



OIC Overview and Essential Worker Definitions

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Purpose

- Provide a brief overview of the Orders in Council, entry requirements and quarantine measures.
- Define the Canada Border Service Agency's role and responsibility in administering the *Quarantine Act*.
- Discuss essential services and critical infrastructure, including exemptions to the *Mandatory Isolation Order*.



General Rules – Entry from the United States

In order for a foreign national to enter Canada from the US, they must:

- Be asymptomatic; and
- Not be entering Canada for a purpose that is optional or discretionary; and
- Be able to comply with the requirement to quarantine based on their purpose of travel and intended length of stay if required to do so.



General Rules – Entry from any country other than the United States

In order for a foreign national to seek entry into Canada from a country other than the United States, they must:

- Fall within one (1) of the classes of persons/exemptions in section 3(1) of the OIC; and
- Be asymptomatic; and
- Not be entering Canada for a purpose that is optional or discretionary; and
- Be able to comply with the requirement to quarantine based on their purpose of travel and intended length of stay if required to do so.



Entry – Purpose of Travel

All foreign nationals (subject to some exceptions) are prohibited from entering Canada for a purpose of travel that is optional or discretionary in nature.

Entry and quarantine are assessed separately. An exemption to enter Canada does not automatically provide an exemption from quarantine

The Government has identified several key categories to establish Non-Discretionary Travel to authorize entry, including:

- economic services and supply chains
- critical infrastructure support
- cross-border employment
- shopping for essential goods such as medication or basic needs

Examples of Discretionary Travel categories in which entry may be denied:

- Tourism/sightseeing, recreation, entertainment
- Religious functions
- Shopping for non-essential goods
- Short term social visits to immediate family members



Entry vs Quarantine

- Canadian Citizens, Permanent Residents of Canada, and Registered Indians enter the country by right; however, the right to enter does not remove the requirement to quarantine, unless an exemption exists.
- Foreign nationals seeking entry in the trade and transport sector, as well as critical infrastructure support, may be deemed to be travelling for a non-discretionary purpose under the OICs (assuming there are no IRPA [immigration] admissibility concerns).
- In order for the travel to be considered non-discretionary when seeking entry as a technician or specialist entering to support critical infrastructure, the foreign national must clearly demonstrate their presence in Canada is required, and the nature of the work they are coming to complete.
- All travellers are required to quarantine unless the traveller explicitly meets one of the exemptions to the mandatory quarantine requirement outlined in section 6 of the Mandatory Isolation OIC. BSOs do not have a residual or implicit discretion to exempt travellers based on an assumed level of risk of the traveller, or based on their views as to the essential nature of their travel.
- BSOs use the information available to them at the time the traveller is seeking entry into Canada to determine if the travellers are eligible to enter the country, as well as to determine which set of instructions (exempt or required to quarantine) are to be provided to the traveller.



CBSA Roles and Responsibilities

- Border service officers (BSOs), are screening officers under the *Quarantine Act*:
 - Assess if purpose of travel is non-discretionary or discretionary (as per Orders in Council [OICs] under the *Quarantine Act*);
 - They work in collaboration with the Public Health Agency of Canada (PHAC) to ensure proper screening and referrals are made;
 - Conduct pre-border documentation assessments
 - Compassionate leave exemption letters (PHAC) and extended family (Immigration, Refugees and Citizenship Canada [IRCC]) reunification letters are issued by partner Agencies.
- If a traveller has a right of entry (e.g., Canadian citizen), or the foreign national's travel is non-discretionary, the BSO will then provide instructions to the traveller pertaining to their obligations under the Mandatory Isolation OIC.
- Each traveller subject to mandatory quarantine must provide a suitable quarantine plan to a BSO. If the traveller does not have a suitable plan, they are referred to a PHAC quarantine officer (QO).



Essential Services

There is no definition of “essential service” or “essential worker” in any PHAC OIC.

With respect to the three active OICs in effect as a result of COVID-19, the term “essential service provider” appears in both the Mandatory Isolation Order as well as the OIC that outlines the prohibitions on entry for a foreign national coming from a country other than the United States (US).

In each case, the Chief Public Health Officer of Canada has defined classes of persons that they deem an essential service provider. For the purpose of the public health and travel measures in place, these classes of persons stand on their own, and are not linked to definitions of “essential” outside the context of the Order.

Being considered an essential service provider, essential worker, or an individual who works in an essential service based field, in the context of provincial, municipal, or even other federal spheres, does not equate to being considered an essential service provider under the respective PHAC OICs.



Foreign National Entry – Critical Infrastructure

- Foreign nationals must clearly demonstrate how they meet the general rules for entry.
- Simply being employed in the critical infrastructure field does not automatically grant an exemption to the traveller.
- It is important that the travellers be able to clearly articulate why their travel is not discretionary, including why they must be in Canada, including the immediacy of the work they need to complete.
- In addition, the traveller should be prepared to clearly articulate the hands-on nature of the work they need to complete in the critical infrastructure field.



Quarantine Exemptions

In order to be exempt from the federal quarantine requirements, the client must explicitly meet one of the exemptions outlined in section 6 of the Mandatory Isolation Order. Section 6(e) exempts individuals entering Canada who will provide essential services as defined by the Chief Public Health Officer Group Exemption list made pursuant to section 58 of the *Quarantine Act*.

Cross-Border Workers

An exemption from quarantine is extended to individuals who must cross the border regularly to attend their normal place of employment. In order to qualify for this exemption from quarantine, the client must demonstrate the following when seeking entry:

- That they are crossing the border to go to their normal place of employment or work location; and
- That they cross the border regularly (generally defined as daily or weekly); and
- That they are not directly caring for persons over 65 years old.

Technicians and Specialists

The Chief Public Health Officer also provides an exemption from quarantine to technicians or specialists who enter Canada for the purpose of maintaining, repairing, installing or inspecting equipment necessary to support critical infrastructure.

In order to qualify for this exemption from quarantine, the client must demonstrate the following:

- That their purpose of travel is to maintain, repair, install or inspect equipment necessary to support critical infrastructure; and
- That they must provide their service within 14 days of entry into Canada; and
- That they have a strong rationale for the immediacy of the work that they need to perform; and
- That they are able to demonstrate a reasonable rationale as to why they were not able to plan for a 14 day quarantine.



Quarantine Exemptions - Continued

- Should a client not explicitly meet an exemption under section 6 of the Mandatory Isolation Order, the most viable option for the client to be potentially exempt from quarantine would be to seek a National Interest Exemption letter pursuant to paragraph 6(f) of the Mandatory Isolation Order.
 - “6(f) a person or any person in a class of persons whose presence in Canada, as determined by the Minister of Foreign Affairs, the Minister of Citizenship and Immigration or the Minister of Public Safety and Emergency Preparedness, is in the national interest, as long as the person complies with any conditions imposed on them by the relevant Minister to minimize the risk of introduction or spread of COVID-19.”
- Another alternative would be to seek a determination from the Chief Public Health Officer of Canada, pursuant to paragraph 7(2)(c), which states:
 - “7(2)(c) The requirements set out in sections 3 and 4 do not apply to a person if (c) the Chief Public Health Officer determines that the person or the class of persons that the person is in does not pose a risk of significant harm to public health, and as long as the person complies with any conditions imposed on them by the Chief Public Health Officer to minimize the risk of introduction or spread of COVID-19.”
- Unless they have one of the above documents, or meet one of the other section 6 exemptions, the clients will be required to quarantine.



Thank you!

Calvin Christiansen
Director General
COVID-19 Border Taskforce