

NAV CANADA BRIEF

Canadian Transportation Agency

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Amending the Air Passenger Protection
Regulations

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NAV CANADA appreciates the opportunity to provide feedback regarding proposed changes to Air Passenger Protection Regulations (APPR) brought forward through the Canada Gazette I process.

NAV CANADA recognizes the considerable effort the Government of Canada has put into the development and implementation of Air Passenger Protection Regulations (APPR) – including a number of changes that reflect industry feedback from its prior consultation. Despite important enhancements to the current APPR proposal, we believe that further adjustments would be beneficial for our aviation sector and Canada more broadly.

With one of the best safety records in the world, NAV CANADA has built a trusted, collaborative environment among all aviation stakeholders, where safety information is regularly shared, to drive continuous improvement in the reduction of operational safety risks. As such, we welcome the fact that all APPR proposals to date are reflective of our primary mission to keep Canada's skies safe.

TIMING OF CHANGES TO APPR

NAV CANADA supports the view that the timing of the introduction of the APPR vis-à-vis the impact of the pandemic and the unprecedented industry upheaval must still be considered. The global aviation industry experienced an unprecedented shock due to the pandemic. This meant that when demand started to recover, there were many challenges to resumption of services across the sector. Since then, the industry has observed almost a full recovery – whether it be security processing times, overall staffing levels, and technology improvements, the passenger experience is continually improving. There have also been important strides in transparency and accountability across the sector.

There is still work to do to achieve an optimum operating environment for all players in the system; few industry players will deny that. However, the perceived benefits of a more punitive APPR environment must be weighed against increased costs for passengers, the Canadian aviation sector's competitiveness, and their limited ability to drive actual performance improvements. Ultimately, using the period immediately following a generational black swan event (and the associated backlog) as the reference point for future regulation remains a concern.

This is compounded by the current level of global economic uncertainty which brings significant risks to the health of our airline sector. As such, additional consideration should be given to postponing further APPR changes to ensure that our airline sector remains resilient.

CANADIAN CONTEXT AND ALIGNMENT WITH OTHER JURISDICTIONS

Any changes regarding the application of APPR must consider impacts on affordability of air travel and competitiveness of the unique Canadian operating environment.

We firmly believe that the Canadian Transportation Agency should not seek to mimic regulations from other jurisdictions without considering the lessons learned from their application and underlying differences between countries and regions.

Canada is a vast country and extremely reliant on aviation for its supply chains, with a population that is distributed around a small number of large cities and many small-to-medium cities and municipalities. The sheer distance between domestic city pairings, the unique and often harsh climate and the propensity for many routes that need service but do not offer the economies of scale that can be observed in Europe or the United States means that air carriers operate with a much greater degree of operational and financial risk in Canada.

In terms of recent developments in other jurisdictions, Australia, recently opted to eliminate airline compensation obligations under its new Aviation Charter out of concern that airlines would need to account for potential costs in advance, leading to higher airfares. Meanwhile, the U.S. has currently paused its reforms due to industry's concern that new regulations would create significant financial strain, while the European Union is evaluating modifications to its "EU261" framework to lessen costs for airlines.

IMPACTS TO REGIONAL AND CROSS-BORDER SERVICE

NAV CANADA believes that while the proposed APPR makes a good effort to differentiate between small and large air carriers and their respective realities in most cases, the inherent added costs to small carriers will impact their ability to provide regional connectivity. Additionally, it may discourage larger carriers from offering regional services due to higher compensation levels, more demanding rebooking requirements, and accountability for knock-on effects of earlier disruptions, all of which increase financial risk for airlines.

NAV CANADA believes that the CTA should better analyze the proposed APPR's impacts and cost recovery measures on regional connectivity and over air travel affordability. As the CTA states in the CG1 proposed changes to the APPR: "depending on the air carrier's ability to pass on costs, this may be reflected in higher tickets prices for passengers." Cost will inevitably be passed down to passengers considering traditionally low per passenger profit margins in the sector, further impacting affordability of air travel for Canadians. This comes at a time when the Minister of Transport says that high travel costs are "not acceptable at a time when Canadians' pocketbooks are hurting and when they've been saving for their travels". As a result, a more in-depth cost-benefit analysis of the proposed APPR is required.

Lastly, it should be noted that airlines that previously operated to Canada prior to the pandemic have not fully resumed service. Airlines for America (A4A), an airline association representing 11 major airlines, has stated that "costs and burdensome regulatory requirements in Canada can be considered among barriers of expansion and entry into the Canadian market." This has the effect of decreasing competition, economic activity and connectivity for travellers.

SAFETY

Safety is a core pillar of the aviation industry. Every player in the system is focused on safety; it is critical that any future adjustments to language that speak to exceptions to compensation signal that safety is not taken for granted in any way by the Federal Government.

The current APPR proposal does include improvements from the prior proposal released by the CTA as it relates to certain safety-related circumstances that will be considered exceptional. NAV CANADA appreciates the CTA's concerns that some parties would apply a vague and too broad interpretation of "safety" to avoid compensation, under the current regulation. However, we caution against a complete elimination of a critical subclass of exceptional circumstances.

The current safety-related situations have the potential to be too narrow or overly conditional; at the same time, it is difficult to foresee an exhaustive range of potential safety-related circumstances and some degree of flexibility should be captured in wording where specific examples cannot be provided.

UPSTREAM EVENTS (KNOCK ON EFFECTS)

The current version of APPR provided improved acknowledgement that justifiable events upstream – that have a knock-on effect on performance later in time – should not result in compensation requirements. We understand, however, that for our airline customers that a concern remains that the short horizon for an exceptional circumstance will still regularly generate compensation requirements rooted in a justifiable cause of delay.

When there is a challenge in the system, such as a significant adverse weather event, recovery from that event in Canada can be much more lengthy and costly compared to other jurisdictions. It can take an airline multiple days to bring its fleet back into position, despite best efforts. The risk of fleet displacement is proportionally similar for a large airline as it is for a small airline, yet the proposed amendments would not impose any limit to chain reactions for small air carriers (and rightly so). However, large airlines simply cannot feasibly operate with significant volumes of redundant crews and equipment and, as such, the 24-hour window appears to be a subjective threshold where an exceptional circumstance simply times out.

Finally, airlines will be required to incur costs such as those associated with minimum assistance, such as meals and accommodation over a 72-hour period, even when the issue is not related to their performance as an airline – further amplifying financial risk to low frequency and low margin regional routes and serving as a disincentive to connectivity within smaller regions.

One would reasonably expect that the 72-hour limit would capture the vast majority of instances of disruptions for exceptional circumstances, and as a result, it is difficult to see how this window strikes a "balance between the interest of air carriers to limit the costs of providing assistance and

the interest of passengers in getting reasonable protection when experiencing a flight disruption.” In many if not most cases, the underlying cost of a ticket will be well below the cost of providing the proposed standards of care, particularly in the absence of any capping. Further details on the rationale for this cutoff would be beneficial, to demonstrate that there is indeed consideration for limiting costs and that it is indeed a well-balanced approach.

COMMUNICATION

NAV CANADA supports the development of communications protocols that are fact-based, and data driven. Air passengers should receive clear, accurate, and timely communication, ensuring transparency regarding their travel experience to the extent possible.

However, the aviation system is complex, and the industry and Government should invest in creating a greater understanding of the operational complexities and impacts that can occur – particularly as it relates to justifiable sources of delay that should not result in compensation despite the inconvenience for passengers. While it is easier to shift blame and costs to the airlines, bypassing improved consumer literacy and shared understanding of why delays do occur in our sector creates unrealistic expectations and, ultimately, a consumer culture where everything is the airline’s fault.

It should be noted that the operational complexity in the aviation sector and potential for multiple contributing factors for delay means that airlines may require time to accurately assess multiple sources of delay. Additional flexibility may be required given that these communications directly impact customer expectations for compensation.

Furthermore, passengers need to be actively informed not just on the availability of, but also on the risks of not using existing protections (e.g., travel insurance offered at the time of travel purchases, protections offered by different tiers of ticket pricing, etc.). In this sense, consumer protection options are available on the market today and some consideration should be given to how this can be more effectively leveraged instead of making APPR the first line of recourse.

COST BENEFIT ANALYSIS

While NAV CANADA has a somewhat limited direct exposure to the underlying costs that an airline will incur from APPR, we believe that the Cost-Benefit Analysis is likely to understate the costs to airlines. This impression is based on the fact that costs exclude those that will be incurred by foreign air carriers, that costs for hotels, meals and taxis contain no indexing or consideration for inflation, and that hotels costs appear to be based on the low end of average costs associated with advanced hotel booking (versus the likely greater cost incurred by airlines “on the day”). The aviation industry has shown through a number of studies that these costs, which are inevitably passed on to the passenger, can directly impact demand. As changes in passenger demand can

directly impact the underlying financials for the entire ecosystem, NAV CANADA encourages a more thorough assessment of costs to airlines, impact to demand for air travel and associated impacts to other industry organizations.

AIR TRAFFIC MANAGEMENT PERSPECTIVE

Finally, NAV CANADA appreciates and fully supports that air traffic management (ATM) restrictions are considered exceptional circumstances outside of the control of airlines, and reinforces that they should not be subject to compensation requirements.

While NAV CANADA is the body which typically communicates the implementation of a traffic management initiative (TMI) to various affected parties, it is important to note that in most cases, NAV CANADA is not the cause of the delay. TMIs are an important tool in the air traffic system. These initiatives contribute to the safe and orderly movement of air traffic and are used by air traffic control organizations globally in the regular course of day-to-day operations. In the same way, NAV CANADA supports the inclusion of NOTAMs as criteria for exceptional circumstances, as defined by subsection 101.01(1) of the Canadian Aviation Regulations.

NAV CANADA also supports the position of the CTA that the primary relationship identified in APPR must remain between the airline and its customers as the airlines respond to all sources of delay, interface directly with customers and are best positioned to adjust itineraries to minimize delay.

Any assignment of responsibility for cost of recovery from NAV CANADA would at best be circular, with NAV CANADA needing to pass these costs back on to the airlines through its service charge mechanism defined in CANSCA. If NAV CANADA were to compensate airlines, this added cost would put pressure on the very service charges airline customers and other aircraft operators pay to NAV CANADA.

COST RECOVERY

While not part of the current Canada Gazette proposal, we also wish to express concerns with the CTA's prior proposal to undertake cost recovery for administering APPR. Factoring in an additional \$790 for any single adjudication process, whether in favour of the passenger or not, is a disproportionate burden on our travel system at a time when there are concerns with the cost environment for both airlines currently in the market and the country's ability to incentivize new airlines to enter the Canadian market. Airlines receive all their revenues from consumers of their service. As a result, these costs will and must be covered by passengers.

Similar to some of the other topics raised above, we believe that penalties such as those proposed by the CTA will only force airlines to de-risk their operation, to use finite resources in a more cautious manner which will spur less frequency, less connectivity, increased cost and less choice for Canadians.

NAV CANADA and the airline sector respect the role that the CTA has in weighing individual claims for compensation when they occur, and requests that further consideration be given to the revenue-generating aims of a federal agency that has created the underlying cost structures in question.

IN CLOSING

On balance, NAV CANADA believes that the current APPR proposal represents an improvement from the proposal previously consulted on by the CTA. However, we also believe that there is room for improvement regarding safety-related exceptional circumstances and standards of care time horizons and associated compensation thresholds to better reflect the operating reality in Canada.

We further recommend additional analysis – working with organizations such as the National Airlines Council of Canada and the Air Transport Association of Canada – in key areas to ensure that the cost burden and impacts to passengers and passenger demand are well understood. The timing of implementation of any changes to APPR should be considered against a backdrop of significant global political and economic uncertainty to ensure that they do not exacerbate forthcoming challenges to a healthy and fluid Canadian economy.

We must be cautious not to place a financial burden on an already stretched aviation sector, threatening regional connectivity without delivering meaningful improvements to air travel performance. To build a resilient and globally competitive air travel system, the Federal Government and CTA must implement balanced regulations that protect passenger rights while considering the operational and economic challenges airlines face. Failing to strike this balance could undermine the long-term viability and competitiveness of Canada's air transportation network.

We thank the CTA for its consultative approach, and for the opportunity to comment as part of the Canada Gazette process.