

ENF 4 Port of Entry Examinations

[http://www.unog.ch/80256EDD006B8954/\(httpAssets\)/C8297DB1DE8566F2C1256F2600348A73/\\$file/Convention%20P%20&%20I%20\(1946\)%20-%20E.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/C8297DB1DE8566F2C1256F2600348A73/$file/Convention%20P%20&%20I%20(1946)%20-%20E.pdf); and

<http://www.un.org/law/ilc/texts/diplomat.htm>

For more information on orders (OICs) made by the Governor in Council and to search OICs, see

<http://www.pco-bcp.gc.ca/oic-ddc/oic-ddc.asp?lang=EN>

26. Removing enforcement flags from FOSS so that they are no longer displayed at the Integrated Primary Inspection Line

26.1. Background

An enforcement flag is generated when there is an entry in FOSS that automatically tells the officer on the Primary Inspection Line that a particular traveller is of interest. The enforcement flag will show up as a hit on the IPIL database and will ensure that the traveller is referred to Immigration Secondary each and every time they seek entry into Canada. Types of FOSS entries that currently trigger enforcement flags include enforcement entries (such as watch-for NCBs, A44 reports and persons allowed to leave) and voluntary relinquishments of status NCBs (NCB type 10). As FOSS is a permanent record of a particular traveller's immigration history in Canada, enforcement flags remain on a traveller's file indefinitely, regardless of how frequently the traveller seeks entry into Canada.

Although FOSS will always retain a traveller's enforcement history, it is possible to turn these enforcement flags off so that a traveller is not automatically referred to Immigration Secondary. The enforcement history will remain intact in FOSS, but the traveller will not appear as a hit on the IPIL database. Furthermore, only past enforcement flags will be removed ensuring that if any enforcement action were to take place in the future, the enforcement flag would automatically get turned on once again.

Currently, the delegated authority to remove an enforcement flag in FOSS lies with the Director of Immigration Ports and Border Management, Admissibility Branch, at NHQ. These guidelines will clarify when it is appropriate to request the removal of an enforcement flag and will detail the proper procedure to follow to make this request.

26.2. Guidelines

The objective of these guidelines is twofold; first of all, the CBSA would like to ensure that travellers to Canada are not unduly referred to Immigration Secondary for a past enforcement action that has now been resolved and secondly, the CBSA would like to maintain the integrity of the program by ensuring that enforcement flags remain on for those travellers who have wilfully attempted to circumvent immigration legislation and procedures in the past.

Although these guidelines are not all encompassing, they will help to provide guidance on when it may be appropriate to request that an enforcement flag be removed from PIL and when it would be inappropriate that an enforcement hit be removed.

There are several broad factors that must first be considered when deciding whether or not an enforcement flag should remain:

- **Frequency** with which an individual seeks entry into Canada. Does an individual travel to Canada on business every week, or is this the first time that the traveller has sought entry since the enforcement action took place?
- **Intent** of traveller at time the enforcement action took place. Did the traveller wilfully intend to circumvent immigration legislation, or was the enforcement action the result of a misunderstanding on the part of the traveller?

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- **Seriousness** of the enforcement action. Does the previous enforcement action continue to make the traveller inadmissible, or has the inadmissibility been resolved (i.e., criminal convictions that continue to make a traveller inadmissible versus the lack of a work permit that has been overcome)?
- **Number of enforcement actions** present in FOSS. Was the event a one-time mistake on the part of the client, or does it represent a pattern?
- **Purpose** of present and future trips to Canada. Does client have a valid reason for entry into Canada?
- **Time passed** since the enforcement action took place.
- **Age** of client at time of enforcement action versus their age now.

Once again, these are only some of the broad factors to consider when determining whether or not the enforcement flag should be removed, each traveller should be evaluated on a case-by-case basis. There are, however, specific instances when it may be appropriate or inappropriate to remove an enforcement hit.

26.3. Instances when it may be appropriate to request the removal of an enforcement flag:

- Former permanent residents who have voluntarily surrendered their status.
- In cases where enforcement action exists for past criminal convictions, but the traveller now qualifies for deemed rehabilitation. For more information, see ENF 14/OP 19, Criminal Rehabilitation. The rationale is that although the traveller has been convicted of certain minor criminal offenses and has had enforcement action for these convictions, the inadmissibility no longer exists. CPIC and NCIC checks should be performed to ensure that there are no additional convictions.
- Cases where persons may be allowed to leave: Examples of these cases include where US citizens and permanent residents seek entry into Canada, but are unaware of the documentary requirements (i.e., they are unable to satisfy the officer of their status in the US) providing that they are now aware of the requirements, or travellers who are allowed to leave for not having a work permit and have since obtained the work permit.
- Where a removal order has been quashed upon appeal. These situations should be assessed on a case-by-case basis.
- Where an A44 report has been overturned by the Minister's delegate or at an admissibility hearing. Once again, these situations should be assessed on a case-by-case basis.
- Clients who are enforcement hits on PIL, but no enforcement action exists in FOSS.

26.4. Instances where it may be inappropriate to request the removal of an enforcement flag:

- Clients who have multiple enforcement actions against them in FOSS.
- Clients who wilfully attempted to mislead the CBSA officers in Immigration Secondary.
- Clients who continue to be inadmissible due to the enforcement action.
- Clients who are likely to be the subject of future enforcement action.
- Clients who have previously had an enforcement flag removed and subsequently had other enforcement action taken against them.

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26.5. Procedure for requesting the removal of an enforcement flag

The current authority to remove an enforcement flag lies with the Director of Immigration Ports and Border Management Directorate (IPBM), Admissibility Branch, CBSA NHQ. Individual officers should not contact the IPBM directly; they should follow the procedures outlined below when requesting the removal of an enforcement flag:

- If an officer encounters a traveller who they feel should not be automatically referred to Immigration Secondary due to an enforcement flag, the officer should first take the appropriate action to ensure that the traveller is admissible to Canada (i.e. interview, NCIC and CPIC checks, etc.).
- The officer should then write an e-mail justifying why they believe the traveller should not be automatically referred to Immigration Secondary. Officers should clearly demonstrate in the e-mail that the above guidelines have been taken into consideration.
- This e-mail should then be forwarded to their manager.

If the manager agrees that the enforcement flag should be removed from the PIL, the office manager will forward the e-mail along with their comments to the IPBM. All requests of this nature should be forwarded to the following address: flags-indicateurs@cbsa-asfc.gc.ca.

26.6. Enforcement flags on Canadian citizens

Normally, once a permanent resident of Canada receives citizenship, a type 11 non-computer based entry (NCB) is entered into FOSS. This NCB will automatically remove any enforcement flags that the person may have. Occasionally, officers will encounter travellers with enforcement flags who have become citizens, but for which no NCB type 11 has been entered into FOSS. Providing that the officer is satisfied, through documentary evidence and/or a system check, that the traveller is in fact a Canadian citizen, the officer can enter a type 11 NCB. This NCB should be valid for 100 years and contain remarks outlining the date citizenship was granted and the citizenship number.

27. *Open Skies Treaty*

27.1. Background

The *Open Skies Treaty*, signed by Canada in 1992, did not come into effect until 2002. The Treaty allows overflight of one signatory country by another for the purpose of collecting imagery. Under the Treaty, only Russia and Belarus have quotas to carry out inspections in Canada.

Signatory countries may commence their overflight of Canada 72 hours after notifying the Canadian government. The CBSA personnel will be notified immediately after the CBSA NHQ has been informed of an impending inspection.

On occasion, military personnel will enter Canada via a commercial aircraft in order to join a military aircraft already in Canada. Military personnel may also enter Canada in order to witness the development of film at the end of a Canadian inspection flight or to inspect a Canadian aircraft designated for overflights.

27.2. Temporary resident visa

Temporary resident visas (TRVs) issued for purposes of the *Open Skies Treaty* will only be issued in Moscow. The TRVs will be stamped overseas indicating to the CBSA officers at PIL that they shall refer the individual to Immigration Secondary. This added security measure has been implemented to prevent abuse of the TRV and allows the CBSA to keep track of individuals entering Canada for the purpose of the Treaty. Russia and Belarus have been advised that the TRVs issued under the *Open Skies Treaty* are only to be used for that purpose.