



The British Columbia Fruit Growers' Association

880 Vaughan Avenue, Kelowna, BC V1Y 7E4
Ph: (250) 762 – 5226 • Fax (250) 861 – 9089
e-mail • info@bcfga.com

Proposed Mandatory Requirements for Employer-Provided Accommodations

A response from the BC Fruit Growers' Association

December 21, 2020

Federal TFW Accommodation Proposals

The federal review of the TFW Program Accommodation was launched on October 27, 2020 with the purpose of seeking feedback on proposed federal accommodation requirements and strengthening oversight of worker accommodations.

Introduction

The BC Fruit Growers' Association observes that *access to TFW's is essential* to farm viability, national food security, and export growth. The BCFGAs strongly supports the implementation of rational regulation that addresses real issues, such as protecting farm worker safety and ensuring that accommodation achieves Canadian standards.

The proposals presented by the federal government on accommodation requirements will reduce the number of TFWs in agriculture, in the short term, and increase production costs. If implemented as proposed, the new regulation will reduce the number of farm workers, impacting food security and agricultural exports. The BCFGAs will take the opportunity to comment on

1. Proposals that can be implemented immediately to strengthen the TFW programs and to protect workers.
2. Proposals that require phase-in and support.
3. Proposals that should not be considered as they provide no certain outcome or are in conflict with other provincial and local government regulation.

Our Washington State competitors receive \$8 million in grants in a single year, 2019, and the federal government, instead of imposing regulation, should bring resources to help growers expand housing that is appropriate for TFW purposes.

The BC Fruit Growers' Association represents 400 family owned and operated tree fruit farms in British Columbia.

Statistics Canada 2016 Agricultural Census				
- Okanagan Tree Fruit Sector (\$ million)				
	Farm Gate	Packing - Value Add	Packed Value	Economic Contribution (3.44 Multiplier)
Apples	50.9	64.7	115.7	410.6
Apricots	1.3	0.7	2.0	6.9
Cherries, sweet	52.3	26.1	78.4	278.2
Nectarines	1.6	0.8	2.4	8.5
Peaches	7.6	3.8	11.3	40.2
Pears	3.4	3.4	6.8	24.1
Plums/Prunes	1.5	0.8	2.3	8.0
Total tree fruit	118.6	100.2	218.8	776.6

In the BC tree fruit sector, labour needs are approximately 7,000 seasonal workers per year, with approximately 60 percent of the total labour force from the TFW SAWP and Agriculture Stream.

Comments on the Housing Regulation Proposals

1. Annex A Proposed Minimum Accommodation Requirements for Primary Agriculture: BCFGA Agreement on Items in the Objectives:
 - a. Ensure that TFW's "are provided with safe and suitable housing during their employment in Canada".
 - b. Current PT assessments with a "focus on the soundness of the accommodations as per the appropriate building and fire safety codes... and adequacy of the facilities...".
2. Annex A Proposed Minimum Accommodation Requirements for Primary Agriculture: BCFGA Opposition/Alternative Approaches to proposed Items in the Objectives:
 - a. "To complement established PT standards....".
 - i. "... adequate personal space and privacy;"
 - ii. "... ratios of amenities..."
 - iii. "... cooling and air quality..."
 - iv. "... access to phone..."
 - v. "... address communicable disease outbreak in future..."
 - vi. "...reasonably receive guests without restriction..."
 - b. As background to the objections under a, above, the additional regulations will likely, now or eventually as PT regulations evolve, conflict with PT standards, which will cause confusion and leave growers and the public less

confident that regulations are meaningful and put in place to achieve objectives.

- i. The term “adequate” is subjective, yet standards are meant to be objectively verifiable. Likewise, the term “proper” is used elsewhere and should be eliminated from the regulatory change proposals.
- ii. “Ratios of amenities” are regulated provincially by Health Departments. Overlapping, duplicate federal rules should be avoided.
- iii. We concur that heating is a requirement for seasonal accommodation in Canada; however air conditioning is not required even in the hottest climates, so long as housing is managed to control daytime solar heating (e.g. drawing shades or curtains, keeping windows and doors closed) and maximize nighttime cooling (e.g. open windows to maximize flow of cooler air). In discussions with liaison services, the response was uniform that air conditioning need not be a requirement, but that heating is essential.
- iv. “Access to phone” appears to be a requirement for workers to be able to communicate with their families at home. This item has been debated over the years, and the best solution is that internet wi-fi service be available to workers who almost always have their own cell phones. This element appears to be requiring a fixed line telephone be available, which is anachronistic - most Canadian youth do not subscribe to ‘landlines’.
- v. The Public Health Officers have responsibility for communicable diseases. Canada is not redesigning public areas due to the pandemic, nor should permanent pandemic changes be forced by Service Canada regulation. If changes are required to housing for public health, then local health authorities will (and have) intervened, on a temporary basis.
- vi. The item requiring “freedom of movement and reasonably receive guests without restriction...” will be either redundant (i.e. freedom of movement) or be in severe conflict with other provisions of the law (i.e. receive guests without restriction). Currently, there is no question that workers must be free to leave the farm property - to do otherwise is an existing criminal offense with severe penalties. Placing freedom of movement as a regulation will confuse and obscure the clarity of existing law. On the other hand, “reasonably receive guests without restriction” is very problematic. Who will judge “reasonable”? There are issues of safety in moving through an orchard. For example, it is a requirement that all workers receive pesticide training and make workers aware of the areas which pesticides are applied to. WHO is responsible for telling visitors? If the worker is ‘responsible’, but the farmer gets sued, is that fair? Would the government enforce this rule

on remote workcamps, such that those corporations would have to open up their workcamps to any visitors? Some camps are 'dry' and have tight controls on worker testing and visitors for the reason of protecting the integrity of the work camp and work safety. This type of initiative would not be possible under the proposed regulation. The province of BC has strengthened trespass laws to ensure the safety of farm families from unsafe, uninvited visitors.

- c. Annex A Proposed Minimum Accommodation Requirements for Primary Agriculture: BCFGA Opposition to proposed Items in the Objectives:
- i. Building Structure: the proposed regulation is good, so long as they refer to Provincial Territorial codes and health and safety legislation. The access of the building to the public is in contravention of Pest Management Regulatory Agency, WorksafeBC and new trespass regulation in BC. Worker freedom of movement is covered under existing laws on personal freedom and protection from human trafficking - the regulation could make reference to these laws being a requirement, rather than attempt to rephrase the laws.
 - ii. Common Living Spaces: A/C equipment is not required to maintain a specified temperature range - the regulation should focus on maintaining a specified temperature range. The range in BC is 18 to 27 C. The upper temperature of 25.5 C is too low, or tight and has not received support from liaison services. The lower range is important to keep and 18 C appears to be accepted by Liaison services. "Sufficient" furniture is subjective. Furnishings adequate to store personal belongings" is recommended. "Furnishings of sound construction" is acceptable, but "good condition" could be better defined as "functional, without major cosmetic defect". Minimum amount of square footage of 80 sq. ft. per worker is acceptable to BC, but may cause a housing shortage and significant expenditure in renovation or new space acquisition in other provinces with a lower square footage per worker. "Unobstructed floor area" is problematic. Square footage of residential housing is conventionally calculated by taking the total floor area of the housing, not the "unobstructed floor area".
 - iii. Sleeping Quarters: A desk and padded chair are for students, and would typically cause the bedroom living area to be too cramped. Workers make use of tables and chairs in common living areas and do not require an unnecessary desk and chair to crowd their personal living area. Use of a mortise-type lock on bedrooms is likely in contravention of fire regulations. A normal indoor lockset is the alternative. Details such as bed height, size, mattress size, linens, and garbage baskets, could be included, but should be guidance for

provincial workcamp regulation rather than a new duplicate regulation. The use of bunkbeds, of proper construction to support an adult, should not be excluded as there is no safety or health rationale, and the change would require fundamental change in the housing space, with very significant cost implications for the industry and no independent, corroborated evidence to that bunk beds are any less acceptable than two twin beds.

- iv. **Washroom Facilities:** in BC, the Agricultural Land Reserve regulations and municipal regulations have, on occasion, required that washroom facilities be separate from living quarters, as a way of ensuring that the housing was not subsequently converted to normal residential use. Therefore, requiring washrooms within the worker accommodation federally and requiring washrooms to be not within the worker accommodation provincially or municipally is not workable. In BC, 1 toilet is required for every 7 workers. This change appears to be arbitrary and any change should be supported by outside expert advice. In BC, 1 sink is required for every 7 workers, and moving to 1 sink for every 4 workers is an arbitrary move that should be substantiated by expert advice. If changes are subsequently required to toilets or sinks, then grandfathering of existing facilities must be considered as a way of avoiding expensive structural changes to previously-compliant buildings. Urinals should not be required: we have housing that is all female and this would be clearly a waste of resources. Also, urinals are not a normal component of residential bathrooms, but suited to industrial sites and mass event sites.
- v. **Eating Facilities.** The ratios should be offered as guidance to provincial health authorities that have jurisdiction over workcamps. There is a need to include the option of having 'comparable cold storage and cooking facilities in an industrial work kitchen type of facility'.
- vi. **Laundry Facilities:** BC requirement is for on-site washing machines and dryers, with an allowance for coin-operated machines for accommodation rented by the employer for the employee.
- vii. **Amenities:** the employer cannot assure access to cell phone service as expanding the telephone network is simply beyond the control of the employer, though almost all areas are serviced by cell phone now. All or almost all employees have their own cell phones or tablets. Internet access should be provided where available.

Comments on strengthening oversight of worker accommodations

The strengthening of oversight (inspections) of accommodations is suggested as a goal, but no detail or resources are identified. Yet this is one of the areas that industry would see as being beneficial to the program. Service Canada should provide 60% federal, 40% provincial funding for housing inspections if real progress is to be made. Simply adding to the multiplicity of provincial and local government regulations without a contribution to oversight is not cognizant of the true issue - regulations are easy to impose but costly to implement and oversee.

Conclusion

The detailed requirements suggested in the federal proposals for TFW housing duplicate, overlap, and conflict with existing provincial and local government jurisdiction. In BC, there are already multiple regulatory layers involving

- Ministry of Labour (workcamps), Attorney General (trespass), and Ministry of Health (workcamp and communicable disease) regulations, as well as
- local government farm worker housing bylaws and
- the Agricultural Land Reserve regulations, and
- local fire safety bylaws and
- municipal or provincial building codes and bylaws.

Many of the “TFW Program:Mandatory Requirements for Employer-Provided Accommodations” proposals are too detailed, and should be structured as “guidance” for provinces, rather than adding a new layer of regulation for TFW accommodation. Some of the proposals, if made into formal regulatory or LMIA approval conditions, would require extensive structural change or reduce the number of workers, with very significant impact on farm operations and their contribution to food security and exports.

The federal government should focus on providing resources to oversee existing provincial and local government regulation.

Overall, the proposals for change should be structured as guidance for the provincial and local governments.