AIR CANADA

Air Canada's response to the Canadian Transportation Agency's Consultation on Draft Regulations Amending the Air Passenger Protection Regulations

March 6, 2025

I. Introduction

Air Canada welcomes the opportunity to provide feedback on the Canadian Transportation Agency's (the "**Agency**") proposed *Regulations Amending the Air Passenger Protection Regulations* ("**APPR**") published in the Canada Gazette, Part I, vol. 158, #51, on December 21, 2024.

We agree that the complexity of the current APPR should be reviewed and the regime simplified, for the benefit and ease of understanding of consumers of air travel. We recognize that a significant backlog of complaints has yet to be resolved, with processing delays increasing. More clarity in the application of the regime would ensure greater consistency in application, fewer complaints, and expedient resolution.

While we acknowledge that significant improvements have been made since the initial proposal issued by the Agency in summer 2023, we are concerned that the approach taken with the proposed revisions will have an effect contrary to the desired objective, while also adding significant cost to carriers for developing systems and processes to comply with information requirements that will inevitably increase the cost of air travel in Canada.

Context

a) Operational improvements achieved without new regulations

On-time performance across the industry has improved appreciably since 2022, when the resurgence of travel demand and capacity constraints across the system led to a number of operational challenges and greater number of flight disruptions. In the absence of any regulatory change, Air Canada enhanced the customer experience through improved operations, including an eight-point gain in on-time performance over 2023 and ongoing fleet, product, technology, and airport investments. These investments are driving tangible improvements for our passengers. In addition, we have noted significant improvement in the performance of our ecosystem partners since 2022, including CATSA, CBSA, airport authorities and others as a result of their own investment in staffing levels, resources and modernization initiatives. This is a testament to the drive the industry has through natural economic forces, to provide air passengers in Canada with seamless travel and the highest levels of customer service. Rather than cutting red tape, more prescriptive regulations will add cost without benefit.

b) Costs, competition and regional service

While we have invested to improve services to travellers, continued increases in costs have impacted affordability and connectivity of air travel, in particular costs associated with regulations, federal fees, taxes, and charges. This has led the House of Commons Standing Committee on Transport, Infrastructure and Communities to initiate a study on the competitiveness of the Canadian air travel system, and the Competition Bureau of Canada launching its own market study, highlighting concerns around regional air access and increasing operating costs.[1]

Costs have also significantly increased as a result of the pandemic. Following a lack of government support, airports have had to increase their debt levels impacting their cost structure. Navigation fees and Air Travellers Security Charges have also increased by about 30%. In addition, regulations, such as the APPR and the new flight and duty time regulations (requiring more pilots to fly the same schedule), have significantly increased the cost of air travel, and impacted carriers' abilities to re-establish their networks. This inability is particularly exacerbated in regional markets.

The new proposed Amendments to the APPR would continue to add costs and exacerbate current challenges. If adopted, these costs will result in higher airfare and reduced regional connectivity,[2] putting regional routes at risk of being discontinued.

Internationally, the risks of overly complex and prescriptive regulations are well-documented. The European Union's ("**EU**') Regulation 261/2004 ("**EC261**") has resulted in extensive litigation, increased costs for carriers, and higher ticket prices for consumers.[3] The APPR has not yet had 2 years of active application in a normal operational

1 https://competition-bureau.canada.ca/how-we-foster-competition/promotion-and-advocacy/market-study-notice-competition-canadas-airline-industry-0

2 On January 12, 2024, the Council of Atlantic Premiers wrote to the Honourable Pablo Rodriguez, Minister of Transport for the Government of Canada, expressing their concerns about the proposed changes to the Air Passenger Protection Regulations. They highlighted that these changes could increase costs for Atlantic residents and make airlines hesitant to continue or provide service to the region, ultimately limiting air accessibility. Atlantic Premiers concerned about the impact of proposed changes to the Air Passenger Protection Regulations – The Council of Atlantic Premiers

3 For example, Ryanair introduced a levy to cover EU compensation costs, initially set at €2 and later increased to €2.50 per ticket. RYANAIR TO INCREASE EU261 COMPENSATION LEVY TO €2.50 FOLLOWING EU COURT RULING / aviator.aero

environment, and is already replicating these issues, propagated well over 100,000 new litigation cases, significant cost to the airline industry that inevitably get passed on to consumers, and like EC261, has not shown to be effective at improving operational reliability.

It can be readily foreseen that the proposed changes will further complexify an already complex regime and create new obligations that do not reflect the reality of airline operations, which will increase passengers' frustration and result in more claims and disputes. Indeed, some of the proposed changes are impossible to implement.

Air Canada strongly urges the Agency to pursue a more harmonized, proportionate, and practical approach that aligns with IATA's core principles on consumer protection and international best practices, addressing accountability gaps, operational feasibility, and passenger education to create a more effective and sustainable framework.

c) Information requirements

The proposed amendments attempt to resolve consumer frustration stemming from a regime that creates misaligned expectations by imposing new communication requirements that cannot be met. For example, communication of root cause of disruptions in real time when it is, in practice, often not known, as well as communication of evidentiary documentation when compensation is refused (without consideration as to the technical complexity of these documents).

The fundamentally complex nature of airline operations must be accounted for. Clearly and simply explaining complex operational fact patterns would require vast amounts of resources and technology that currently do not exist, at a cost that is not taken into account in the Agency's regulatory cost-benefits analysis.

Moreover, while the regulatory objective of improving consumer understanding of their rights, the proposal will not deliver on this objective, as further explained below. Customer misunderstanding and unmet expectations will generate further complaints. The Agency is already struggling under the weight of unresolved passenger complaints and adjudication delays. Last fall, the Agency's backlog was over 80,000, according to reports,[4] with wait times exceeding 18 months for a passenger's claim to be reviewed.[5] This marks a sharp increase from September 2023, when the backlog stood at 57,000 cases, despite the Agency preparing to launch a new complaint resolution process.[6]

Notwithstanding additional financial resources given by government, the Agency remains unable to manage claims efficiently. The proposed changes to APPR would exacerbate the existing backlog.

4 Backlog of airline complaints hinders transport agency's ability to protect passengers - *The Globe and Mail*

5 Air passenger complaint backlog hits new high, but agency says it's processing complaints faster | CBC News

6 Backlog of air passenger complaints tops 57,000, hitting new peak | CBC News

II. Clear communications

The proposed amendments require airlines to promptly communicate detailed information to passengers during flight disruptions through their preferred electronic communication method, including the reason for the disruption, their entitlements to food, drink, communication, overnight accommodation, rebooking, refunds, and compensation, along with the conditions that trigger these entitlements. Airlines must also inform passengers of the process to claim their entitlements or file complaints with the carrier or regulatory agency.

Comment

The requirements to provide real-time information and updates on entitlement to compensation as the disruption unfolds are not possible, as they do not reflect the complexity of airlines operations.

Explanations for delays are fluid. Airline operations rely on a network of interdependent factors, including technical systems, weather conditions, air traffic control, and security protocols. Each disruption is unique, often involving multiple causes that are not immediately apparent. Determining the root cause requires careful investigation, particularly when overlapping factors like mechanical issues, weather conditions, or airport congestion interact.

For instance, a delay initially attributed to a mechanical issue may later be revealed as compounded by severe weather or airspace congestion. Similarly, a cancellation may stem from a complex combination of crew availability and external operational constraints, which may only become clear after a thorough review.

Mandating airlines to constantly and throughout the unfolding of a disruption inform and pre-emptively communicate compensation is not possible, as entitlement to compensation is based on the root cause of the overall delay at arrival at final destination.

Not all passengers on a disrupted flight share the same travel circumstances. For some, the disrupted flight may represent their final destination, potentially triggering certain entitlements. For others, it may be a connecting flight that does not ultimately affect their arrival time at their final destination. Some passengers also connect onto other airlines, where Air Canada would have no information about their arrival time at final destination, or whether they have additional disruptions. These cases are currently investigated with other airlines on a case-by-case basis, but to do this for every customer, irrespective of whether a complaint is submitted is unrealistic. Doing so in real time prior to arrival at final destination cannot be achieved accurately.

Attempts to do so will trigger confusion and frustration. Passengers may incorrectly believe they are entitled to compensation when they are not, as a longer, uncontrollable delay may occur later in their itinerary. Subsequent corrections to such information will erode trust and foster frustration. This confusion will lead to a rise in disputes

and unnecessary claims, ultimately conflicting with the transparency and clarity the proposed amendments aim to promote.

Finally, the proposal risks creating significant confusion regarding passenger entitlements under overlapping passenger rights regimes. Given that air travel is subject to multiple regulatory frameworks, any misalignment in entitlements could lead to inconsistent application, conflicting obligations for carriers, and uncertainty for passengers.

Recommendation

To achieve the amendments' goal of ensuring clear and accurate communication, the requirement to provide information about compensation entitlements and their triggers must consider the operational complexities faced by air carriers. Specifically:

a) Real-time communication of reasons for disruptions prior to root cause determination are unhelpful

Communication of reasons of disruptions have been one of the greatest sources of consumer confusion stemming from the APPR framework. Reasons are difficult to explain as they evolve over time and may differ from the root cause of the overall disruption. This confusion is what led to the Agency's inquiry into notifications of reasons for disruptions, and was one of the main conclusions of the Agency's own inquiry officer:

"The Agency recognizes that providing information in real time can be complex, and that, in some situations, it may not be possible for carriers to discern all information regarding the reason for a disruption until after an event has unfolded or been investigated."7

The Inquiry Officer's report underscores the complexities airlines face in real-time communication during flight disruptions. It highlights that disruptions often stem from multiple, evolving causes, making immediate and accurate communication challenging.[8]

The Inquiry Officer could not fix this aspect of the APPR, recommending instead that carriers advise consumers that reasons for disruptions can change and evolve, in an attempt to better manage expectations.:

No other regulation in the world has any similar requirement. The Agency now has an opportunity to fix this aspect of the regulations that has been a source of consumer frustration and misunderstanding.

However, not only does s. 11(1)(a) still contain an obligation to communicate reasons for disruptions in real-time, s. 11(1)(d) goes further in requiring that compensation entitlement, which is based on the reason for delay at final destination, also be provided in real time, prior to arrival at final destination. This proposal is in complete contradiction to the conclusions of the Agency's own Inquiry Report. Rather than fixing the issue, the Agency is proposing a new requirement that will exacerbate it.

b) Allow a reasonable investigation period for root cause analysis

Carriers should be afforded adequate time to investigate and determine the root cause of a disruption before providing passengers with information on the root cause of the disruption and their compensation entitlements. This approach ensures accuracy and prevents the dissemination of premature or potentially misleading information.

A reasonable timeframe to complete investigations and coding would be 36 to 48 hours from actual arrival time. Such a period would allow the various teams within the airline responsible for getting flights to depart on time (operations control, airports, maintenance) to communicate, gather whatever information that may have contributed to the disruption, and fully assess root cause.

c) Entitlement to compensation cannot be realistically provided prior to a claim being made

To Air Canada's knowledge, entitlement to compensation is currently assessed on a claim basis not only in Canada but also in every other country with a passenger-rights regime that awards compensation for delay and cancellation. Proactive communications of entitlement are not possible in a world where consumers connect from one carrier to another, as the root cause of a delay at final destination must be analyzed.

In addition, this requirement risks causing confusion where multiple regimes may apply. A customer may not be entitled to compensation under the APPR but entitled under EC261/2024.

These requirements should be replaced by an obligation for carriers to confirm a passenger's eligibility to compensation on their websites, subject to the information being available for flights operated by them, post root cause investigation. Air Canada already has such a self-serve tool, which allows customers to verify their eligibility to compensation prior to filing a claim should they wish it, and to our knowledge, it is well appreciated by Air Canada customers.[9]

7 Decision 122-C-A-2021 at par. 48.

8 Inquiry Officer's Report into complaints that airlines did not respect communications obligations under the Air Passenger Protection Regulations | Canadian Transportation Agency

9 Self-Serve Eligibility Tool

III. Document provision

Under s. 15(4) of the proposed amendments, if a carrier declines to pay compensation for inconvenience based on an exceptional circumstance, it must provide a clear and detailed explanation accompanied by any documents, reports, or other evidence that establishes the existence of the exceptional circumstance.

Comment

This requirement cannot be realistically complied with and will not achieve the desired objective of clarity for consumers. It will inevitably create confusion for passengers and will overly complexify the communications and relationship between carriers and passengers. It will raise privacy, and confidentiality concerns, and generate another undue financial burden on carriers.

a) Internal documents are not designed for public consumption

Air Canada's experience with passenger complaints before the Agency highlights a significant challenge. Even Complaint Resolution Officers, professionals with transportation expertise and familiarity with aviation terminology, often struggle to understand an airline's internal operational documents. These documents, such as Netlines and maintenance reports are highly technical in nature and are intended solely for internal operational use. They contain vast amounts of industry-specific jargon, abbreviations, and codes, and often present information in formats that mix time zones (e.g., UTC and local time), making them unintelligible without specialized knowledge or context.

If individuals with aviation expertise require extensive clarification to accurately interpret these documents, it is unreasonable to expect passenger to comprehend them. Releasing such documents for public interpretation would not foster transparency but would instead result in confusion, misinterpretation, and potentially unwarranted complaints.

In fact, one of the reasons for the long adjudication delay by the Agencyand the backlog it has created is the complexity of airline operations, leading to the Agency's CROs' difficulty to understand and interpret the technical documents provided by carriers to justify their operational decisions, and the sheer amount of evidence expected by CROs. Passing this burden to passengers is simply not a solution to the Agency's inability to process claims in due time.

b) Significant logistical and financial burden on carriers

Internal documents are often not designed to meet accessibility standards for passengers with disabilities. Making these documents accessible—through formats like screen reader compatibility, large print, or Braille—will require extensive remediation at a high cost.

These costs are disproportionate to the goal of providing clarity on exceptional circumstances.

c) Confidentiality, proprietary and privacy information concerns

Many internal documents contain proprietary or sensitive operational information that should not be disclosed. For instance, maintenance logs may include specific repair methodologies or operational details that, if released, could compromise safety protocols. Such disclosures could also create risks for the integrity of the aviation industry as a whole, particularly in the areas of safety and operations.

Internal documents frequently include personal information, such as employee names, ID numbers (necessary for tracking and continuous improvement of operations), and some contain passenger details. For example, records related to medical diversions may include sensitive health information about a passenger. Disclosure of such information could violate privacy regulations and expose carriers to legal risks.

Recommendation

Amend the requirement to mandate carriers to provide a summary explanation of the exceptional circumstance rather than disclosing raw internal documents. This approach ensures transparency and accessibility while avoiding passenger confusion and protecting sensitive information.

IV. Proposed exceptional circumstances framework too narrow

The proposed amendments to the APPR require air carriers to compensate passengers for delays or cancellations unless the disruption falls under a narrowly defined exhaustive list of "exceptional circumstances", subject to onerous evidence that all reasonable measures were taken to avoid the disruption, even in the case of an exceptional circumstance.

This list of situations that exempts airlines from paying compensation has been significantly narrowed, and a new evidentiary requirement added. These changes will cause airlines to incur significant additional costs to comply with APPR, and will hold airlines responsible for situations they do not control.

We note that the notion of mechanical and technical defects has been included. We strongly support this addition. However, we are concerned that the test set out for technical defects is so stringent that it will effectively eliminate its usefulness.

Comments

a) All reasonable measures test is inappropriate

Exceptional circumstances are defined as events outside the airline's control that could not have been avoided even if carriers prove that the *flight disruption could not have been avoided even if all reasonable measures had been taken by the air carrier"*. We disagree with this aspect of the test.

The occurrence of the exceptional circumstances alone should be sufficient to exonerate carriers as they are in themselves situations where disruption cannot be avoided. The additional proposed test has been used by courts across Europe to slowly degrade the concept of "extraordinary circumstances" over time, it is a vague and highly subjective requirement that will add confusion and litigation, as has been the case in Europe.

This additional test goes against the objective to provide a simple and clear list, both for passengers and carriers and to minimize dispute and proceedings. Courts have decried the APPR and its inability to achieve its consumer protection goals given its legalistic complexity.[10] This test will fuel further litigation and worsen the Agency's already excessive backlog of cases. It should therefore be removed.

b) Exclusion of third-party failures

The proposed amendments do not fully recognize the interdependence of the air travel ecosystem, where carriers rely on numerous third-party actors, including government agencies, airport operators, and service providers. This exclusion unfairly shifts responsibility for failures outside a carrier's control onto airlines.

Airlines cannot be penalized for disruptions that are caused by third party failures, in particular government related entities. The current list does not cover delays caused by CATSA or CBSA delays, for example, or their equivalent agencies in other countries, but it must. It would not be sufficient to include only navigational services providers.

c) Airport operations issues

Similarly, the exclusion of airport operation issues, except for closures, fails to reflect the pivotal role that airport infrastructure plays in flight operations.

Airport operations issues include tarmac congestion, gate unavailability, baggage system issue, and equipment availability, such as equipment used to power essential aircraft systems, and equipment used to onboard or deplane passengers. Airlines should not be held accountable for circumstances beyond their control. If an airport cannot perform tasks due to inadequate resources or staffing, or if their equipment fails due to weather issues (bridges freezing etc.), delays can ensue through no fault of the airline. Penalizing carriers in such situations would be unjust and inappropriate.

d) Exclusion of cybersecurity incidents and IT outages

By omitting IT outages from the list of exceptional circumstances, the Agency ignores the conclusions of its own inquiry report, in which a test to assess the controllability of network outages had been developed:[11]

> *[107] In categorizing a flight disruption involving a computer issue or network outage, the surrounding circumstances must be considered, including, but not limited to, the following factors:*
>
> - *Whether the carrier exercises control over the impacted system;*
> - *Whether the issue or outage is the result of a cyberattack;*
> - *If the carrier exercises control over the impacted system, whether it took reasonable measures to prevent the outage or issue; and*
> - *How the carrier has responded to the outage or issue, including whether the carrier has prepared and implemented reasonable contingency plans.*

The omission of cyberattacks and cybersecurity incidents is particularly problematic given are that they are unpredictable and externally orchestrated. Effectively, some could be deemed acts of war and part of a new way of wagging war, although clearly attributing a cyberattack to a particular party can be challenging. Acts of war form part of the list of extraordinary circumstances, as should cyberattacks. A cyberattack targeting airport or airline systems could disable critical infrastructure such as check-in systems, flight scheduling platforms, or air traffic control.

Similarly, IT outages that occur due to issues affecting critical IT infrastructure or third-party entities also lie beyond the control of airlines and should be included in the list of exceptional circumstances. Airlines rely heavily on IT systems, such as cloud computing services, reservation systems, and air traffic control networks, to manage their operations. When these systems fail—whether due to technical errors, service outages, or large-scale disruptions—airline operations are directly impacted.

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10 See *Geddes v. Air Canada*, 2021 NSSM 27 at par. 2: "When consumer protection is the intended outcome of a regulatory regime, it should be assumed the regime will be in plain language, easy to understand and supports a simple claims process. The APPR, which was intended to accomplish enhanced passenger rights, accomplishes none of these. The language is complex and legalistic; one needs detailed or specific knowledge to invoke the claims system; and the process to seek compensation, once invoked, does not lend itself to quick resolution. This case illustrates that complexity, as lengthy pre-hearing processes involved the issuance of subpoenas to obtain detailed records from the Defendant about aircraft fleet information, maintenance records and other matters to support the Claim."

11 Decision No. 122-C-A-2021 | Canadian Transportation Agency

Air Canada agrees that reasonable measures should be taken to guard against these attacks and IT issues, as recognized in the Agency's own test. However, failing to recognize the uncontrollable nature of these events would be a mistake.[12]

e) Exceptional circumstances for mechanical events do not reflect operational realities

i. Unrealistic assumption about timing of defect finds

The requirement that a defect or problem must be discovered after the completion of the most recent required scheduled maintenance is not consistent with the reality of aircraft maintenance[13]. A technical defect can:

- Reoccur despite being properly addressed during scheduled maintenance in full compliance with the aircraft's maintenance manual.[14]
- Emerge as a result of factors unrelated to the most recent maintenance cycle, such as unforeseen operational stress or environmental exposure, like unexpected corrosion or wear; and
- Be detected during scheduled maintenance but be of a completely exceptional nature and require significant work that could not have reasonably been foreseen.

Aircraft maintenance programs are designed to proactively inspect only what is necessary at defined intervals. Additional time is planned to repair routine issues that may arise. However, unforeseeable findings that require considerably longer time than originally planned, and parts that had been unplanned for, can occur.

This requirement as currently drafted oversimplifies the complexities of maintenance and risks misinterpretation, which does not support the objective of avoiding any pressure on those making safety-related decisions or questioning safety decisions. The amendments should include a measure of reasonableness to allow for significant defects found during scheduled maintenance, that could not be reasonably foreseen.

ii. Airworthiness determinations are not exclusively made by Pilots

The proposed test for defects[15] designates the pilot in command as the sole individual authorized to determine the airworthiness of an aircraft.

Maintenance personnel also play an essential role in ensuring an aircraft's airworthiness by overseeing maintenance activities and verifying compliance with all safety and regulatory requirements. This includes conducting detailed reviews of maintenance records, inspections, and technical assessments to make informed airworthiness determinations.

The notion of who the pilot in command is at any given time, or when they assume duty, is not a concept that is clearly defined. This provision will add significant confusion and cannot be realistically applied. It should be deleted.

The notion of person responsible for making safety decisions prior to a flight should be expanded to include all qualified maintenance personnel, or anyone making safety-related decisions that can disrupt a flight.

iii. Hindsight cannot be used to assess carrier liability

The requirement that the defect or problem "was not caused by an act or omission of the carrier or of any person for whom the carrier is responsible"[16] is an assessment made with the benefit of hindsight. With hindsight, there will always be something that could have been done to avoid the occurrence of a technical issue.

Evaluating past decisions with the benefit of hindsight can lead to unfair judgments. Decisions made by maintenance crews and engineers are based on the information available at the time, and what might seem like an omission in retrospect could have been a reasonable decision given the circumstances.

Rather than using language such as an "act or omission" Air Canada suggests that the Agency considers stating that the defect cannot have been caused by a fault or negligence of the carrier. This would address the Agency's concern around carriers not causing the presence of defects through their own failures, without rendering the exceptional circumstance related to technical defects devoid of all usefulness.

Recommendation

a) Amend the list of exceptional circumstances

Expand the list to reflect the realities of the air travel ecosystem to include the following:

- Government agency delays: Customs processing delays or security screening bottlenecks.
- Airport infrastructure failures: De-icing, snow removal, baggage system malfunctions, or power outages.
- Cyberattacks, security incidents and IT outages: Malicious disruptions targeting airlines, airports, or air traffic control systems, as well as unforeseen IT failures impacting third-party platforms critical to airline operations.
- Unforeseen events clause: A catch-all provision for other unforeseeable events beyond the airline's control.
- Amend section 18(a)(i)(G) to read "an unforeseeable

12 On July 2024, a significant Microsoft Azure outage, compounded by a faulty CrowdStrike software update, disrupted global airline systems over a 24-hour period. This incident caused flight cancellations, delays, and operational challenges across the globe, and were entirely outside airlines' control: https://www.reuters.com/business/aerospace-defense/air-travel-hit-by-global-cyber-outage-2024-07-19

13 Section 18(a)(i)(G)(II) " The defect or problem was discovered after the completion of the most recent required scheduled maintenance."

14 Geddes v. Air Canada, 2021 NSSM 27.

15 Section 18(a)(i)(G)(III) states: "The pilot-in-command has determined that the defect or problem affects the airworthiness of the aircraft and makes it unsafe to operate until the defect is repaired."

16 section 18(a)(i)(G)(IV)

technical defect in, or other unforeseeable technical problem with, the aircraft if the required scheduled maintenance of the aircraft is up-to-date and the defect is not the result of a fault or negligence of the carrier".

b) Remove the two-pronged "all reasonable measures" test

Remove the requirement for airlines to prove that a disruption was unavoidable despite reasonable measures. Instead, focus should be placed solely on whether the event was beyond the airline's control.

c) Make the list non-exhaustive

To effectively regulate disruptions in aviation, the regulatory framework must incorporate discretion, allowing decision-makers to evaluate situations on a case-by-case basis. Aviation is inherently unpredictable, and operations can be disrupted by numerous external factors, making it impossible to exhaustively define all exceptional circumstances. The industry recently experienced such an unpredictable situation with the COVID-19 pandemic. A rigid approach risks unfairly penalizing carriers for situations genuinely beyond their control that were not initially envisioned by the regulator.

As suggested by NACC the proposed clause should be added:

"Any other act of god or force majeure"

V. Knock-on test must reflect operational realities

The proposed amendment limits the knock-on test for disruptions to 24 hours for large carriers, and requires evidence that all reasonable measures were taken to avoid the delay.

Comment

While the 24-hour limit may make sense for short haul, regional flights, this limits fails to consider the realities of long-haul flight operations and the complexities of recovering from disruptions in international networks.

Moreover, the limit could be useful to reduce the administrative burden associated with the application of this rule, if airlines did not also have to prove that all reasonable measures had been taken to avoid the delay. As drafted, this additional test significantly burdens the defence of claims and empties the provision of its meaning.

a) The 24-hour limitation is unrealistic for long-haul flights

Long-haul flights involve complex planning, international coordination, and limited opportunities for quick aircraft rotation or crew substitution given crew duty time limitations and where staff is based. Recovering from a disruption on a long-haul flight within 24 hours is often logistically impossible, especially when international airspace or airport constraints, aircraft availability, or crew rest regulations come into play. Applying a 24-hour limitation in this case would unfairly penalize the airline for delays entirely outside its control and ignore the operational reality of international aviation.

For example, if a flight from Toronto to Tokyo is delayed due to an exceptional weather event, the same aircraft may not return to Canada for 36-48 hours as the crew will require adequate rest, in compliance with applicable regulation, to operate the return flight safely. In addition, as the return flight would be operating outside its original planned schedule, its operation may be restricted by airport curfew and local slot constraints.

The 24-hour window does not adequately account for the ripple effects of widespread events, such as major storms, labour disputes, or other large-scale disruptions. Even with the best contingency plans, widespread events reverberate through a carrier's network for days. Aircraft and crew are often displaced, as illustrated in Annex A. Operations often depends on external factors, such as airport capacity, airspace availability and weather improvement. Penalizing airlines for disruptions beyond the 24-hour window unfairly disregards the operational challenges posed by such events.

A major snowstorm affecting multiple hubs could result in extensive delays and cancellations across a carrier's network that may take days to recover. Aircraft and crews may be out of position, requiring days of reallocation to restore normal operations. A 24-hour knock-on limit does not reflect the time needed for recovery and penalizes carriers attempting to mitigate the broader impact of such events.

Labour disputes create operational challenges that extend beyond the strike or lock-out period. To minimize disruptions, airlines may need to adjust flight schedules and coordinate with aviation authorities on aircraft positioning. Crew availability and regulatory requirements further impact recovery efforts. Even after a strike ends, resuming full operations takes time due to mandatory aircraft maintenance, crew repositioning, and passenger rebooking efforts. For example, WestJet's 2024 mechanics' strike caused significant operational disruptions that persisted well beyond the strike's conclusion.[17]

The 24-hour limitation for large carriers introduces an inequitable standard that unfairly disadvantages larger airlines, like Air Canada, while small carriers face no such restriction.

Small carriers typically operate point-to-point networks with limited connections, making their recovery processes less complex. Large carriers, on the other hand, manage intricate hub-and-spoke networks, where disruptions at a single hub can cascade throughout the system. Imposing a stricter 24-hour limit on large carriers penalizes them for their size and operational complexity.

17 WestJet struggles to recover from mechanics strike over Canada day weekend | Benefits and Pensions Monitor

Recommendation

The Agency should allow for a longer recovery window for long-haul flights and network-wide disruptions. A 48-hour window would better reflect the time required to recover from widespread events and mitigate cascading effects.

b) Evidence of knock-on should be sufficient

Evidence that one delay caused a delay on a subsequent flight operated by the same aircraft or same crew should be sufficient evidence of a knock-on effect. The Agency's "all reasonable measures" test is excessively burdensome and annuls the effectiveness of the provision. It also needlessly complexifies the APPR and its application, contributing to the Agency's already heavy backlog of cases.

To avail itself of this exception, particularly if a disruption occurs at a base, carriers must demonstrate where other aircraft in the fleet were, or that all reserve crew had been assigned and that the carrier had a reasonable contingency plan in place. This disproportionate burden of proof applies even if a disruption occurred away from a base[18], with evidence of what that plan was and why it was a reasonable plan. This amount of evidence is disproportionate to the nature and value of APPR cases and is unreasonable.[19]

Air Canada always attempts to reduce disruptions for its customers and to ensure that flights depart on time. We are available to explain to the Agency how these processes work and delve into what contingency plans are in place, but to do this for every case is unreasonable and needlessly burdensome. knock-on tests should apply uniformly across all carriers, regardless of size. This would ensure fair treatment and avoid creating a competitive disadvantage for large carriers with more complex networks.

c) Any time limit on knock-ons should provide for an exception for major, widespread events

Recognition of the disproportionate impact of large-scale disruptions on carriers is necessary to reflect the reality of airline operations. There have been unforeseen, unique situations in the history of aviation that have grounded aircraft in major regions for days, with an inevitable impact on other parts of a carrier's network – for example, the eruption of an Islandic volcano which cause disruptions for well over one week; the terrorist attacks on 9/11 which led to an FAA-ordered two-day grounding of all flights, and more recently, the covid 19 global pandemic, which led to near complete halt of operations for several months, even years. In all these cases, recovering an entire flight network takes upwards of 3-7 days depending on the extent of the impact. Regulations should account for such exceptional circumstances, and not needlessly penalize carriers for situations that they truly do not control

VI. Standards of treatment should be subject to reasonable availability

The proposed amendments require air carriers to provide passengers with assistance during all flight disruptions resulting in a delay of two hours or more from the originally scheduled departure time. Assistance includes food, drink, overnight accommodation if necessary, and access to a means of communication. This obligation applies even in cases of exceptional circumstances but is limited to a period of 72 hours.

Comment

Air Canada supports the notion of a cap on the provision of standards of treatment, which provides a reasonable balance on costly obligations.

However, the cost impact of hotel provision in all circumstances should be understood. A study on passenger rights in the EU found that airlines struggled to secure hotel accommodations in popular tourist destinations during peak travel seasons, even under normal conditions.[20] Widespread disruptions only exacerbate these difficulties, making compliance with accommodation obligations unfeasible.

The International Civil Aviation Organization (ICAO) has also identified the duty to provide care, especially hotel accommodations, as the most financially burdensome requirement under EC261[21]. The expense of providing care for passengers even for the proposed 72-hour period – could far exceed the cost of the passenger's ticket. Without a reasonability framework for the securing of these accommodations, airlines operating under APPR would face similar unsustainable burdens.

In addition, these obligations should be subject to availability of accommodations of reasonable quality. During large-scale disruptions, securing overnight accommodation for all affected passengers might be logistically impossible. Local hotels reach capacity quickly, especially in high-demand scenarios, leaving airlines unable to fulfill this requirement. This is particularly true in remote regions with limited

18 See for example case 22-44697, where an aircraft grounded for maintenance in Thunder Bay (not a base), replacement parts were being secured, evidence that no other aircraft could be sent to operate was provided, but the CRO remained unconvinced that all reasonable measures had been taken to avoid the knock-on. Similarly, in case 22-62293 pertaining to a disruption in Denver, where the CRO expected evidence of why a replacement aircraft should be sent to shorten a 2h47 delay.

19 Ibid. In addition, see for example case 22-61019, where evidence of reasonable measures having been taken to avoid the knock-on were provided but deemed insufficient, as the CRO was expecting evidence of why two other specific FINs were unavailable, labouring under a false assumption that airlines have free aircraft sitting idly, unscheduled, available to operate alternate flights in the event of a disruption.

20 Study on the current level of protection of air passenger rights in the EU, Final report no. MOVE/B5/2018-541, Steer, January 2020.

21 ICAO Secretariat, Effectiveness of Consumer Protection Regulations, Worldwide Air Transport Conference (ATCONF), Sixth Meeting, Agenda Item 2.3, Information Paper No 1, Doc ATConf/6-IP/1 (27 February 2013), https://www.icao.int/Meetings/atconf6/Documents/WorkingPapers/ATConf6.IP.001.en.pdf

infrastructure, where accommodation options may be severely restricted or entirely unavailable.[22]

Lastly, Air Canada will not accept to send its customers to accommodations that do not meet certain standards, such as those that it has reason to believe may be unsafe or unhygienic. Moreover, while we have access to a large pool of options, it may not have access to all possible hotel accommodations. However, we would reimburse reasonable accommodation costs should customers make choices as to the type of accommodations they need, that Air Canada would otherwise not be in a position to select for them. The possibility of reimbursing reasonable costs should be expressly considered an acceptable compliance method under the APPR.

Recommendation

The provision of standards of treatment should be subject to availability of accommodations of reasonable quality and cost. Should such options not be available at time of disruption, compliance with this requirement through a reimbursement of reasonable expenses, as is standard practice across the industry, should be deemed appropriate. In addition, in the event of significant disruption impacting availability and price of accommodations, hotels costs should be capped at average hotel rates at that location.

VII. Rebooking (alternate travel arrangements)

Large air carriers must rebook passengers, for all types of disruptions causing a delay of three hours or more, on the next available flight or a partner carrier's flight within nine hours of the original departure. If not possible, they must secure a rebooking on the next available flight with any carrier from the same airport.

Comment

These provisions seem to be drafted with short haul travel in mind. International flights, long haul flights and those that cross several time zones, are often scheduled overnight. Rebooking within the proposed nine-hour window could be disruptive to many customers. Keeping customer at the airport or providing short rest prior to the next available flight, causing passengers to travel at odd hours may not be the preferred option for some customers, such as those with special service requests, customers traveling with young children, or elderly customers.

Rebooking passengers on flights through third countries where visas or electronic travel authorizations (eTAs) are required presents particular complexity and challenges, which risk creating a negative customer experience and further disruption, particularly since rebooking on another carrier causes the original carrier to lose control of the ticket and be unable to assist with further disruptions.

Recommendations

For long haul and international flights, the rebooking window should be increased to 48 hours. This would allow customers to simply return at a convenient time for a direct flight, rather than be rebooked on convoluted connecting itineraries.

Rebooking obligations should always be subject to passenger's acceptance, and carriers' rebooking obligations subject to them making reasonable efforts to accommodate a passengers' needs.

VIII. Denied boarding compensation should not be owed when no delay at arrival occurs

The proposed amendment to the APPR requires air carriers to provide passengers with a minimum compensation of $900 if they are involuntarily bumped from a flight, regardless of whether they arrive earlier or at the same time than their original scheduled time. Specifically, passengers bumped to an alternative flight and arriving before the time indicated on their original ticket are entitled to this compensation.

Compensation is intended to address inconvenience. Compensating passengers for arriving earlier than scheduled imposes unjustifiable costs on carriers, particularly when no inconvenience or harm has occurred. For instance, a passenger bumped to an earlier flight that meets their needs and arriving four hours ahead of their original schedule has not been inconvenienced.

The APPR approach is inconsistent with international passenger rights frameworks such as the EC261 and the US DOT's 14 CFR part 250[23], which provides for no compensation if the passenger arrives within one hour of their original planned arrival.

Overbooking is a standard industry practice that keeps fares low. The practice is necessary to avoid inventory deterioration related to passenger misconnection and passengers with refundable fares who do not show up or make last minute changes. Rebooking passengers to ensure timely arrivals is a standard industry practice aimed at minimizing inconvenience. Penalizing airlines for effectively meeting the originally promised service undermines the intent of passenger rights regulations and discourages operational practices that benefit passengers.

22 During the volcanic eruption in Iceland in 2010, passengers stranded in remote areas faced severe shortages of hotels and basic amenities, highlighting the practical limitations of mandating universal accommodations.

23 See 14 CFR part 250, at s. 250.5(a)(1): "No compensation is required if the carrier offers alternate transportation that, at the time the arrangement is made, is planned to arrive at the airport of the passenger's first stopover, or if none, the airport of the passenger's final destination not later than one hour after the planned arrival time of the passenger's original flight;"

IX. Refund for changes in government travel advisories

Travel advisories serve as guidance to inform passengers about potential risks. Airlines are not insurers. Passengers have the discretion to purchase refundable fares to cover the risk associated with travel choices, or to purchase insurance.

Comment

Requiring airlines to issue refunds in response to passenger-initiated cancellations due to advisories will place an undue financial and administrative burden on carriers that will only lead to higher fares. Last minute refund requests interfere with efforts to efficiently manage seat inventory and affect the cost structure of flights. Airlines operate within narrow profit margins and cannot absorb the financial risks associated with cancellations triggered by government decisions.

If the Agency were to pursue this proposal, which Air Canada opposes, at the very least, customers wishing a refund should be required to make their request within a short time after government travel advisory changes have been issued, so that airlines may recover its inventory. Air Canada proposes this timeline to be no longer than 7 days after a change in government travel advisory has been issued.

Also, GoC frequently issues advisories for specific regions rather than entire countries. For example, if a remote area of a country receives an "avoid all travel" advisory, refunding passengers traveling to unaffected areas of the same country is unreasonable. The one-size-fits-all approach of the regulations is unmanageable. Refund obligations should pertain to travel advisories solely targeting a region where the airport of destination is located.

Also, for carriers to validate refund entitlement, historical information regarding changes to GoC travel advisories should be made publicly available.

X. Child seating

Air Canada supports the idea of a simple requirement for proximity seating rather than a complex, tiered distance separation by age group as is currently provided for in the regulations. However, Air Canada's seating systems cannot assign or guarantee seats prior to booking completion. The Agency proposes to force airlines to change their entire seating system, in order to confirm availability at time of check-in. Moreover, the obligation to offer this confirmation is on carriers, not travel agents, who are responsible for the majority of air travel bookings in Canada. There are no systems in place that could allow carriers to comply with this obligation for bookings made by travel agents.

Air Canada does not have complaints that show an issue with its current seating system. In fact, Air Canada currently succeeds in seating all passengers under 16 years of age next to their parent prior to boarding. Yet, the Agency's proposal would lead to IT development at a high cost, that would take 1-2 years to achieve, for no identifiable benefit.

The proposal goes well beyond the Agency's mandate to ensure that air carriers seat all children under the age of 14 next to their accompanying adult at no extra cost, by imposing a prescriptive system requirement that runs in real time at time of booking, that may unduly lengthen the booking process, and that would be unachievable for other ticketing agents, such as online travel agents, therefore putting carriers at a disadvantage by imposing excessive IT costs.

One alternative could be for carriers to confirm availability of adjacent seating within 24h of booking, and allow for full refunds should adjacent seating not be available.

XI. Implementation timeline

Compliance within 30 days of coming into force of some of the proposed requirements would be impossible. In particular, compliance with enhanced communication obligations, documentary evidence when refusing compensation, and child seating at time of booking all require in-depth changes to IT infrastructure, system integration, and employee training. Such broad and sweeping changes require a minimum of 3 years to implement, and significant investment. None of these costs appear to have been assessed in the Agency's regulatory cost-benefit analysis

We do recognize that there are some less complex amendments that could potentially be met within a shorter timeline. These include amendments that require:

- adjustments to text contained in existing platforms, such as Air Canada's website to include a clear and concise description of the complaints process;
- amending the existing language regarding passenger rights on digital platforms and itinerary receipts to reflect the new proposed requirements could possibly be duly implemented, supposing the requirements themselves can be readily implemented;
- the child seating requirements could also likely be implemented if the proposed amendments remove the need to confirm seating at time of reservation as adjacent seating is already provided through existing systems
- In each of the above cases, no substantial development or material changes to IT infrastructure or other factors, such as employee training, will likely be required.

XII. Conclusion

The proposed review of the APPR comes at a time when imposing additional costs on Canadian businesses should be limited, and when the government should be supporting industry in reinforcing our economic contributions and resilience. Most requirements contained in the proposal will add recurring cost to airlines, as well as IT development costs for implementation that are completely unjustified and unsupported by a clear need. These costs are also grossly underestimated in the Agency's cost-benefit analysis.

In addition, the implementation of notifications in real time with individualized compensation information is impossible, and the communication of documentary evidence at a claims level is not only highly unrealistic, it will also confuse and frustrate customers given that these documents are generally unintelligible to anyone but those with expertise.

The proposal would also put Canada further at odds with other similar regimes around the world and would require such significant investment for foreign carriers to comply that Canada will become unattractive to many airlines, particularly those based in countries with a lower cost structure. This will ultimately put the Canadian air travel system at a further competitive disadvantage versus other countries, ultimately negatively impacting the travelling public.

Finally, should government choose to proceed with implementing requirements that require significant IT changes, as have been identified above, an implementation timeline of at least three years must be provided.