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Targeted control audit of temporary resident permits: Audit findings

Canada Border Services Agency

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Compliance results

Compliance with policy and procedures

31. The audit reviewed 168 TRP (Temporary Resident Permit)s [9] issued by the CBSA to determine whether:

- required information is documented, including officer justification

- designated authority for issuing TRPs is documented and at the appropriate level [10]

32. Requirements for issuing and documenting TRPs in GCMS (Global Case Management System) are listed in the Enforcement Manual 4 (ENF 4): Port of Entry Examinations [11].

- Officer justification in GCMS:

  - a description of the FN (Foreign national)'s inadmissibility and the equivalent in the *Criminal Code* of Canada

  - a description of the compelling reasons to warrant the issuance of the TRP and how the need outweighs the risk: economic contribution, national interest, personal reasons, political visit, and ministerial intervention

  - the relevant circumstances that prompted a favourable recommendation

  - the duration of the TRP as it corresponds with the purpose of the trip

  - a description of the reasons for either granting or refusing re-entry

- Designation of authority:

  - to ensure that the correct designated authority issues the TRP, officers were also required to include their title, along with their name or initials, badge number and CBSA user ID (ABC123) in their GCMS TRP Application Notes and on hard copy files

- Other required information:

  - the foreign national's contact address in Canada

33. Expectation: Required information, including officer justification for issuing a TRP, is documented in accordance with enforcement manuals.

34. Overall, 48% of TRPs were compliant with the officer justification: one or more of the 5 required elements were not documented [12].

Figure 2

Element of Officer Justification
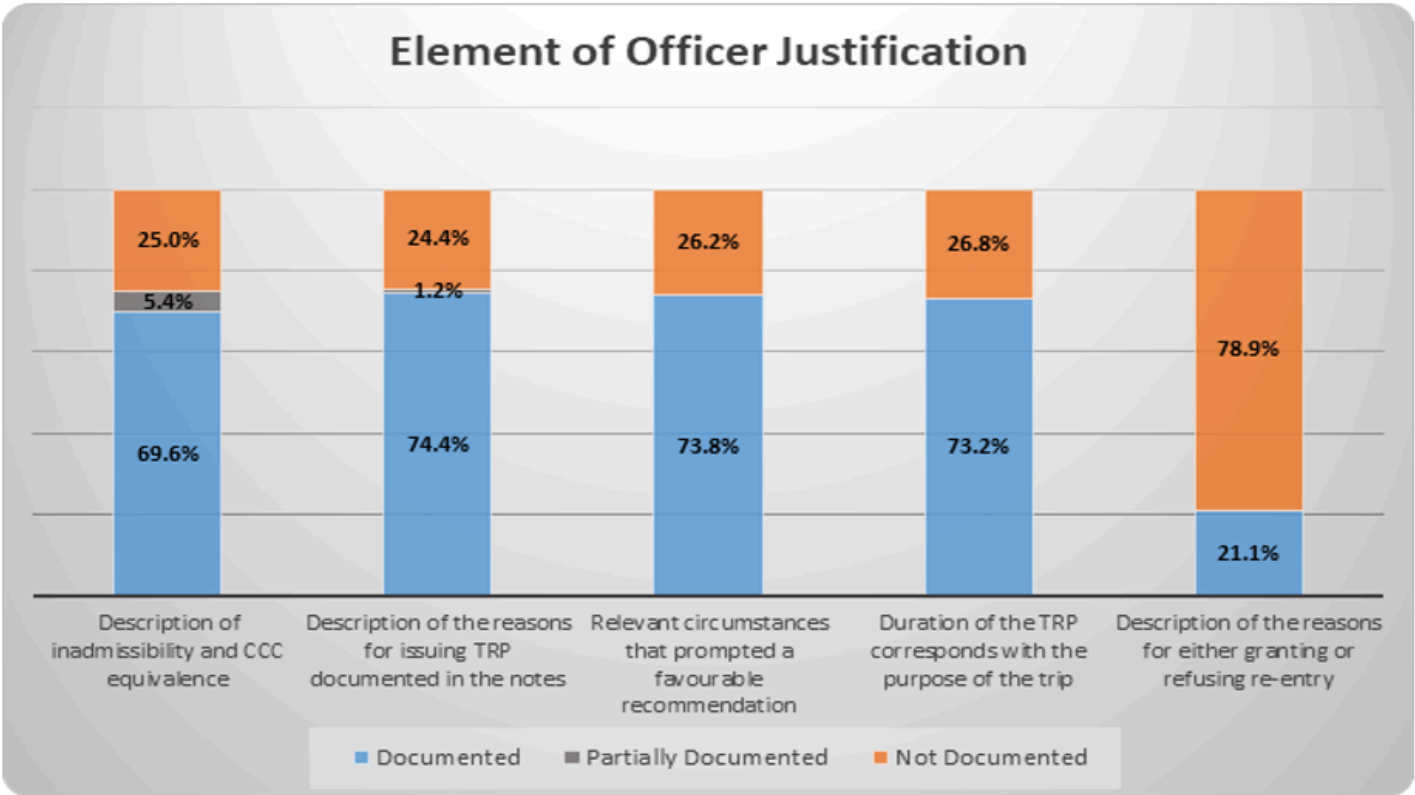
▼ Image description

Element of officer justification

Element	Documented	Partially documented	Not documented
Description of inadmissibility and CCC equivalence	69.6%	5.4%	25.0%
Description of the reasons for issuing TRP documented in the notes	74.4%	1.2%	24.4%

Element	Documented	Partially documented	Not documented
Relevant circumstances that prompted a favourable recommendation	73.8%	n/a	26.2%
Duration of the TRP corresponds with the purpose of the trip	73.2%	n/a	26.8%
Description of the reasons for either granting or refusing re-entry	21.1%	n/a	78.9%

35. 23% of the TRPs reviewed were issued to FNs from Ukraine and Afghanistan.

- These cases may have been issued as part of the temporary Public Policy to exempt foreign nationals from certain immigration requirements in support of Canada-Ukraine Authorization for Emergency Travel and the Afghan Special Immigration Measures.

- 74% of these cases had no notes in GCMS indicating why the TRP was issued or the specific grounds for inadmissibility [13], so the audit could not confirm if the cases were issued under these measures. Officers were still expected to document their justification for issuing a TRP.

- If Ukraine and Afghanistan TRPs are excluded, compliance with officer justification reaches 60%.

36. 63% of TRPs had no Canadian address documented on file [14].

37. Expectation: The designated authority for issuing a TRP is documented and at the appropriate level.

38. Approval level by type of TRP [15]:

- Superintendent or above

    - Serious Criminality

    - Health Grounds

- BSOs

    - Criminality

    - Financial Reasons

    - Misrepresentation

   - Non-compliance

    - Inadmissible family member

39. Almost all TRPs reviewed (99%) were issued at the appropriate designated authority [16].

40. There are no controls in GCMS to prevent a BSO from issuing a TRP that requires approval at a higher level. The approval and issuance of a TRP in GCMS is captured using:

- the ID of the officer who logs in the file; **or**

- the approver, if properly documented in the notes.

This last option becomes important in situations where approval at the superintendent level or higher is needed [17].

Figure 3

TRP Issued by Designated Authority
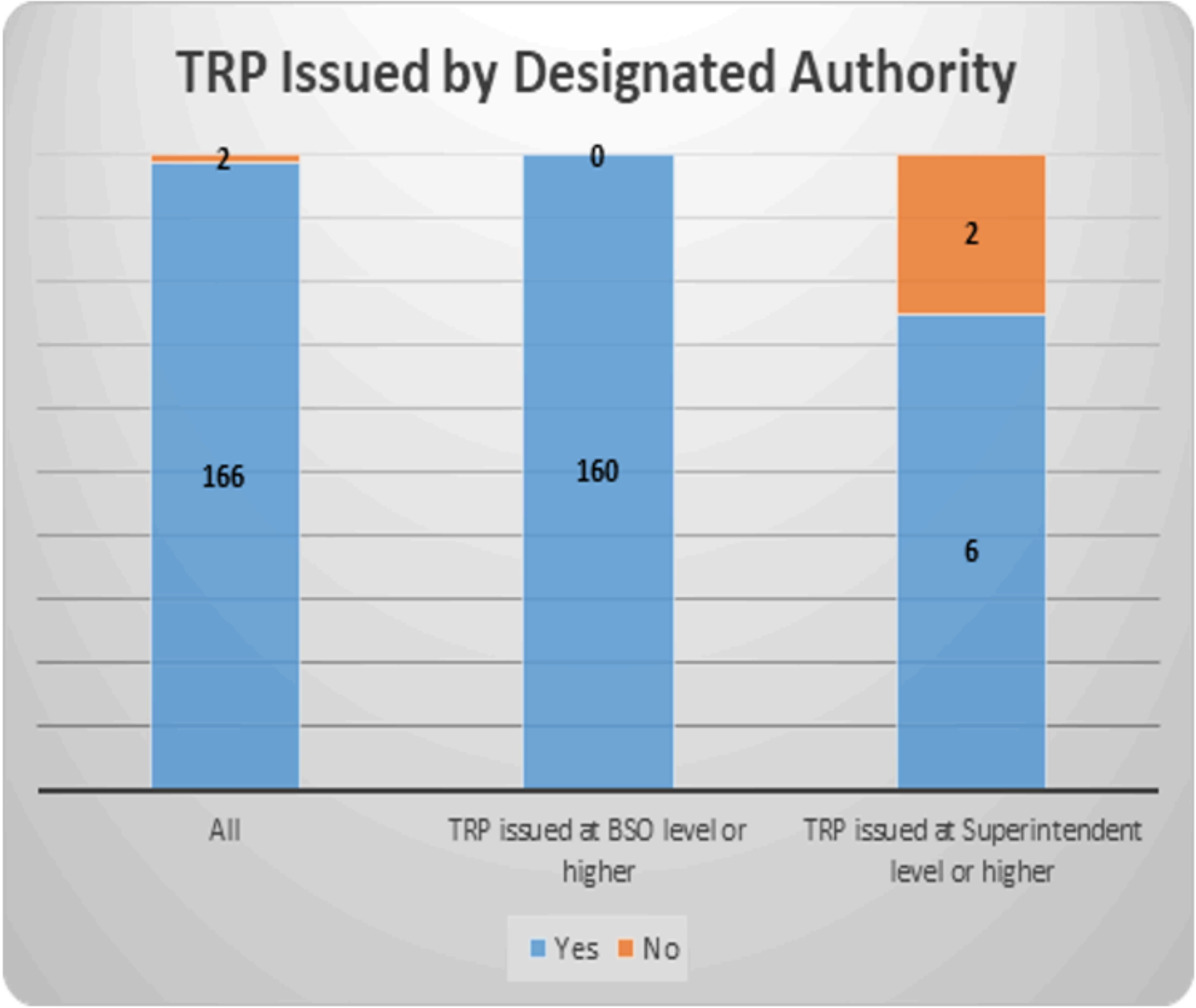
▼ Image description

TRP issued by designated authority

Designated authority	Yes	No
TRP issued at BSO level or higher	160	0
TRP issued at Superintendent level or higher	6	2
All	**166**	**2**

41. Eight cases in the sample required the approval at the superintendent level or higher. Six were appropriately documented; two had no notes to document the authority. The regions confirmed that they were approved by a BSO and therefore not at the appropriate level.

42. Based on the testing elements related to officer justification and the designation of authority, the audit found that overall:

- 48% of TRPs included a complete officer justification

- 99% of TRPs were issued at the appropriate designation level

43. It is important that the agency demonstrate the justification for issuing TRPs, including the careful consideration of the need and risk for allowing an inadmissible person into Canada (who may potentially gain access to health and social services, or be granted permanent resident status), as well as the appropriate designated authority to issue the TRP. This justification is critical if the decision is challenged in a legal proceeding, and to support subsequent immigration decision-making.

Recommendation 1

The VP of Travellers Branch should improve compliance with respect to the documentation of TRP justification, by establishing continued program compliance oversight and monitoring, and ensuring that training for designated authorities is completed and tracked.

Management response

Agree. The VP of the Travellers Branch will update the policy to include requirements for regional management to perform compliance monitoring of TRP issuance. The Regional Director Generals will ensure compliance with the policy through regular oversight and monitoring, including implementing any mitigation necessary, and reporting to NHQ. Additionally, the VP of Travellers Branch will update the policy to reflect the need for regional management responsible for overseeing TRP issuance to complete the Minister's Delegates Review and/or Immigration for Chiefs and Directors courses, depending on their operational background.

Completion date: January 2024

Key control: Program oversight

44. Oversight helps identify gaps in compliance and areas of improvement while supporting overall program consistency.

45. Expectations: Management oversight is conducted regionally to ensure that TRPs are documented in accordance with policies and procedures. Compliance monitoring is conducted nationally to ensure consistent application of TRP policies and procedures when issuing a TRP.

Regional quality control

46. Regionally, there is no formal requirement to perform reviews of TRPs issued to ensure the quality of information on file.

- Some regions have established QC practices; however, they vary in scope.

- Two of the three regions (Southern Ontario Region and Pacific Region) with the highest compliance rate have established QC practices of reviewing TRPs; however, even those regions still had high overall non-compliance.

- Some POEs have established review functions where quality checks are performed for immigration processes including TRPs.

National quality assurance

47. Currently, there is limited compliance monitoring of TRPs nationally.

- Two assessments, Port Program Assessment and Operational Program Assessment [18], were conducted as a result of OAG findings. However, the improvements needed are not consistently applied nationally to address systemic issues and gaps identified. There is no plan to continue sustained monitoring of TRPs beyond the Port Program Assessments.

- TB (Travellers Branch) has a compliance monitoring function, however TRPs are not assessed under this regime: only one program (Digital Device Examinations) is currently being assessed.

- TB officials noted that the expansion to monitor other programs would require consultation with senior management on risk tolerance and resource planning.

48. A lack of oversight may limit the agency's ability in identifying weaknesses and improving compliance with TRP policies and procedures, and ultimately program performance.

Key control: Policies and training

49. Policies, training and supporting resources guide officers in making sound decisions when issuing TRPs. It also supports the consistent delivery of the program.

50. Expectations: TRP training provides adequate guidance to officers on the assessment, decision making and documentation of TRPs. TRPs are issued by Superintendents and Chiefs who have completed the required training.

TRP training

51. In addition to the initial BSO training, the Officer Induction Training Program, the agency has two trainings providing guidance and information on issuing TRPs [19] to varying degrees. However, they provide limited information on how to document the officer's justification for issuing TRPs in GCMS.

52. Specifically, superintendents and chiefs who enforce the *Immigration and Refugee Protection Act* (IRPA) are required to complete the Minister's Delegates Review training; superintendents within 12 months, and chiefs, within 6 months of appointment, regardless of acting or substantive [20]. This training is not required to issue TRPs, however it provides additional guidance.

53. In the sample of 6 TRPs that were approved at the superintendent level, 5 superintendents had completed the Minister's Delegates Review training.

54. In addition, the audit could not confirm whether all superintendents and chiefs had completed the training within the required timelines because:

- information on who should take the training (appointed individuals) is not tracked centrally
- completion of those 2 training courses is not reported to the Travellers Branch or the regions for follow-up

55. Expectation: Tools and guidance documents are available to support officers in processing TRPs. TRP policies include the requirements to support the assessment, decision making and documentation when issuing TRPs.

Resources to issue a TRP

56. There are resources available for issuing TRPs: Officers can refer to ENF manuals, procedures, job aids and training and can consult with senior officers (on-the-job learning).

57. Although available, the resources are not located in a single repository for officers to get a comprehensive overview of the TRP process.

58. The ENF 4 (and supplementary resources) includes the procedure and the requirements to issue a TRP. However, there is limited guidance on the acceptable threshold of factors that would outweigh the inadmissibility and compel an officer to issue a TRP. Officers, particularly new or with limited immigration experience, consistently flagged the need for more support in that area [21].

59. To bridge the gap noted in immigration knowledge, some regions developed their own supplementary resources: practical operational instructions, ad hoc immigration refresher sessions and an Immigration Development Program.

Guidance on documenting approval in the ENF 4

60. The 2020 ENF 4 included a requirement that "officers document their names and title in GCMS notes and paper files" to indicate that the correct designated authority issued the TRP.

61. With the ENF 4 revision in May 2022, this requirement was removed on the basis that GCMS automatically records the name and authority level of the officer that issues a TRP.

62. However, in certain situations, when management is not on site, BSOs have to issue a TRP on their supervisors' behalf by obtaining prior approval via phone or email. With this new change to the ENF 4, officers are no longer required to document the approver, limiting the ability to determine if the TRP was issued at the appropriate designated authority.

63. Thoroughly documenting TRP decisions allows the agency to demonstrate that they are issued appropriately and within its authority, which reduces legal and reputational risks.

Recommendation 2

The VP of Travellers Branch should:

- update the ENF 4 Manual to include the requirement of the approval of TRPs when issued on behalf of another officer; **and**

- enhance TRP resources to include more guidance on how to assess the risks against the compelling need for the traveller to enter Canada, and the importance of documenting TRP decisions

Management response

Agree. Travellers Branch updated policy in May 2022 which provides guidance on decision making, documentation of the decision and making a risk assessment. The Vice-President of the Travellers Branch will update agency policy specific to the requirement of approval a TRP when issued on behalf of another officer.

Completion date: September 2023

Monitoring TRP stay compliance

64. TRP holders are inadmissible travellers who are allowed to enter Canada on a temporary and exceptional basis. Although there is no explicit legislative requirement to monitor the departure of TRP holders, the agency has a responsibility to identify border-related risks and protect the safety of all Canadians; as a result, it is important that it monitors the departure of individuals who may pose a risk to Canada.

65. Expectation: TRP holders' authorized stay is being consistently monitored.

Monitoring overstay

66. The agency does not systematically monitor travellers' (including TRP holders) departure from Canada. All travellers are expected to comply with their visa/permit conditions.

67. TRP holders are granted special permission to enter Canada for a temporary period of time. The duration of the permit is determined by the officer and based on the traveller's purpose of travel and their risk to Canada (past (serious) criminality).

68. At the time of the audit, clear responsibility for monitoring TRP holders was not established.

69. TB has established processes for officers to:

- At their discretion and in certain circumstances, require that a traveller reports to a POE upon leaving Canada (for e.g. serious criminality cases); **and**

- Notify IEB (Intelligence and Enforcement Branch) and senior management when a high-profile/complex TRP is issued (for e.g. serious criminality). There is no reconciliation to determine if all high profile cases (e.g. serious

criminality) are brought to IEB's attention. These cases are not monitored to determine the traveller's departure.

70. Despite these processes:

- There is no requirement to document in GCMS if the TRP holder has left Canada as requested and/or to report to IEB.

- IEB officials noted that TRP holders and other permit holders are deemed low risk; IEB is not resourced to monitor all travellers along with their associated departure.

- As a result, travellers' authorized stay period is not monitored by IEB, regardless of whether it is a high-profile case or not. The associated risk of not monitoring travellers' departure has not been assessed by IEB, and the risk tolerance was neither defined, nor approved in agency documents.

71. Since February 26, 2019, the agency collects some Entry/Exit information on travellers [22]. This traveller Entry/Exit information is designed to:

- identify individuals who do not leave Canada at the end of their period of authorized stay (overstay);

- focus immigration enforcement activities on persons believed to still be in Canada; **and**

- respond to the departure, or intended departure, of high risk persons or goods who may pose a risk to the national security or public safety of Canada.

72. Expectation: Entry/Exit Data is available to support monitoring activities.

Entry and exit data

73. A traveller's entry and exit records are needed in order to determine overstay. As of September 2022, exit data was not yet available for all modes of travel to determine and report overstays. Specifically, land data was available since 2019, while air data only became available in 2022 [23].

74. TB was still designing this function and it was not yet operational. IEB was also developing guidance to determine how to use it.

75. Current limitations with the overstay function in Entry/Exit include:

- Some overstay data is only available from January 25, 2022 onwards, so information may be incomplete and inaccurate. As a result, the audit could not confirm the departure of all travellers with expired TRPs from the sample.

- The related overstay indicator in GCMS (once operational) will not trigger an alert to take action; **and**

- A list of overstays can only be generated by the Strategic Policy Branch, however each traveller's status has to be further validated individually.

76. Taking into account these limitations, the only way to determine a traveller's departure is to manually review a TRP holder's file.

77. Of the 168 TRPs reviewed, 8 were serious criminality cases and considered high profile [24]. Of those, 6 TRPs were expired as of >September 30, 2022 and the Program confirmed that those travellers departed Canada through land mode [25] .

78. Without monitoring and confirming the departure of these travellers, the agency cannot take enforcement action, particularly for persons who may pose a risk to Canada.

Recommendation 3

The VP of Travellers Branch, with support from the VP of Intelligence and Enforcement Branch, should determine the risk and impacts of the TRP holders who overstay, the extent to which monitoring is required and

implement associated actions as required.

Management response

Agree. By nature of the TRP program, TRP holders are a low-risk population. The VP of Travellers Branch and VP of Intelligence and Enforcement Branch will review the audit findings, its case sampling and additional case samples to determine level of risk posed by TRP holders. The VPs will determine whether additional actions are required based on findings of the risk assessment against the priority framework.

Completion date: September 2023

Footnotes

9   Refer to the Sample in Appendix D.

10   Instrument of Designation and Delegation, 105 and 103.

11   Sections 15.3 and 15.5 of the Enforcement Manual 4 (ENF 4): Port of Entry Examinations (2020).

<u>12</u>   48% (88 of 168) of the TRPs were overall compliant, meaning one or more of the 5 required elements were not documented.

- 24% (41 of 168) had no description of the compelling reason to warrant issuing the TRP.

- 26% (44 of 168) did not document the relevant circumstances that prompted the favourable decision to issue the TRP.

    - Two files included partial justification for issuing the TRPs, meaning only the category was documented for example "issued for humanitarian grounds" no other description was given and therefore the actual purpose of the trip was not written.

- 25% (42 of 168) did not document the traveller's inadmissibility and its equivalent in the *Criminal Code* of Canada.

    - 5% (9) had only partial notes meaning they documented one of the two requirements of inadmissibility and *Criminal Code* equivalence.

- 27% (45 of 168) did not document the reason for the duration of the TRP as it corresponds with the purpose of the trip to Canada.

- 79% (75 of 95) did not document the reason for granting the traveller re-entry to Canada.

<u>13</u>   Note that 87% (34 of 39) of the TRPs issued to Ukraine and Afghanistan citizens were issued in one region.

<u>14</u>   37% of the TRP case files had Canadian contact address documented on file, 49% had documented a foreign address, and 14% had no address documented.

<u>15</u>   ENF 4, section 15.9, Designated authority to issue a TRP.

16   Results:

- 99% (166 of 168) of the TRPs were issued at the appropriate designation level.

- 5% (8 of 168) of the TRPs issued were serious criminality cases which required issuance from a designated authority at a Superintendent level or higher.

  - 25% (2 of 8) of the serious criminality TRPs did not include documentation to demonstrate that the TRP was issued at the right level of designated authority. The regions confirmed that they were issued at the BSO level.

17   In 1 serious criminality case, the superintendent had been acting for at least 6 months but this management role had not been updated in GCMS.

18   The objective of the Port Program Assessment / Operational Program Assessment is to determine whether POEs are adhering to policy and procedure for various activities within commercial and traveller operations. This is achieved through a self-assessment, meaning set criteria for a particular activity are provided and POEs then assess whether they were in compliance. POEs also select the files/cases they will review, if they have more than the requested amount. Each POE will develop and implement its own local action plan to address any identified non-compliance. (2021-B Operational Program Assessment National Results Overview, Temporary Resident Permit.)

19   The three trainings are:

- The Officer Induction Training Program (OITP) – taken at the start of an officer's career

- The Minister's Delegates Review required training for Superintendents and Chiefs and for BSOs who must have 1 year of experience

- The Immigration for Chiefs and Directors training – only available at the Chief and Director level

20   Minister's Delegates Review Training within 12 months of appointment; while Chiefs have to complete the Immigration for Chiefs and Directors Training within 6 months of appointment.

21   While it is not possible to document all possibilities, officers may benefit from tools such as case scenarios with examples of the assessment considerations.

22   Entry and exit data collection and use

23   Entries and exits for marine (including cruise ships) and rail is not yet available: Entry/Exit Program – Canada.ca

24   IRCC (Immigration, Refugees and Citizenship Canada)'s Program Delivery Instructions, [redacted]

25   1 was confirmed by reviewing notes in GCMS and the other 5, by reviewing Entry/Exit Data.

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