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August 9, 2021

**Submitted Via Email**

To Whom It May Concern:

**RE: Proposed Regulations Amending the Immigration and Refugee Protection Regulations (Temporary Foreign Workers)**

On behalf of the Canadian Produce Marketing Association members, we welcome the opportunity to provide feedback to Immigration, Refugees and Citizenship Canada (IRCC) and Employment and Social Development Canada (ESDC) regarding the proposed regulations amending the *Immigration and Refugee Protection Regulations* as published in the *Canada Gazette, Part I*. We have shared general comments below, but would also like to express our strong support for the comments submitted by the Canadian Horticultural Council (CHC).

The Temporary Foreign Worker Program (TFWP) is critical to the ongoing viability of many fruit and vegetable growing operations across Canada. We urge the government to give serious consideration to our submissions to avoid unintended negative consequences to fresh fruit and vegetable production in Canada.

**About CPMA**

Founded in 1925, the Canadian Produce Marketing Association (CPMA) represents domestic and international members across the entire fresh fruit and vegetable supply chain, from the farm gate to the dinner plate. Our comments are reflective of a wide array of members who are responsible for 90% of fresh fruit and vegetable sales in Canada, working daily to provide Canadians with the fresh and healthy fruit and vegetable options they need and demand.



## Comments

The fresh fruit and vegetable industry relies upon tens of thousands of workers coming into Canada as part of the TFWP and the Seasonal Agricultural Worker Program (SAWP) to plant, cultivate, process, harvest and pack our products. As noted by CHC, the rural location of many growing operations, as well as the seasonal and labour-intensive nature of their work, means that Canadian horticulture relies more heavily on international workers than do other segments of agricultural production, with 43% of horticultural workers coming from outside Canada, (compared to 17% for the rest of agriculture), and 61% of horticultural farmers hiring foreign workers, (compared to 35% of the rest of agriculture). It is extremely difficult to hire Canadians who are typically concentrated in urban centres and who generally prefer year-round work.

Throughout the COVID-19 pandemic, the logistical challenges of bringing in employees through the TFW program have posed a considerable threat to food production, food security and the integrity of the food supply chain in Canada. Growers have incurred significant added costs to follow public health protocols and ensure the health and safety of their workers – and these protocols are likely to remain in place for the foreseeable future, with an ongoing impact on domestic production. Even prior to the COVID-19 pandemic, the labour gap in horticulture was becoming a crisis, expected to increase to 46,500 jobs by 2025 – the largest labour gap in the agricultural sector.

Bridging the labour gap in the agriculture sector is critical to ensuring the success of the Canadian fresh produce industry in both the short and longer term. It is therefore important for the federal government to continue to evaluate and improve processes under the TFWP and the SAWP.

CPMA and its members support federal government efforts to strengthen the protection of workers who enter Canada as TFWs. At the same time, we echo CHC's strong recommendation that IRCC and ESDC develop clear guidance that outlines how the proposed changes will be operationalized, to provide greater clarity for both employers and compliance officers. We would also strongly urge the government to collaborate with employers and employer groups, such as FARMS, FERME, and WALLI, as well as with associations such as CHC, CFA, CAHRC, CPMA, and others to ensure that the intended policy objectives are achieved. Appropriate timelines for implementation must also be recognized and adapted to ensure success on farm.

CPMA is concerned that many unanswered questions remain regarding the responsibilities of employers on behalf of their employees. With that in mind, the vast majority of employers of TFWs are committed to compliance and clear guidance will facilitate this compliance. See CHC's comments below regarding our sector's specific concerns:

### ***1.1 Providing information to temporary foreign workers about their rights in Canada***



- *Given the context surrounding the COVID-19 pandemic, confirmation of whether days including quarantine and/or self-isolation upon arrival in Canada would constitute the first day of work*
- *Further clarification as to whether the information required under this proposal would need to be posted in a worker's place of quarantine and/or self-isolation*

### **1.2 Providing an employment agreement to the temporary foreign workers**

- *There is ambiguity around what efforts on the part of an employer would be considered reasonable in providing workers with a copy of their employment agreement*
  - *Specifically, whether a physical copy of an employment agreement must be sent, or if an employer would be able to provide it electronically*
- *If a worker must quarantine and/or self-isolate upon entry to Canada, clarification is needed as to whether this constitutes the beginning of their employment*
  - *This is important as many employers will not have physical contact with workers until they have completed their period of quarantine and/or self-isolation*
- *Clarification as to when signature must be included with the employment agreement*
- *Additional guidance on employer obligations in the event a worker fails to sign the agreement despite being requested to*

### **1.3 Amending the definition of “abuse” to include “reprisal” against temporary foreign workers**

- *CHC supports strengthening legal protections for workers, and including the issue of reprisal under those supports*
  - *Our members are committed to fostering a workplace free of both abuse and reprisal, and have made considerable efforts to ensure workers are able to access their legal protections as easily as possible*
- *It is recommended that a separate criterion for employers is created that specifically addresses the issue of reprisal, rather than incorporating it under the current definition of abuse*
  - *There should be different compliance repercussions based on the severity of the infraction*
  - *Incorporating reprisal under the definition of abuse may unduly limit the capacity of program staff and compliance officers to exercise professional judgement in more serious cases of abuse*
  - *Uncertainty as to whether reprisal is inclusive of disciplinary measures less serious than dismissal, which are not currently defined by the proposed regulations*

### **1.4 Prohibit employers from charging or recovering fees for the provision of services in relation to an LMIA**

- *Guidance as to whether this specific proposal also applies to the Seasonal Agricultural Worker Program (SAWP)*



- *Whether there are obligations on the part of employers to ensure compliance from any third party involved in the recruitment of a worker*
  - *Specific actions that an employer to take*
  - *Whether additional steps are required if the third party acting in non-compliance is based in a foreign jurisdiction*
  - *Guidance on the process to ensure TFWs receive the full compensation they are entitled to, and are able to recover any illegitimate fees that may have been imposed on them*

### **2.1 Requiring documents from third parties**

- *We believe that program compliance officers should prioritize working with employers to receive the necessary documentation prior to escalating by engaging third parties*
  - *The vast majority of employers follow the proper protocol and provide documents in a timely fashion, and giving them the opportunity to do so should not be by-passed*
  - *We do understand the need, in extreme circumstances, to rely on third parties to provide documentation, but this should only be used when employers are uncooperative*
    - *It is worth noting that during the stakeholder engagement session hosted by IRCC and ESDC on July 27, 2021, verbal confirmation that this process would only be used when employers do not cooperate and refuse to provide essential documentation (i.e., used as a last resort)*
    - *Further confirmation or guidance of this approach would be appreciated*

### **2.2 Reducing timelines to respond to notices of preliminary findings**

- *CHC appreciates that reducing the timeframe employers have to respond to a notice of preliminary finding allows for the streamlining of overall processes*
- *However, it is expected that if government requires industry to provide information more expeditiously, the same will be true when information is requested from IRCC and ESDC*
  - *Assurances from IRCC and ESDC on how each Department is planning on reducing the timeframe to respond to industry would be appreciated*

### **2.3 Suspend processing of a request for an LMIA when there is no reason to suspect employer non-compliance**

- *Given the discretionary power given to integrity officers, as the consequences of having an LMIA suspended, further guidance is needed outlining how suspected non-compliance will be determined*
  - *IRCC and ESDC have previously communicated that this process relies on information being provided to integrity officers indicating potential wrongdoing*
  - *Clarification on how probable wrongdoing is evaluated would be appreciated*



**2.4 New assessment requirements for employers applying for an LMIA**

- *CHC believes the current scope of the proposed regulation is too broad*
- *A greater focus should be placed on the extent to which individuals are able to influence an employer's actions*
  - *Doing so would be more consistent with Canadian labour, employment, and occupational health and safety law*

Finally, CPMA would like to reiterate the need for the Government of Canada to continue efforts to address labour challenges in the agricultural sector moving forward. Specifically, this includes improving service standards and processing times for applications under the SAWP and the Agricultural Stream of the TFWP, including by working with source countries and implementing measures to further streamline the collection of biometrics as well as the visa and work permit application processes. As we look to COVID-19 recovery, it is also important that the government recognizes the ongoing nature of increased costs growers are assuming due to the pandemic by committing to measures to help growers manage costs associated with housing reforms and health and safety requirements.

Thank you again for the opportunity to provide comments on the *Proposed Regulations Amending the Immigration and Refugee Protection Regulations (Temporary Foreign Workers)*. We look forward to continuing to work with you to support a strong and growing fresh fruit and vegetable sector in Canada.

Sincerely,

A handwritten signature in black ink, appearing to be 'R Lemaire', followed by a horizontal line.

Ron Lemaire  
President  
Canadian Produce Marketing Association