

Comments on proposed regulations published in Canada Gazette, Part I, Volume 158, Number 51: Regulations Amending the Air Passenger Protection Regulations

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Description

1. Communication Obligations

In Northern regions, many passengers prefer airport check-in; only ~10% of passengers checking-in online with Canadian North. Further, in many northern communities, passengers do not use smart phone technology, and if they do, they face unreliable and inconsistent internet connectivity. Because of this unique reality, the proposed requirement for airlines to collect contact information would result in an increase in both Canadian North's overhead (through additional staffing required to facilitate data collection at the check-in counter) while also failing to meet the unique needs of our customers who may be unable to check-in online or prefer not to.

Clarity is needed on acceptable communication methods or defined minimum expectations. For instance, if an airline offers only email as a communication method, will this suffice under the amended regulations?

Addressing these ambiguities will help ensure feasible implementation.

2. List of Exceptional Circumstances

While we appreciate that the establishment of an exhaustive list of events that qualify as exceptional circumstances will simplify the process, we do not believe the proposed list of circumstances captures all the potential scenarios adequately.

Further, factors that are beyond the control of an air operator and which impact operational decision making are complex and would be difficult to list exhaustively. In some cases, we believe that additional clarity needs to be added to the listed items and in other cases, we feel that additional items need to be added to the list.

Special attention should be paid to address to key factors for operating an airline in the North, including:

1. The unique environmental conditions, and;
2. Fuel availability.
3. Standards of Treatment Provisions

The mandatory provisions for food and accommodations under the revised Standards of Treatment fail to account for the realities of many Northern communities where hotels, restaurants, and other passenger amenities may not exist. In such instances, Canadian North works with local grocers and businesses to provide alternatives, but this is not always feasible. Additionally, we would be disproportionately affected by such conditions, specifically as it relates to weather in an environment where the cost of these provisions is significantly higher than in the South. The proposed updates also do not set forth any expectations for when these provisions are not available due to time of day or location. Is it required that the customer be informed of their eligibility but advised we are unable to fulfill it, is evidence required to support this?

The addition of these provisions for exceptional circumstances represents significant costs. Specifically, the provision of hotels in these circumstances are greatly inflated within the northern communities we serve and disproportionately inflated due to the environment in which we operate.

Real World Example:

The average nightly cost of a hotel room in the North when booked within 48-hours of check-in is \$425 per night. Based on this, we forecast that the cost impact of further extending the provisions under the Standards of Treatment for hotels alone would have an incremental cost impact of approximately \$32million within the first year. This represents a significant cost that would subsequently influence overall ticket pricing.

We strongly urge the Agency to reconsider the application of Standards of Treatment provisions for delays noted in the list of exceptional circumstances in addition to providing greater clarity surrounding the expectations when services are unavailable. We further recommend that the language of the APPR explicitly recognize exclusions for communities where these services are unavailable and provide flexibility for carriers operating in remote regions.

4. Rebooking Challenges and Cost Assumptions

The requirement to rebook passengers within 48 hours is impractical in remote communities served exclusively by Canadian North, where flight frequency is limited, and alternate carrier options are unavailable. Additionally, the assertion that there is no incremental cost to rebooking passengers on a competitor's flight is flawed and demonstrates a misunderstanding of airline revenue management. Many fares purchased in advance are significantly lower than the cost of last-minute tickets, making rebooking economically burdensome.

We request a reconsideration of this requirement for small carriers and greater acknowledgment of the financial implications.

5. Refund Timelines

The proposed reduction in refund processing time from 30 days to 15 days places an undue burden on carriers reliant on third-party financial institutions to process transactions. This change does not consider the constraints imposed by external systems outside the airline's control.

We recommend retaining the existing 30-day timeline to ensure realistic compliance.

6. Claims Process and Compensation for Inconvenience due to Flight Disruption

Under the proposed amendments, if a carrier declines to pay compensation for inconvenience based on an exceptional circumstance, the carrier's response should be accompanied by documents, reports, and evidence to support that establishes proof of the exceptional circumstance. This undoubtedly will create confusion for customers and this confusion is evidenced today where supporting documentation is misinterpreted or misunderstood by the CTA's own Complaint Resolution Officers. The requirement to explain this documentation, technical language, acronyms, and associated procedures to every customer makes the claim incredibly burdensome for the airline.

Real World Example:

Should a flight be canceled or delayed because a NOTAM has been issued stating approach lights are inoperable, is it a requirement to provide customers with a detailed explanation to help them understand the NOTAM? Does the airline also need to explain that increases our minimums, and how to read the METAR to demonstrate that the weather is now below those new minimums?

As mentioned, this requirement exists today with CTA complaints where evidence is supplied to CRO's, yet we have still been compelled to compensate for adverse weather conditions which is clearly defined as Outside Carrier Control. With that in mind, we are concerned that providing documentation of this nature to our customers may generate more questions and confusion rather than less.

Additionally, this proposed amendment raises additional privacy concerns and questions. Often some of the required documentation may include sensitive information, evidencing a medical emergency for example. In these cases, what information may be redacted?

It is proposed that passengers may make a claim with any air carrier involved in the passenger's itinerary. This is simply not achievable by the air carriers. Currently, air carriers are each responsible for their own operation, the existing definition that directs a claim to an operating carrier is clear for the customer to understand. If Carrier A receives a claim for a flight operated by Carrier B, Carrier A has no way to validate this claim, nor provide the necessary evidence or documentation associated to that claim. Additionally, would Carrier A have the financial liability associated with Carrier B's flight disruptions compensation and expense provisions under the standards of treatment? If Carrier A and Carrier B are identified as a small carrier and large carrier respectively under the APPRs, which sections apply for compensation, rebooking, refund, standards of treatment? This would place the financial burden of a large carrier, onto a small carrier simply based upon the customer's choice on where to submit their claim.

7. Modifications to Penalties

The proposed modifications to penalty amounts payable by corporations represent a significant increase with no differentiation between large and small carriers. As a result, the financial impact of assessed penalties disproportionately affects smaller carriers. At Canadian North, safety and compliance with regulatory standards are fundamental to our operations, and penalties would never result from willful non-compliance.

We recommend the regulations include clear language to ensure penalties are scaled appropriately to the size of the carrier. This approach would help drive equity across the industry and ensure that penalties serve as an effective deterrent without unduly burdening smaller operators.

8. Summary and Conclusion

The proposed changes fail to distinguish the distinct differences between Northern and Southern operations. Northern carriers often operate in remote areas with limited resources, infrastructure, and limited or nonexistent alternative travel options where customers have far less accessibility to the technology and solutions more commonplace in the South. Additionally, fuel management in the North differs significantly from Southern operations. In the South, fuel is managed by the airline and their independent contractors. In the North, fuel is managed by the territorial government with a third-party provider, and the airline has its own QA procedures to ensure safety. As currently written, there are no provisions within the list of exceptional circumstances that would accommodate fuel issues outside of a NOTAM, such as the failure of a fuel provider to meet standard safety practices.

The proposed changes will lead to increased operational costs, which will inevitably be passed on to customers. This will further limit the accessibility of air travel for Northern and Arctic residents, exacerbating challenges in these underserved regions and further limiting the community's opportunities for economic growth. Specifically, the increased costs associated with the proposed changes to the of Standards of Treatment provisions, rebooking options, and the increased expectations for providing customers with documentation and evidence should their claim be denied.

While Canadian North supports measures to enhance passenger protections, the proposed amendments must consider the unique challenges of operating in Canada's North and mustn't place undue burden on the airline, but more importantly, passengers in the communities we serve. We recommend incorporating provisions that reflect the realities of remote operations, including adjustments to exceptional circumstances, standards of treatment, rebooking, refund timelines, communication requirements, and penalty structures. By tailoring these regulations, the Agency can ensure an equitable balance between protecting passenger rights and supporting carriers that provide essential services to Northern communities.

We urge the Agency to balance consumer protections with the need to maintain affordable travel options for all Canadians.

Provision of Information

"We propose the following updated list of exceptional circumstances. Additionally, a process should be defined to quickly and efficiently update this list.

- war or political instability;
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- one of the following situations, if it is incompatible with the safe operation of a flight:
 - o (a) a security threat,
 - o (b) an act of sabotage or other unlawful act,
 - o (c) a natural or environmental disaster, or
 - o (d) disruptive passenger behaviour;
 - meteorological conditions that are incompatible with the safe operation of the flight, that require a payload reduction to permit continue safe operation of the flight, or that result in capacity restrictions at the airport of departure or of arrival, or the required alternate airport;
 - damage to the aircraft, including damage that is caused by meteorological events, that could affect flight safety and that requires immediate assessment and possible repair, unless the damage is caused by a willful act or omission of the carrier or of any person for whom they are responsible;
 - a collision with a bird or other object during flight that could affect flight safety and that requires immediate assessment and possible repair to the aircraft;
 - a hidden manufacturing defect in an aircraft that was identified by the manufacturer of the aircraft concerned, or by a competent authority, that could affect flight safety and that requires immediate assessment and possible repair;
 - an unforeseeable technical defect in, or other unforeseeable technical problem with, the aircraft if
 - o (a) the required scheduled maintenance of the aircraft is up to date,
 - o (b) the defect or problem was discovered after the completion of the most recent required scheduled maintenance,
 - o (c) the pilot-in-command, or other qualified individual, has determined that the defect or problem affects the airworthiness of the aircraft and makes it unsafe to operate the aircraft until the defect is repaired or the problem is resolved, or the defect affects the crew, payload or capacity of the aircraft, and
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o (d) the defect or problem was not caused by a willful act or omission of the carrier or of any person for whom the carrier is responsible;

- a medical emergency discovered at short notice before flight departure or necessitating the interruption or deviation of the flight;
 - air traffic management restrictions or closure of an airspace;
 - an unscheduled partial or full closure of an airport, that may include local shutdowns limiting passenger and staff ability to attend the airport, runway restrictions or closures, or other airport or service restrictions that practically limit the operational capacity, even if the airport remains open;
 - the failure of a scheduled support or service provider at the airport to provide the published services during the published operating hours;
 - A NOTAM as defined by subsection 101.01(1) of the Canadian Aviation Regulations that outlines situations that impact the operation of the aircraft, the airport, or the Air Navigation System. This includes situations that would normally be published in a NOTAM but that are provided to a carrier by some other reliable means or source;
 - a labour dispute involving the carrier or an essential service provider such as an airport managing body, air navigation service provider or ground handling service provider;
 - an order or instruction from an official of a state, law enforcement agency, a person responsible for airport security, or from another territorial or local authority;
 - a disruption in fuel availability either as a result of a fuel providers inability to provide fuel or due to safety concerns that impact a Carriers ability to uplift fuel;
 - de-icing issues affecting operations, including de-ice queue delays resulting in flight delay or cancellation, or meteorological conditions that result in insufficient holdover time to permit a takeoff to occur following de-icing operations;
 - an unforeseeable technical defect in, or other unforeseeable technical problem with, required Ground Service Equipment (GSE);
 - third-party computer system outage.
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SCHEDULE

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