foreign workers from meeting their requirements under the *Quarantine Act* or any requirements that may in the future be made under the *Emergencies Act* and that the accommodations meet additional conditions described previously which support Canada's objective of slowing the spread of COVID-19.

Due to the unique circumstances, it is not possible to retrieve data on the proportion of employers that are small business; however, it can be assumed that these costs may represent a relatively higher burden on small businesses than other employers of temporary foreign workers.

One-for-one rule

The proposal addresses an emergency circumstance and is exempt from the requirement to offset administrative burden and regulatory titles under the one-for-one rule.

Regulatory cooperation and alignment

The proposal is not related to a work plan or commitment under a formal regulatory cooperation forum.

The proposed amendments help ensure alignment with any new orders made under the *Quarantine Act* or the *Emergencies Act* in response to COVID-19, and demonstrate a compatible approach with efforts taken by provincial and territorial partners to slow the spread of the pandemic.

Strategic environmental assessment

In accordance with the *Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals*, a preliminary scan concluded that a strategic environmental assessment is not required.

Gender-based analysis plus (GBA+)

The power imbalance inherent in most employment relationships is intensified for foreign workers as a result of their temporary status in Canada, and in the case of employer-specific work permit holders, the conditional nature of their authorization to only work for one employer. This imbalance can be further exacerbated by factors such as a lack of proficiency in English or French, lack of knowledge of their rights, and misinformation. Gender and intersectional factors (e.g. age, race, low-wage level) may further increase vulnerability to workplace abuse.

One of the policy objectives of these regulatory amendments is to protect temporary foreign workers to help ensure that they are not put in situations where they are at risk of being infected by COVID-19 and/or at risk of infecting others. The proposal is expected to safeguard against an employer encouraging a worker to violate any requirements under the *Quarantine Act* or the *Emergencies Act*.

Rationale

The proposed amendments are required to support the Government of Canada's response to COVID-19. Foreign nationals contribute to the strength of Canada's economy, and as such, exemptions from the travel ban have been introduced to facilitate the arrival of some temporary residents and other foreign nationals authorized to enter Canada. To balance these contributions with the safeguarding of public health, regulatory amendments are needed to ensure that foreign nationals comply with any order or regulation made under the *Quarantine Act* or the *Emergencies Act*, and that foreign workers are supported by their employers in doing so. When foreign nationals violate these requirements, the Minister of Public Safety or the Minister's delegate would have the required regulatory tools to issue removal orders.

Implementation and compliance and enforcement

Implementation

The Regulations come into effect upon registration. Communications to temporary residents, employers, and guidance to officers have been made available.

Compliance and enforcement

Foreign nationals

Any foreign national who is subject to these conditions and is found to be in non-compliance could be subject to a removal order and barred from returning to Canada for a period of one year.

Employers

There will be increased opportunity for inspectors to verify employer compliance with the provisions regarding the *Quarantine Act* or the *Emergencies Act*, should it be invoked. Inspections of employers will be pursued as part of existing employer compliance regimes. Enforcement and the application of consequences for non-compliance remain within the existing Administrative Monetary Penalty and ban scheme. That scheme ranges in consequences from warning letters, to monetary penalties, and periods of ineligibility during which employers are unable to hire temporary foreign workers. In the most egregious findings of non-compliance, those bans can be for life.

The new Regulations impose minimum administrative monetary penalties for findings of non-compliance with regulatory conditions requiring employers not to prevent foreign workers from complying with any orders or regulations made under the *Quarantine Act* or the *Emergencies Act*, in the amounts of \$1,000 for a small business and \$2,000 for a large business. The maximum penalty

for not complying with the new Regulations also remains within the existing scheme and stands at \$100,000 for a single violation and \$1M for multiple violations, depending on the nature and number of violations as well as the number of foreign workers affected.

Employers who do not cooperate with inspections will be subject to higher penalties than the penalties previously applied for non-cooperation with an inspection. This emphasizes the importance of complying with the requirements under the *Quarantine Act* to protect public health in Canada.

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Footnotes

^a S.C. 2008, c. 3, s. 2

^b S.C. 2001, c. 27

^c S.C. 2017, c. 11, s. 6

^d S.C. 2015, c. 36, s. 172

^e S.C. 2013, c. 16, s. 21

¹ SOR/2002-227