

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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Issues

The existing regulations are too open to interpretation, which means that passengers can (and are) denied compensation they ought to receive. The appeal process is complicated and lengthy, but even when it works it often provides little relief. If the compensation due a passenger is overnight accommodation due to flight delays or cancellations, a monetary compensation months later does not make up for the inconvenience and misery of having to spend the night at an airport. Not all travelers are able to pay for accommodation in the belief (or hope) that they will eventually be reimbursed. Justice delayed is justice denied.

Objective

All of the objectives for the proposed amendments are appropriate and necessary. Providing clarity in how the set of rights for passengers are to be understood and administered is important because the current system does not provide this.

Description

In the subsection ""Assistance (standards of treatment)"" it is not clear whether ""overnight accommodation"" is intended to be strictly interpreted as overnight (and if so what precisely that means -- if a passenger is delayed after completing a flight segment that arrives at 2AM does this trigger entitlement, or does the delay have to start before midnight or some other time?

More generally, if a passenger has taken a ""red eye"" flight that departs before midnight and arrives around 6AM and the continuation flight scheduled to depart at 8AM is cancelled and the only available replacement flight will not depart until 8PM, is the passenger entitled to accommodation for the almost 12 hours of layover? It would seem reasonable that in such a situation the airline should provide accommodation,

especially if the original itinerary would have had the passenger arriving at the final destination before noon and thus the passenger would be able to catch up on missed sleep at that time. It does not seem reasonable that passengers taking red eye flights should be expected to have had the equivalent of a "good night's sleep" upon arrival, especially if they experience a non-scheduled layover of more than 12 hours. In those situations, it should be assumed that passengers have a legitimate need to have reasonable accommodations that would allow them to sleep during such a layover.

Regulatory development

The proposed changes seem to improve clarity on many aspects of the process, but there still seems to be a lot of uncertainty regarding what constitutes an exceptional circumstance. In addition to the considerations outlined in this section, there should be consideration for developing a framework in which airlines be required at the time of the delay or cancellation to make a clear declaration to passengers and to the regulatory agency that the airline believes an exceptional circumstance applies, and the airline should be required to clearly state which exceptional circumstance (or circumstances) it believes applies. In addition, the regulatory agency should be required provide a timely initial assessment of the airline's claim (perhaps within 2-4 hours). The initial assessment would not be final, but it would serve as notice to the airline that the claim might not be accepted after a complete review. In such cases, where the regulatory agency has indicated to the airline that the claim is not initially accepted by the regulatory agency, the penalties for not providing compensation should be higher should the claim not be accepted after a complete review.

While not perfect, this approach would better balance the legitimate needs of passengers with the rights of airlines to benefit from exceptional circumstances when they exist. The improved balance would be provided by the airline being advised by the regulatory agency that a claim might be denied, thus providing the airline an opportunity to reassess its decision to not provide remedies to passengers. The airlines would retain the right to make a claim of exceptional circumstances, but if the claim is not accepted after final review the airlines would incur a penalty. Implicit in this suggestion is that the regulatory agency would be required to have a robust process for initial assessments and that the process would provide the benefit of the doubt to the airlines (i.e., unless the regulatory agency has initial evidence that exceptional circumstances do not exist, the regulatory agency would presume that the airline's claim is correct). Striking this balance operationally would no doubt be a challenge, but it is hard to imagine any system that would have have some challenging aspects.

The current system is, I believe, too much weighted in favor of the airlines because there is not enough penalty for airlines making claims that cannot be substantiated to balance the rights of passengers for fair compensation. It may be that raising the limit for penalties is intended to strike this better balance, but I believe that a better approach is one that places some responsibility on the regulatory agency to enter into dialogue with the airline immediately rather than only after the fact, and through this mechanism provide airlines an opportunity to fine tune their "risk model" by taking into account the initial feedback from the regulatory agency as a way to better predict whether there actually are exceptional circumstances. Done correctly, this could be a win-win solution for passengers and the airlines, and thus also for the regulatory agency. There would of course be a cost for the extra work done by the regulatory agency that would have to be determined and the apportioned amongst the stakeholders (passengers who might see this cost reflected in higher fares, airlines who might see this cost reflected in lower profits, and the general public who might see this cost reflected in higher taxes because the regulatory agencies work is considered for the benefit of society as a whole much like other government services). The primary motivation for this suggestion is that it seems to me it is better to have more immediate involvement of the regulatory agency (providing initial feedback to the airlines) because more information usually leads to better decisions and this provides more information to the airlines.

In cases where the regulatory agency's initial assessment is that exceptional circumstances do not exist, the airlines would be required to notify passengers of that fact. This would then serve a similar purpose of providing additional information to passengers that would allow them to make better decisions (if the regulatory agency's initial assessment does not accept the airline's claim, a passenger might feel more justified to pay for whatever compensation has been denied by the airline because there is an increased likelihood an appeal might be successful, whereas if the airline informs passengers that the regulatory agency has not questioned the claim of exceptional circumstances a passenger has less expectation that an appeal will ultimately be successful).

Regulatory analysis

Referring to comments I made in two earlier sections, if the meaning of "overnight accommodation" is broader than a strict reading and includes accommodation during the day in situations such as those I described, this would increase the expected cost to airlines.

If the more active role of regulatory agencies envisioned in my comments (where the regulatory agency provides a fairly immediate initial assessment of an airlines claim of exceptional circumstances), there would be increased costs for the regulator.

Implementation compliance and enforcement and service standards

As noted earlier in my comments, the increase of the maximum AMPs by a factor of ten might be revised so that maximum only applies when airlines have disregarded an initial assessment by a regulatory agency that the airline's claim of exceptional circumstances is (at the time) not accepted by the regulatory agency. If the regulatory agency does accept the claim in its initial assessment, the maximum APPS might be (for example) only \$125,000. This approach would I think provide a significant incentive for airlines to reassess claims of exceptional circumstances that the regulatory agency warns might not be accepted on appeal. The hoped for effect would be that this would result in airlines being more accurate in assessing their claims of exceptional circumstances, which in turn might mean there were less denials that result in successful appeals (perhaps the savings for the regulatory agency due to a reduced number of appeals would more than offset the increased costs for providing timely initial assessments of airlines' claims of exceptional circumstances).

Provision of Information

The Provision of Information section has a number of requirements that the airlines must meet related to providing information to passengers using digital communications (email, text, etc.). These are all good, but they are not meaningful if passengers are unable to receive those communications because of consequences of the delays or cancellations they are experiencing. It is not likely that airlines can surmount this problem in every case, but there are some cases where there are easy solutions. The most obvious case is when passengers are ""trapped"" in an airport due to a delay or cancellation. In that case, there will usually be adequate communication channels to support email, text messages, and web access for passengers to receive information from the airlines, but it may require that passengers incur charges (either having to pay for network access or pay for cellular data usage). It would make sense to include requirements that in that type of situation airlines be required to facilitate free access to the airport's WiFi for customers (or to some commercial service if the airport does not have WiFi).

This could be done by the airline providing codes that allow passengers to login for free access. The codes could be unique to a passenger if airlines are concerned about

unauthorized use of the codes. The codes would of course have to be provided to the WiFi provider (a cost for the airlines), but one might imagine that there would come into existence an industry-wide solution that would allow airlines to do this rather easily, perhaps through a third-party solution). The codes would need to be such that they continue to be valid until whatever time period is appropriate for the particular situation. In the grand scheme of things, the logistics of this are rather simple compared to the complexity of many other aspects of the problem. So it ought to be easy to add these guarantees to the proposed amendments without putting an undue burden on either the airlines or the regulatory agencies. It might be that part of the solution would require that the appropriate regulatory agencies interact directly with airports to ensure there is appropriate communication infrastructure in place to accommodate the new policies.
