CONSULTATION SUBMISSION ON PROPOSED REGULATORY TEXT
Regulations Amending the Air Passenger Protection Regulations

Submitted By: WestJet

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SUBSECTION 1(3)—DENIAL OF BOARDING

A. Proposed Regulatory Text by the Agency

> *"For the purpose of these Regulations, there is a denial of boarding when, no earlier than 24 hours before the scheduled departure time of a flight, a carrier cancels a passenger's confirmed reservation for the flight, or otherwise does not permit a passenger who holds a confirmed reservation to occupy a seat on the flight, because the number of confirmed reservations for the flight exceeds the number of seats that may be occupied."*

B. WestJet Comments and Recommendations

#1: Ensuring Clear Distinctions Between Cancellation and Denial of Boarding

The proposed new definition of "denial of boarding," which covers both the cancellation of a passenger's confirmed reservation and the refusal to allow a passenger to occupy a seat, does not explicitly link the first action (cancellation) to the specific circumstance of overselling. As drafted, it could be interpreted to mean that "any" cancellation of a confirmed reservation might constitute a denial of boarding—even if unrelated to overbooking or overselling. WestJet believes this was not the Agency's intention, particularly since the Proposed Amendments treat cancellations and denials of boarding separately and recognize that the obligations and remedies for each are distinct.

Furthermore, case law has consistently confirmed that cancellation and denial of boarding are distinct legal concepts. In *International Air Transport Association v Canadian Transportation Agency*, 2022 FCA 211, Justice De Montigny, writing for the bench, observed: "I agree with the Attorney General that cancellation, denial of boarding, and delay are three different concepts, both factually and legally."

In light of these considerations, WestJet recommends that the Agency refine the definition to specify that only a cancellation triggered by overbooking or overselling should be treated as a denial of boarding. We propose the following revised definition to enhance clarity:

> *"For the purposes of these Regulations, there is a denial of boarding when, no earlier than 24 hours before the scheduled departure time of a flight, a carrier <u>either</u> cancels a passenger's confirmed reservation for the flight <u>or</u> does not permit a passenger who holds a confirmed reservation to occupy a seat on the flight, <u>and does so</u> because the number of confirmed reservations for the flight exceeds the number of seats that may be occupied."*

Using "either … or" clearly distinguishes the two separate actions that can amount to a denial of boarding—namely, (1) cancelling a passenger's confirmed reservation, or (2) refusing to allow a passenger with a confirmed reservation to occupy a seat. This makes it evident that either action, if tied to overselling, would qualify.

The phrase "and does so" then links both of those potential actions to the specific reason of overselling ("because the number of confirmed reservations for the flight exceeds the number of seats that may be occupied"). In other words, "and does so" clarifies that whichever action is taken, it must be because the flight is overbooked, ensuring that cancellations or refusals for other reasons do not fall under the definition of "denial of boarding."

#2: *Excluding Safety-Related Cancellations or Denial of Boarding from the Definition*

The proposed revision to the definition of "denial of boarding," which introduces the concept of cancellation as a form of denial of boarding, creates ambiguity and may lead to unintended consequences. This is particularly concerning in situations where reservations must be cancelled due to safety constraints rather than overbooking. The revised definition does not clearly specify whether a cancellation for safety reasons should be classified as a denial of boarding. Without such clarification, carriers may be unfairly subject to compensation obligations for denial of boarding that arise from legitimate cancellation for safety concerns.

For example, should an aircraft seat become inoperable due to mechanical failures and safety concerns, the carrier may be required to cancel the confirmed reservation of the passenger assigned to that seat. Since this cancellation is not a result of overbooking but rather due to unforeseen safety reasons, it would be inappropriate to classify it as a denial of boarding due to overbooking. Instead, such cases should be treated as cancellations due to exceptional circumstances under Section 18 of the Proposed Amendments.

Both the United States and the European Union recognize that a denial of boarding for safety reasons is not considered to have been denied boarding for purposes of compensation.

Under U.S. Regulation 14 C.F.R. Part 250, specifically Section 250.6, a passenger denied boarding is not eligible for denied boarding compensation if the flight is unable to accommodate the passenger due to a substitution of equipment with lesser capacity, required for operational or safety reasons. Accordingly, if a carrier must cancel a confirmed reservation due to a safety-related change in aircraft capacity, that cancellation is not classified as a denial of boarding. This ensures that carriers are not unduly penalized for safety-related situations beyond their control.

Similarly, under Regulation (EC) No 261/2004 of the European Parliament and of the Council, Article 2 defines "denied boarding" as a refusal to carry passengers on a flight, except where there are reasonable grounds to deny boarding, such as reasons of health, safety, or security, or inadequate travel documentation. Thus, under these rules, if a carrier must cancel a confirmed reservation because a seat cannot be occupied due to safety reasons, this would not be considered a denial of boarding.

In light of these considerations, WestJet recommends that the Agency refine the definition of "denial of boarding" to specify that if a cancellation or refusal to board results from an exceptional circumstance, as defined under Section 18 of the Proposed Amendments, it should not be classified as a denial of boarding. This clarification will ensure consistency with international regulatory frameworks and safeguard safety concerns.

> *"For the purposes of these Regulations, there is a denial of boarding when, no earlier than 24 hours before the scheduled departure time of a flight, a carrier either cancels a passenger's confirmed reservation for the flight or does not permit a passenger who holds a confirmed reservation to occupy a seat on the flight, and does so because the number of confirmed reservations for the flight exceeds the number of seats that can be occupied. A cancellation or refusal to board arising from an exceptional circumstance, as defined under Section 18 of these Regulations, shall not be considered a denial of boarding."*

#3: Clarifying Intent that Denial of Boarding Must be Due to Overbooking and Intentional

The proposed revision to the definition of "denial of boarding" introduces ambiguity through the phrasing: "the number of confirmed reservations for the flight exceeds the number of seats that may be occupied." It is unclear whether this definition is intended to apply solely to cases of overbooking and overselling or whether it extends to other circumstances. Additionally, the language does not specify whether the denial must be intentional on the part of the carrier, creating further uncertainty in its application.

Canadian case law supports the interpretation that "denial of boarding" should be limited to cases of overbooking and overselling. In *Fauvel v. WestJet Airlines Ltd.*, 2024 BCPC 190, Justice Stewart clarified in paragraph 9 that "not any denial of boarding meets the APPR definition of a denial of boarding. An APPR-defined denial of boarding only occurs in circumstances of flights that are overbooked or oversold." Similarly, in *Mackoff v. Air Canada*, 2022 BCCRT 1121, the tribunal held that section 1(3) of the APPR, when read in the context of the regulations, can only be interpreted to mean that "denial of boarding" explicitly refers to denial due to overbooking.

Under U.S. Regulation 14 C.F.R. Part 250, specifically Section 250.6, a passenger may only be involuntarily denied boarding from an oversold flight. The regulation explicitly uses the term "oversold," which provides clarity regarding the scope of its application. Additionally, the regulation incorporates the term "intentional" to indicate that only an intentional act of overselling by the airline falls within the scope of "denial of boarding." This specificity ensures that inadvertent seat unavailability does not erroneously qualify as a denial of boarding. This clarity prevents unnecessary disputes.

In light of these considerations, WestJet recommends that the Agency refine the definition of "denial of boarding" to explicitly incorporate the terms "overbooked," "oversold," and "intentionally." The inclusion of these specific terms will ensure that the regulation is applied in a manner consistent with legal precedents and international practices. The proposed revised definition is as follows:

> *"For the purposes of these Regulations, there is a denial of boarding when, no earlier than 24 hours before the scheduled departure time of a flight, a carrier either cancels a passenger's confirmed reservation for the flight or does not permit a passenger who holds a confirmed reservation to occupy a seat on the flight, and does so because the carrier has intentionally overbooked or oversold the flight. A cancellation or refusal to board arising from an exceptional circumstance, as defined under Section 18 of these Regulations, shall not be considered a denial of boarding."*

SECTION 2.1—DENIAL OF CLAIM

A. Proposed Regulatory Text by the Agency

> *"A carrier that denies—in whole or in part—a claim referred to in section 85.01 of the Act must, when communicating that denial to the claimant, provide*
>
> > *(a) a clear and detailed explanation of the reasons for the denial that sets out the terms and conditions of carriage, fare and fare rule that are relevant to the denial; and*

(b) a copy of or electronic access to the applicable tariff."

B. WestJet Comments and Recommendations

#1: Revising the Language for Making the Administrative Burdens more Balanced

Section 2.1, as proposed, imposes an administrative burden on carriers that would be extremely difficult to fulfill in practice. Under the new Section 2.1, when a carrier denies a claim under Section 85.01(1) of the Act, it must provide a detailed explanation referencing the relevant terms, conditions, fares, and fare rules. Additionally, the claimant must be provided with a copy of or electronic access to the applicable tariff. Furthermore, as per Section 15(4) and Section 16(6) of the Proposed Amendments, if compensation is refused, the explanation must be accompanied by any documents, reports, or other evidence substantiating the denial.

This requirement effectively mandates that carriers provide a comprehensive decision within 30 days, referencing both legal provisions (terms, conditions, fares, and fare rules) and evidentiary support (documents, reports, and other materials). The use of the term "detailed"—which remains undefined in the regulation—adds further complexity. According to Black's Law Dictionary, "detailed" is defined as "a thorough element or something with many parts, requiring significant care."

This new obligation removes carriers' ability to provide a simple, clear and practical explanation for claim denials. Instead, they would be required to issue a quasi-judicial decision similar in nature to those rendered by the Agency, requiring detailed legal and factual analysis.

Moreover, unlike the Agency, carriers would be required to issue these quasi-judicial decisions within just 30 days—far less time than the Agency itself takes to process similar complaints. According to the Agency's website, passengers who submit claims may wait over 18 months before their case is even reviewed, with no indication of how much longer resolution might take. It is therefore highly concerning that carriers would be expected to render such detailed decisions within such an abbreviated timeline.

WestJet estimates that the implementation of these new obligations alone will result in annual costs in the tens of millions of dollars in 2025, with costs expected to increase each year thereafter. These estimates are derived from data in the agency's Annual Reports and information presented during consultations on the air travel complaints fee proposal.

These obligations are unprecedented in the aviation industry on a global scale. The United States, the European Union, and Australia do not impose similar requirements. Under Regulation (EC) No. 261/2004, Article 16 provides that if a passenger is dissatisfied with a carrier's response, they may escalate their claim to the national enforcement body. There are no explicit requirements regarding the level of detail carriers must provide in their responses.

This level of obligation was also not contemplated in the changes to the Act introduced through the *Budget Implementation Act*, No. 1 SC 2023 c 26. Subsection 85.01(2) of the Act only requires that "on receipt of a written request to deal with a claim, to communicate to the claimant its decision on the claim within 30 days after the day on which it received the request." There is no requirement that the decision must be detailed with cross-references to the law and the facts. The proposed regulatory changes under Section 2.1 go far beyond the statutory requirements contemplated by Parliament, imposing an excessive burden on carriers.

In light of these considerations, WestJet recommends that the Agency amend Section 2.1 to remove the word "detailed" and remove the requirement to reference the relevant terms, conditions, fares, and fare rules. This revision would strike a balance between providing transparency to claimants and avoiding excessive administrative burdens. The proposed revised definition is as follows:

> *"A carrier that denies—in whole or in part—a claim referred to in section 85.01 of the Act must, when communicating that denial to the claimant, provide:*
>
> *(a) an explanation of the reasons for the denial; and*
>
> *(b) a copy of or electronic access to the applicable tariff."*

SUBSECTION 2.2(2)—REFUND DEADLINE

A. Proposed Regulatory Text by the Agency

> *"The refund must be provided by a carrier within 15 days after the day on which the passenger becomes entitled to it."*

B. WestJet Comments and Recommendations

#1: Maintaining the Current 30-Day Refund Timeline

The Proposed Amendments to reduce the refund timeline from 30 days to 15 days conflicts with the Act. The existing 30-day refund timeline must be maintained to ensure compliance with the Act and to allow for a fair and reasonable review process for refund claims.

Subsection 85.01(2) of the Act grants carriers 30 days from receipt of a claim to communicate their decision to the claimant. Since a passenger's entitlement to a refund is contingent upon the carrier's assessment of the claim's merits, it would be unreasonable to require a refund within 15 days while the carrier is still within its statutory right to review and determine the validity of the claim.

For instance, under Section 14 of the APPR, a passenger may request a refund for a denied boarding claim. As denied boarding claims relate to potential breaches of the carrier's terms and conditions of carriage—where APPR requirements must be incorporated—such claims fall within the scope of Subsection 85.01(2) of the Act, which provides a 30-day decision period for the carrier. The carrier needs this 30-day period since there are various instances where a claim may not have merit. For example, a passenger may claim they were denied boarding when, in reality, they were refused transport for failing to comply with applicable laws, regulations, orders, or travel requirements. The 30-day period allows for due diligence in distinguishing legitimate claims from those that do not qualify under the APPR. The Agency cannot override this statutory timeline with the Proposed Amendments, as doing so would be inconsistent with the Act.

Also, it is important to note that the 30-day timeline established by Parliament is a carefully considered provision that strikes a balance between the interests of passengers and carriers. The 30-day period accounts for operational complexities that carriers face, particularly during large-scale flight disruptions caused by unforeseeable events such as severe weather. When thousands of flights are impacted, claim processing requires additional resources, and carriers cannot instantly scale up their workforce to meet an increased volume of claims. Reducing the refund

timeline to less than 30 days would exacerbate these challenges, further straining operational capacities.

To align with the statutory requirements under the Act and to ensure a fair and efficient review process, it is essential that the Agency amend Subsection 2.2 of the APPR to reflect the current 30-day refund timeline as follows:

> *"The refund must be provided by a carrier within 30 days after the day on which the passenger becomes entitled to it."*

#2: Refund Timelines Should Be Based on When the Passenger Requests a Refund

The Proposed Amendments require that the refund period begins when the passenger becomes entitled to a refund rather than when they actively request it. This creates a compliance risk for carriers. The refund timeline must be based on when the passenger makes their refund request rather than when the entitlement arises.

Under the Proposed Amendments, the passenger becomes entitled to a refund the moment the flight is cancelled, triggering the 15-day refund period. However, at that moment, WestJet does not know which form of refund the passenger will elect—whether they will request a refund to the original payment method, accept an alternative form of compensation (such as travel credits or vouchers), or choose another legally permissible option. If the passenger takes time to consider their options and only submits their request on the 16th day after the cancellation, WestJet would be in breach of its obligations, as the 15-day refund deadline would have already passed. This creates an impractical situation where the carrier is held accountable for meeting a deadline that begins before it has received the necessary information to process the refund.

This interpretation is problematic as it places carriers in a position where they may be found non-compliant due to factors beyond their control. It is unrealistic to require carriers to process refunds before a passenger formally requests one, as carriers need confirmation of the refund choice before proceeding.

To ensure that regulatory obligations align with practical implementation and to mitigate unnecessary compliance risks, WestJet recommends amending the Proposed Amendments so that the refund timeline begins when the passenger formally submits a refund request, rather than when an entitlement arises. This approach ensures that carriers have clear and actionable information before being required to process refunds and prevents situations where compliance deadlines expire before a passenger has made their decision. The proposed revision is as follows:

> *"The refund must be provided by a carrier within 30 days after the day on which the passenger submits their refund request."*

This adjustment would create a more practical and administratively feasible approach, ensuring compliance while avoiding unnecessary operational burdens on carriers.

#3: Clarification on Person Responsible to Provide Refund

The Proposed Amendments place the refund obligation solely on the carrier. However, as currently drafted, this approach does not account for situations where the carrier lacks access to the necessary transactional details to process a refund accurately. In certain cases, carriers do

not have visibility into the actual price paid by the passenger for a ticket, as this information is held by third-party sellers.

Carriers frequently enter into various commercial agreements with ticket resellers. One such example is a Risk Block Seat Sale Agreement, in which a third party (such as a tour operator, travel agency, or consolidator) purchases a block of seats in advance at a fixed price, assuming the financial risk of reselling them to passengers. Under these agreements, the carrier provides seats at a predetermined rate but has no insight into the final price at which they are sold. Consequently, the carrier lacks the transactional data required to issue accurate refunds to passengers.

This issue is further exacerbated by the fact that some travel agents sell vacation packages that bundle airfare with hotels and meals. In such cases, the passenger's receipt does not itemize the cost of the flight ticket, making it difficult for the carrier to determine the refund amount.

Additionally, even if the carrier were to process a refund and subsequently seek reimbursement from the third party, it would still face a fundamental barrier: the carrier does not possess the original payment information, which remains with the third-party seller. As a result, the carrier is unable to issue a refund to the original method of payment, as required.

In light of this, WestJet recommends that the Agency amend Subsection 2.2(2) to clarify that the refund may have to be provided by a carrier or the person responsible for selling the ticket, which may be a tour operator, travel agency, or consolidator. The proposed revision is as follows:

> *"The refund must be provided by a carrier within 30 days after the day on which the passenger submits their refund request. If the ticket was purchased from a person authorized to sell tickets other than the carrier, the refund will be processed by the carrier only if the commercial agreement between that person and the carrier permits the carrier to issue the refund."*

SUBSECTION 5(1)—SIMPLE, CLEAR, AND CONCISE COMMUNICATION

A. Proposed Regulatory Text by the Agency

> *"A carrier must make the following information available in simple, clear and concise language on all digital platforms that the carrier uses to sell tickets and on all documents issued by the carrier on which a passenger's itinerary appears:*
>
> *(a) the terms and conditions of carriage that apply in the case of*
>
> *(i) flight delay, flight cancellation or denial of boarding,*
>
> *(ii) delayed, lost or damaged baggage,*
>
> *(iii) the issuance of a Government of Canada travel advisory, and*
>
> *(iv) the assignment of seats to children who are under the age of 14 years;*

(b) information on the recourse that is available to passengers through the process for dealing with claims that is established by the carrier under section 85.01 of the Act; and

(c) information on passengers' right to file a complaint with the Agency under section 85.04 of the Act."

B. WestJet Comments and Recommendations

#1 Clarifying "All Documents" and "Itinerary"

The Proposed Amendments do not currently define or clarify the phrase "all documents issued by the carrier on which a passenger's itinerary appears." Although this wording is not new, the Amendments present a valuable opportunity to remove ambiguity and provide clearer guidance.

According to the Agency's June 2022 interpretation guideline, *Communicating Key Information to Passengers*, carriers must include relevant information on "tickets, itinerary receipts, and any other document listing the passenger's itinerary issued to the passenger." However, this guideline does not clarify whether boarding passes are included in that requirement, nor does it specify whether emails or text messages containing the passenger's itinerary—such as check-in notifications, flight status updates, or upgrade offers—meet the definition of "documents."

The absence of clear definitions for "document" and "itinerary" can lead to confusion for carriers attempting to meet regulatory requirements and passengers seeking to understand their rights. For instance, a boarding pass typically shows only the flight segment about to be boarded. While this may represent the entire itinerary for a single-segment journey, it usually reflects just one segment in a multi-segment journey, raising questions as to whether it qualifies as a "document on which a passenger's itinerary appears."

Likewise, passengers frequently receive multiple communications—such as emails or text messages—containing either partial or full details of their trip. The extent to which these communications should be considered "documents" depends on how broadly "itinerary" is defined. By clarifying these terms, the Proposed Amendments could substantially reduce uncertainty and simplify compliance for all parties involved.

SUBSECTION 5(3)—FLIGHT OPERATED BY OTHER CARRIER

A. Proposed Regulatory Text by the Agency

"If a carrier issues a document on which a passenger's itinerary appears and that itinerary includes a flight operated by another carrier, the carrier that issues the document must also make available on the document, in simple, clear and concise language, information on the recourse that is available to the passenger through the process for dealing with claims that is established by that other carrier under section 85.01 of the Act."

B. WestJet Comments and Recommendations

#1 The Operating Carrier is Best Positioned to Provide Claims Process Information

The Proposed Amendments present practical implementation limitations. Each carrier maintains its own independent processes for handling claims under the APPR, which may evolve over time. Consequently, an issuing carrier (such as WestJet) may not be aware of the specific details or real-time updates of another carrier's claims procedures. While codeshare and interline agreements exist, they do not consolidate claims administration, as each carrier remains responsible for managing its own processes.

WestJet currently maintains 21 codeshare agreements and 29 interline agreements with airlines worldwide, totalling 50 different carriers. Under the Proposed Amendments, WestJet alone would be required to continuously monitor the claims processes of each of these 50 carriers and update its documentation accordingly. Given the dynamic nature of claims-handling procedures, which may change between the time a document is issued to a passenger and the time the passenger submits a claim, this requirement is neither practical nor operationally feasible.

WestJet firmly believes that the operating carrier is best positioned to provide passengers with the most accurate and up-to-date information regarding its claims process. Requiring the issuing carrier to do so instead places an undue administrative burden on airlines like WestJet without providing a clear benefit to passengers.

Additionally, no comparable requirement exists in other major jurisdictions. The United States, the European Union, and Australia do not impose similar requirements. To the contrary, under Regulation (EC) No. 261/2004, Article 3(5), the operating air carrier is always responsible for fulfilling passenger rights under the regulation—not the carrier that merely sold the ticket. The Proposed Amendments would therefore introduce a unique and onerous regulatory burden not aligned with international practices.

For these reasons, WestJet urges the Agency to adopt a more practical approach—one that ensures passengers receive the necessary information while recognizing that the operating carrier, rather than the issuing carrier, is in the best position to provide accurate and timely claims guidance. WestJet recommends that the Proposed Amendment text be revised to reflect a practical and realistic approach. Specifically, the regulation should require the issuing carrier to:

1. Inform passengers, in simple, clear, and concise language, that a portion of their itinerary is operated by another carrier; and

2. Advise passengers that for flights operated by another carrier, any applicable claims or complaints should be directed to that operating carrier.

This amendment would ensure passengers receive the necessary information about where to direct claims while acknowledging the operational reality that one carrier cannot reasonably be expected to maintain up-to-date information on what is typically a large number of other carriers' claims processes. The proposed revision is as follows:

> If a carrier issues a document on which a passenger's itinerary *appears and that itinerary includes a flight operated by another carrier, the carrier that issues the document must, <u>in simple, clear, and concise language, inform the passenger that</u>*

a portion of the itinerary is operated by a different carrier and advise that any applicable claims or complaints should be directed to the operating carrier.

This revision ensures that passengers clearly understand which carrier operates each flight and whom they should contact for claims. It also avoids imposing an impractical and burdensome requirement on the issuing carrier to continuously track and update information about other carriers' claims process.

To put this challenge into perspective, the Agency itself maintains a section on its website with links to various air carrier tariffs. However, many of these links are no longer functional because airlines frequently update their websites, while the Agency has not consistently maintained these updates. This example highlights the inherent difficulty—even for a regulatory authority with dedicated resources and oversight powers—in monitoring and maintaining accurate information about multiple carriers worldwide. Expecting an issuing carrier to not only monitor and update the evolving claims processes of numerous airlines but also provide this information in simple, clear, and concise language would be even more impractical.

SUBSECTION 5(5)—NOTICE

A. Proposed Regulatory Text by the Agency

"The carrier must also include the following notice on all digital platforms that the carrier uses to sell tickets and on all documents issued by the carrier on which a passenger's itinerary appears:

"If you are denied boarding, your flight is cancelled or delayed for at least two hours, or your baggage is delayed, lost or damaged, you may be entitled to certain standards of treatment and compensation under the Air Passenger Protection Regulations. For more information about your passenger rights, please contact your air carrier or visit the Canadian Transportation Agency's website.

Si l'embarquement vous est refusé, ou si votre vol est annulé ou retardé d'au moins deux heures ou si vos bagages sont retardés, perdus ou endommagés, vous pourriez bénéficier de certaines normes de traitement et d'une indemnité au titre du Règlement sur la protection des passagers aériens. Pour de plus amples renseignements sur vos droits, veuillez communiquer avec votre transporteur aérien ou visiter le site Web de l'Office des transports du Canada.""

B. WestJet Comments and Recommendations

#1 Consistency Between Subsection 5(5) and Subsection 7(1)

Under the current APPR, the notice text referenced in subsection 7(1)—for signage at airports—precisely matches the notice text required to be displayed on documents and digital platforms. However, the newly proposed text in subsection 5(5) no longer aligns with subsection 7(1), creating an inconsistency between notices appearing at airports and notices displayed on documents and digital platforms.

To ensure a harmonized and consistent approach that facilitates implementation for carriers, WestJet recommends maintaining uniform language across both provisions. Specifically, the

language in subsection 5(5) should be aligned with subsection 7(1). Alternatively, subsection 7(1) could be amended to reflect the revised text in subsection 5(5).

In either case, alignment between these notice texts is essential. A consistent standard would simplify regulatory compliance for carriers and ensure passengers receive uniform information across all communication channels, including online platforms, travel documents, and airport signage.

SUBSECTION 11(1)—DELAY, CANCELLATION OR DENIAL OF BOARDING

A. Proposed Regulatory Text by the Agency

> *"In the case of a flight delay, flight cancellation or denial of boarding, the carrier that operates the flight must, without delay, provide the following information to each affected passenger using the passenger's preferred electronic method of communication referred to in subsection (4):*
>
> *(a) the reason for the delay, cancellation or denial of boarding;*
>
> *(b) a description of the passenger's entitlement under section 12 to food, drink, access to a means of communication and overnight accommodations, including, if the entitlement has not yet been triggered, what will trigger it;*
>
> *(c) a description of the passenger's entitlement under section 13 to alternate travel arrangements or under section 14 to a refund, including, if the entitlement has not yet been triggered, what will trigger it;*
>
> *(d) a description of the passenger's entitlement under section 15 or 16 to compensation, including, if the entitlement has not yet been triggered, what will trigger it; and*
>
> *(e) information on the recourse that is available to the passenger through the process for dealing with claims that is established by the carrier under section 85.01 of the Act and on the passenger's right to file a complaint with the Agency under section 85.04 of the Act."*

B. WestJet Comments and Recommendations

#1 Enhancing Passenger Communication Without Unnecessary Notification Overload

The Proposed Amendments require all five categories of information to be communicated immediately, regardless of the length of any delay. Such a broad requirement would result in a flood of notifications for even minor delays—potentially as short as a few minutes—creating confusion rather than clarity for most passengers, who would not yet be eligible for any entitlements.

Under the Agency's current June 2022 interpretation document, *Communicating Key Information to Passengers*, only two categories of information—(1) the reason for the disruption and (2) recourse options—must be provided "without delay". The guideline further recommends communicating assistance entitlements (e.g., food and hotel accommodations) only after a two-

hour wait, and compensation information once a flight is cancelled or a delay reaches three hours. By contrast, the Proposed Amendments mandate immediate communication of all categories, substantially expanding carriers' obligations and undermining the phased approach designed to reduce passenger confusion.

Furthermore, industry-standard on-time performance metrics classify flights arriving within 15 minutes of their scheduled time as "on time." Canadian air carriers had an overall on-time performance of roughly 65% in 2023, meaning around 35% of flights arrived more than 15 minutes late. Mandating comprehensive notifications for all delays—including minor ones, such as a five-minute wait for a late-connecting passenger—would significantly increase the volume of messages, surpassing 35% of flights and potentially causing passenger confusion rather than reducing it.

WestJet agrees with the Agency's assertion in the Regulatory Impact Analysis Statement that better communication can reduce the stress levels of passengers. However, the opposite can also occur if there is an influx and overload of communication, which may unnecessarily increase passenger stress.

Since the Proposed Amendments alter the current phased approach, WestJet recommends that only delays exceeding 15 minutes trigger the requirement to provide the full set of information under subsection 11(1). This threshold aligns with industry standards for "on-time performance" and ensures that communication efforts focus on more significant disruptions affecting 35% of flights in 2023.

In light of these considerations, WestJet recommends that the Agency amend Subsection 11(1) to clarify that only flight delays exceeding 15 minutes will trigger the obligations:

> *"In the case of a flight delay exceeding 15 minutes, flight cancellation or denial of boarding, the carrier that operates the flight must, without delay, provide the following information to each affected passenger using the passenger's preferred electronic method of communication referred to in subsection (4):*
>
> > *(a) the reason for the delay, cancellation or denial of boarding;*
> >
> > *(b) a description of the passenger's entitlement under section 12 to food, drink, access to a means of communication and overnight accommodations, including, if the entitlement has not yet been triggered, what will trigger it;*
> >
> > *(c) a description of the passenger's entitlement under section 13 to alternate travel arrangements or under section 14 to a refund, including, if the entitlement has not yet been triggered, what will trigger it;*
> >
> > *(d) a description of the passenger's entitlement under section 15 or 16 to compensation, including, if the entitlement has not yet been triggered, what will trigger it; and*
> >
> > *(e) information on the recourse that is available to the passenger through the process for dealing with claims that is established by the carrier under section 85.01 of the Act and on the passenger's right to file a complaint with the Agency under section 85.04 of the Act."*

SUBSECTION 11(6)—GATE AND ON BOARD

A. Proposed Regulatory Text by the Agency

> *"From the time that passengers are required to be present at the boarding gate, whenever information is provided under subsections (1) to (3), the carrier must also provide the following information by means of audible announcements — and, if requested, visible announcements — at the boarding gate and, if passengers have already boarded, on board the aircraft:*
>
> > *(a) the information referred to in paragraph (1)(a);*
> >
> > *(b) an indication that the information referred to in paragraphs (1)(b) to (e) and subsections (2) and (3) is being sent to passengers using their preferred electronic method of communication; and*
> >
> > *(c) an indication that passengers may request that the carrier's personnel at the boarding gate or on board the aircraft, as the case may be, provide them directly with the information provided under paragraphs (1)(b) to (e) and subsections (2) and (3)."*

B. WestJet Comments and Recommendations

#1 Ensuring Flight Safety by Prioritizing Crewmember Responsibilities

The Proposed Amendments present serious concerns about the implications of requiring crewmembers to provide such extensive information on board the aircraft, particularly in the context of their critical safety-related responsibilities. Crewmembers play an essential role in ensuring regulatory compliance and maintaining the highest standards of safety throughout the flight. Their primary focus must remain on cabin security, emergency preparedness, and responding to in-flight situations that may arise. Introducing additional responsibilities, such as disseminating extensive passenger information in-flight, could divert attention from these core duties and potentially impact operational efficiency and overall flight safety.

Furthermore, flight operations require a well-structured chain of communication that prioritizes critical safety information. While WestJet recognizes the importance of keeping passengers informed, the proposed requirement risks overloading crewmembers with tasks that are not directly related to flight safety. The existing electronic communication channels and airport gate announcements already serve as effective means of providing necessary updates to passengers. Requiring crewmembers to relay additional information in real-time on board creates unnecessary distractions, particularly in situations requiring immediate safety-related attention.

In light of these considerations, WestJet recommends that the Agency amend Subsection 11(6) to remove the requirement to indicate that passengers may request personnel on board the aircraft to provide them directly with the information outlined in paragraphs (1)(b) to (e) and subsections (2) and (3). Allowing carriers to rely on existing communication methods will ensure that crewmembers can continue prioritizing their fundamental role in maintaining a safe and secure flight environment. WestJet believes this approach better balances passenger communication needs with the critical safety duties of onboard personnel. WestJet's proposed revision is as follows:

"From the time that passengers are required to be present at the boarding gate, whenever information is provided under subsections (1) to (3), the carrier must also provide the following information by means of audible announcements — and, if requested, visible announcements — at the boarding gate and, if passengers have already boarded, on board the aircraft:

(a) the information referred to in paragraph (1)(a);

(b) an indication that the information referred to in paragraphs (1)(b) to (e) and subsections (2) and (3) is being sent to passengers using their preferred electronic method of communication; and

(c) an indication that passengers may request that the carrier's personnel at the boarding gate ~~or on board the aircraft, as the case may be,~~ provide them directly with the information provided under paragraphs (1)(b) to (e) and subsections (2) and (3)."

SUBSECTION 11(7)—INFORMATION ON REQUEST

A. Proposed Regulatory Text by the Agency

"The carrier must ensure that the information provided under paragraphs (1)(b) to (e) and subsections (2) and (3) is provided directly and without delay to a passenger who requests it."

B. WestJet Comments and Recommendations

#1 Ensuring Flight Safety by Prioritizing Crewmember Responsibilities

If a passenger requests the information while in flight and no electronic method (such as an onboard Wi-Fi system) is available, then the obligation rests on the crew members to provide the requested information at that moment. The crew, as representatives of the carrier, would need to relay the information verbally or through any other available means to meet the requirement of providing it directly and without delay.

As mentioned above, this presents serious concerns about the implications of requiring crewmembers to provide such extensive information on board the aircraft. Their primary focus must remain on cabin security, emergency preparedness, and responding to in-flight situations that may arise. WestJet's proposed revision is as follows:

"The carrier must ensure that the information provided under paragraphs (1)(b) to (e) and subsections (2) and (3) is provided directly and without delay to a passenger who requests it, unless the request is made on board the aircraft."

SUBSECTION 12(1)—STANDARD OF TREATMENT

A. Proposed Regulatory Text by the Agency

"A carrier must provide the following, free of charge, to a passenger referred to in subsection (2) during any period referred to in subsection (3):

(a) food and drink, in reasonable quantities, taking into account the length of the passenger's wait, their location and the time of day;

(b) access to a means of communication; and

(c) if the carrier expects that the passenger will be required to wait overnight for a flight, hotel or other comparable accommodation that is reasonable in relation to the location of the passenger, as well as transportation to that accommodation and back to the airport."

B. WestJet Comments and Recommendations

#1 Expressly Mentioning the Reasonable Effort Standard

The Proposed Amendments present an opportunity to acknowledge the limitations that carriers occasionally face in providing standards of treatment. The Agency's September 2022 interpretation guideline, *Flight Delays and Cancellations*, recognizes these limitations. The guideline explains that:

> *"In certain circumstances (for example, in a remote community), it may not be possible to book accommodations within a reasonable distance of the airport (to ensure the passenger can make it back to the airport the next morning)."*

While this position is outlined in the Agency's guidelines, it is not explicitly stated in either the existing APPR or the Proposed Amendments. Industry stakeholders may be familiar with these considerations, but passengers may not, leading to unrealistic expectations regarding the availability of accommodations, food, and means of communication.

To ensure clarity and enforceability, these operational constraints should be expressly reflected in the regulatory text—not just in guidelines. The Proposed Amendments should recognize these practical limitations, ensuring fair and reasonable enforcement.

Accordingly, WestJet recommends amending paragraph 12(1) to apply the considerations of location, time of day, and length of wait not only to food and drink but also to accommodations and means of communication. Specifically, the provision should read:

> *"Taking into account the length of the passenger's wait, their location and the time of day, a carrier must provide the following, free of charge, to a passenger referred to in subsection (2) during any period referred to in subsection (3):*
>
> *(a) food and drink, in reasonable quantities~~, taking into account the length of the passenger's wait, their location and the time of day~~;*
>
> *(b) access to a means of communication; and*
>
> *(c) if the carrier expects that the passenger will be required to wait overnight for a flight, hotel or other comparable accommodation that is reasonable in relation to the location of the passenger, as well as transportation to that accommodation and back to the airport."*

#2 Access to a Means of Communication

The phrase "access to a means of communication" is not new; however, the Proposed Amendments present an opportunity to acknowledge the limitations carriers face when operating at airports. While carriers strive to facilitate effective communication for passengers, they often do not control the airport infrastructure in which they operate. As a result, their ability to ensure seamless communication is constrained by the facilities and services provided by airport authorities. These factors directly impact the extent to which carriers can guarantee uninterrupted access to communication.

Given these constraints, WestJet believes that compliance should be evaluated based on a carrier's reasonable efforts to provide access, rather than rigid requirements that fail to account for operational limitations beyond their control. Accordingly, WestJet recommends that the Agency amend Subsection 12(1) as follows:

> *"Taking into account the length of the passenger's wait, their location and the time of day, a carrier must take reasonable effort to provide the following, free of charge, to a passenger referred to in subsection (2) during any period referred to in subsection (3):*
>
> > *(a) food and drink, in reasonable quantities~~;~~*
> >
> > *(b) access to a means of communication, <u>taking into account the airport infrastructure</u>; and*
> >
> > *(c) if the carrier expects that the passenger will be required to wait overnight for a flight, hotel or other comparable accommodation that is reasonable in relation to the location of the passenger, as well as transportation to that accommodation and back to the airport."*

#3 Providing Guidance on What Constitutes Reasonable Hotel or Accommodation

The Agency's September 2022 interpretation guideline, *Flight Delays and Cancellations*, states that airlines are expected to make "every reasonable effort" to book hotel accommodations for passengers.

WestJet recommends that the Agency provide clear guidance on what constitutes a "reasonable hotel accommodation." While WestJet understands that the appropriate amount for accommodations may vary across different parts of the world and change over time due to inflation, establishing a benchmark or framework that could be updated over the years would help both passengers and carriers. Passengers would gain a clearer understanding of their entitlements, while carriers would have more certainty regarding their obligations. Without such guidance, varying interpretations of what is considered "reasonable" will continue to create confusion, disputes, and unnecessary claims.

A well-defined standard for reasonable hotel accommodation would ensure consistency in passenger treatment while accounting for regional differences in cost and availability. WestJet encourages the Agency to work with industry stakeholders to develop a guideline that reflects practical considerations, including location, seasonality, and economic fluctuations. By implementing a structured approach, the Agency can foster transparency and prevent inconsistencies that could lead to dissatisfaction among passengers and carriers.

Providing the information in a guideline rather than in the regulations would give the required flexibility to the Agency to make adjustments as needed. While WestJet would prefer that these figures be part of a schedule to the Proposed Regulations, a simple guideline would provide clarity. This approach would allow the Agency to respond to economic fluctuations and regional cost variations without requiring frequent regulatory amendments, ensuring that both passengers and carriers operate with a clear and updated understanding of their rights and obligations.

SUBSECTION 12(4)—LIMITATION, EXCEPTIONAL CIRCUMSTANCES

A. Proposed Regulatory Text by the Agency

> *"Despite subsection (3), if the delay, cancellation or denial of boarding that gives rise to the carrier's obligations under subsection (1) is the result of a circumstance referred to in section 18, those obligations cease to apply 72 hours after the flight is delayed or cancelled or the denial of boarding occurs."*

B. WestJet Comments and Recommendations

#1 Clarification References to the List of Circumstance

The Proposed Amendment references the list in Section 18 but should more precisely specify subsection 18(a). Subsection 18(b) does not contain a list of circumstances but instead provides a second criteria for determining when compensation under Sections 15 or 16 is required. This distinction is critical, as ambiguity in this area could lead to disputes and inconsistent application of the regulations.

For example, if a flight is delayed for more than 72 hours due to weather, a passenger may argue for an extension of the standard of treatment obligation, citing that the carrier did not make all reasonable efforts to mitigate the delay. A clear delineation of the criteria in subsection 18(a) would enable carriers like WestJet to navigate such situations more effectively and reduce the risk of legal challenges.

In light of these considerations, WestJet recommends that the Agency refine the language to clarify the circumstances referred to specifically in subsection 18(a) as follows:

> *"Despite subsection (3), if the delay, cancellation or denial of boarding that gives rise to the carrier's obligations under subsection (1) is the result of a circumstance referred to in subsection 18(a), those obligations cease to apply 72 hours after the flight is delayed or cancelled or the denial of boarding occurs."*

#2 Providing an Exception to the Obligation in Situations of Exceptional Circumstances

A carrier should not be held responsible for passenger treatment obligations in situations that are exceptional and entirely beyond the airline's control. Exceptional circumstances may include weather events, natural disasters, political instability, and war—factors that are completely outside of an airline's influence.

i) Carriers Will Have to Bear Too Much Liability

The Proposed Amendments effectively shift the regulatory framework from passenger rights to creating an insurance mechanism that compensates passengers for extraordinary events that carriers have no control over. Such responsibility traditionally falls within the domain of insurance companies.

A fundamental principle of the Canadian legal system is that risk is assumed by those engaging in an activity unless there is a justified reason to allocate that risk elsewhere. There is no valid reason to shift this risk onto airlines. Carriers have no influence over weather conditions, geopolitical developments, or government decisions and should not be forced to indemnify passengers for these unforeseeable events. No stakeholder in society, including government entities, is expected to bear such liability.

Passengers have access to alternative financial protection for travel disruptions. Many credit card providers offer travel disruption insurance, and passengers can also purchase dedicated travel insurance for exceptional events. It is unjustified to place this financial burden on airlines when travelers have existing means of protection.

ii) The Cost of the Liability of the Carriers Exceeds the Estimates of the Agency

The *Regulatory Impact Analysis Statement* contains multiple flawed assumptions regarding the financial burden imposed on airlines. Regarding the cost of accommodations for passengers, the Agency states:

> *"The cost of accommodation for one passenger is $152.15 (2022 CAN$/night), which is an average of the going rate in every province according to CBRE Canada ($179) minus 15% (assumed corporate discount)."*

This assumption is fundamentally flawed. Hotel prices in Canada are not regulated, and their rates fluctuate significantly based on demand and location. While the reported average might hold across Canada, accommodations near airports are more expensive than the average price. Moreover, in exceptional circumstances such as severe weather events, demand for hotels surges, leading to corresponding price increases.

Thus, the real cost to airlines is not accurately reflected in the agency's analysis. A more precise assessment should consider actual hotel prices near airports during exceptional circumstances. WestJet's internal data suggests that the real cost of accommodating passengers is substantially higher than the agency's estimates.

Similarly, the presumption regarding the cost of taxis is flawed, further questioning the conclusion. The Regulatory Impact Analysis Statement states:

> *"The cost of a taxi for one passenger is used as a proxy for the overall cost of transportation to and from the airport when a flight disruption occurs. The cost for a taxi is $2.00/km plus a $3.75 base cost. The analysis assumes the average distance from airport to hotel is 2.6 km. This includes an assumed corporate discount of 15% of the original cost of $2.35/km plus a $4.41 base cost."*

In exceptional circumstances, hotels within 2.6 km of the airport are often sold out, requiring carriers to accommodate passengers at greater distances. Additionally, taxi rates are strictly regulated in Canada, varying by province, territory, or municipality. It is therefore unrealistic to

assume that carriers can obtain a corporate discount for taxis. In fact, WestJet does not receive any corporate discounts for taxi services.

Also, the *Regulatory Impact Analysis Statement* does not address the role of climate change in increasing the frequency of exceptional circumstances. As climate-related events become more common, the associated costs for carriers will continue to rise.

Furthermore, the analysis does not account for cost variations at international destinations served by flights to and from Canada. The price of food, hotels, and taxis differs significantly across jurisdictions, and the impact of currency fluctuations should be factored into the projections.

Moreover, the impact of rising airline fees on passenger demand is not addressed. A November 2023 study conducted by InterVISTAS estimated that an increase of $5.90 in return fares would result in approximately one million fewer passengers annually. This finding is particularly significant given that Canadians are highly cost-sensitive when booking air travel. A passenger survey conducted by the International Air Transport Association in October 2024 revealed that 96% of Canadian passengers strongly or somewhat agreed that affordability is a key concern when flying, 88% believed there were already too many taxes on air travel—the highest percentage among 15 comparator countries—and 73% preferred to pay the lowest possible price for their tickets.

Finally, no independent expert analysis or comprehensive economic modeling has been provided to substantiate the figures referenced in the *Regulatory Impact Analysis Statement*. Without a rigorous, data-driven assessment conducted by subject matter experts, the Agency's conclusions remain speculative and unsupported, rendering the cost-benefit analysis inaccurate.

Given that the assumptions underlying the *Regulatory Impact Analysis Statement* are flawed, the conclusions drawn from them are inherently unreliable. The methodology used to estimate the cost of accommodations and transportation for disrupted passengers does not accurately reflect the actual expenses incurred by airlines. As a result, the projected compliance costs outlined by the Agency are significantly underestimated.

WestJet's internal data indicates that the true financial burden of compliance will be substantially higher than the figures presented in the *Regulatory Impact Analysis Statement*. This discrepancy suggests that airlines will be forced to absorb costs far beyond the Agency's estimates, leading to increased operational expenses. Inevitably, carriers will need to adjust ticket pricing strategies to offset these additional costs, passing the financial impact on to consumers through higher fares.

If the Agency intends to maintain precise financial projections, it must incorporate defined caps on overnight accommodations at $152, meals at $17, and taxi fares at $8.95. However, the Proposed Amendments instead use the term "reasonable" without imposing fixed cost limitations.

The *Budget Implementation Act* requires the Agency to establish regulations on the minimum standards of treatment that carriers must provide to passengers, including those applicable when a regulatory exception applies. However, the Act does not require these minimum standards to be the same for exceptional and non-exceptional circumstances.

In light of these considerations, WestJet recommends that the Agency amend the language to clarify that, in exceptional circumstances, the only required minimum standard will be the provision of a means of communication.

"Despite subsection (3), if the delay, cancellation or denial of boarding that gives rise to the carrier's obligations under subsection (1) is the result of a circumstance referred to in subsection 18(1), only the obligation set out in paragraph (1)(b) applies, and only for a period of 72 hours from the time of the delay, cancellation, or denial of boarding."

SUBSECTION 13(1)—ALTERNATE TRAVEL ARRANGEMENTS

A. Proposed Regulatory Text by the Agency

"A carrier must, unless the passenger has requested a refund to which they are entitled under section 14, provide the applicable alternate travel arrangements referred to in subsection (2) or (3), as the case may be, free of charge and without delay, to any passenger of a flight operated by the carrier if

(a) the flight is or is likely to be delayed by three hours or more from the departure time that is indicated for the flight on the passenger's ticket and the passenger requests alternate travel arrangements;

(b) the flight is delayed and that delay has caused or is likely to cause the passenger to miss a connecting flight on the same itinerary;

(c) the flight has been cancelled; or

(d) the passenger has been denied boarding of the flight."

B. WestJet Comments and Recommendations

#1 Clarification Needed on Threshold for Carrier Obligations

The Proposed Amendment imposes an obligation on carriers to arrange alternate flights as soon as it is determined that a flight "is or is likely to be delayed" by three hours or more. Additionally, the requirement to act also applies when a passenger "is or is likely to miss" a connection.

The terms "likely to be delayed" and "likely to miss a connecting flight" introduce significant ambiguity, as carriers and passengers may interpret them differently and have varying thresholds. This lack of precision will lead to disputes and inconsistent application of the APPR, causing passenger confusion and unpredictable treatment across airlines. As a result, unfounded complaints are likely to increase, unnecessarily burdening both the Agency and carriers.

Moreover, the inherent subjectivity of whether some future event is "likely" invites retrospective scrutiny of well-founded airline decisions made in real-time during disruptions, potentially exposing carriers to administrative monetary penalties of up to $250,000 per offence.

WestJet recommends revising the language to use definitive terms such as "is" rather than "likely." This ensures that obligations arise only when a delay actually reaches or will reach the three-hour threshold, or when a connection is or will be missed.

In practice, when it is clear from the outset that a delay will exceed three hours, carriers already take proactive measures to arrange alternate travel. However, imposing an obligation based on

speculative likelihood creates unnecessary operational burdens, will lead to inconsistency, and significantly increases the risk of disputes.

> *"A carrier must, unless the passenger has requested a refund to which they are entitled under section 14, provide the applicable alternate travel arrangements referred to in subsection (2) or (3), as the case may be, free of charge and without delay, to any passenger of a flight operated by the carrier if*
>
> > *(a) the flight is ~~or is likely to be~~ delayed by three hours or more from the departure time that is indicated for the flight on the passenger's ticket and the passenger requests alternate travel arrangements;*
> >
> > *(b) the flight is delayed and that delay has caused ~~or is likely to cause~~ the passenger to miss a connecting flight on the same itinerary;*
> >
> > *(c) the flight has been cancelled; or*
> >
> > *(d) the passenger has been denied boarding of the flight."*

SUBSECTION 13(2)—LARGE CARRIER

A. Proposed Regulatory Text by the Agency

> *"In the case of a large carrier, the alternate travel arrangements consist of a confirmed reservation for*
>
> > *(a) the next available flight or series of connecting flights that*
> >
> > > *(i) is operated by the carrier or a carrier with which it has a commercial agreement,*
> > >
> > > *(ii) departs from the same airport as the affected flight,*
> > >
> > > *(iii) is scheduled to depart within nine hours of the departure time that is indicated for the affected flight on the passenger's ticket, and*
> > >
> > > *(iv) uses any reasonable route to arrive, as soon as feasible, at the next destination airport that is indicated on the passenger's ticket;*
> >
> > *(b) if there is no available flight that satisfies paragraph (a), the next available flight or series of connecting flights that*
> >
> > > *(i) is operated by any carrier,*
> > >
> > > *(ii) departs from the same airport as the affected flight,*
> > >
> > > *(iii) is scheduled to depart within 48 hours of the departure time that is indicated for the affected flight on the passenger's ticket, and*

(iv) uses any reasonable route to arrive, as soon as feasible, at the next destination airport that is indicated on the passenger's ticket; or

(c) if there is no available flight that satisfies paragraph (b), the next available flight or series of connecting flights that

(i) is operated by any carrier,

(ii) departs from the same airport as the affected flight or from any other airport located within a reasonable distance of that airport, and

(iii) uses any reasonable route to arrive, as soon as feasible, at the next destination airport that is indicated on the passenger's ticket."

B. WestJet Comments and Recommendations

#1 Ensuring Rebooking Flexibility to Passengers' Final Destination

The Proposed Amendments change the current APPR language from "to the destination that is indicated on the passenger's original ticket" to "to the next destination airport that is indicated on the passenger's ticket." This modification introduces ambiguity, particularly with itineraries involving connecting flights. This drafting suggests that carriers are only obligated to provide alternate travel arrangements to the next destination rather than the final destination, which may not be in the passengers' best interest and gives limited flexibility to the carrier to accommodate the passenger.

For example, if a passenger is flying from Ottawa to Toronto and then from Toronto to Vancouver, and their Ottawa-Toronto flight is cancelled, WestJet should have the flexibility to rebook the passenger on an alternative route via Calgary or a direct flight from Ottawa to Vancouver if it allows them to reach their final destination (Vancouver) sooner than rebooking them exclusively through Toronto.

The carrier's obligation should be to accommodate passengers to their final destination rather than just the next airport on their ticket. Restricting rebooking to the same connecting hub limits carriers' ability to offer better alternatives that may be more efficient and beneficial to passengers.

WestJet recommends revising the language to ensure passengers are rebooked to their final destination rather than just the next destination on their ticket, allowing for greater flexibility and improved service outcomes. Specifically, "next destination airport" should be replaced with "final destination." This revision should also be consistently applied throughout the Proposed Amendments, where applicable, including subsections 13(3), 13(4), 15(1), and 16(2).

"In the case of a large carrier, the alternate travel arrangements consist of a confirmed reservation for

(a) the next available flight or series of connecting flights that

(i) is operated by the carrier or a carrier with which it has a commercial agreement,

(ii) departs from the same airport as the affected flight,

(iii) is scheduled to depart within nine hours of the departure time that is indicated for the affected flight on the passenger's ticket, and

(iv) uses any reasonable route to arrive, as soon as feasible, at the final destination airport that is indicated on the passenger's ticket;

(b) if there is no available flight that satisfies paragraph (a), the next available flight or series of connecting flights that

(i) is operated by any carrier,

(ii) departs from the same airport as the affected flight,

(iii) is scheduled to depart within 48 hours of the departure time that is indicated for the affected flight on the passenger's ticket, and

(iv) uses any reasonable route to arrive, as soon as feasible, at the final destination airport that is indicated on the passenger's ticket; or

(c) if there is no available flight that satisfies paragraph (b), the next available flight or series of connecting flights that

(i) is operated by any carrier,

(ii) departs from the same airport as the affected flight or from any other airport located within a reasonable distance of that airport, and

(iii) uses any reasonable route to arrive, as soon as feasible, at the final destination airport that is indicated on the passenger's ticket."

#2 Extending the Rebooking Timeline from Nine Hours to 36 Hours

The Proposed Amendment significantly reduces the timeframe for carriers to rebook passengers on their own flights from 48 hours to nine hours in situations beyond the carrier's control. This change imposes significant operational and financial challenges on airlines and may lead to unintended negative consequences for passengers, regional communities, and market competition.

Under the current 48-hour rule, carriers have time to rebook most passengers on their own flights, minimizing disruptions and maintaining cost efficiency. However, reducing this window to nine hours would force airlines to secure alternative seats on other carriers much sooner, at higher costs. This is particularly problematic for routes with limited frequencies—47% of WestJet's routes cannot be accommodated within nine hours.

The proposed reduction would affect remote communities, where flight frequencies are lower. If airlines must rebook passengers within nine hours and their own flights are unavailable, they will

be forced to purchase seats on competing airlines. This will impose a significant financial burden on carriers. As a result, service to regional markets would likely be reduced, as carriers shift aircraft to high-frequency routes to mitigate financial risks. Communities reliant on air travel could face fewer options, impacting economic growth and mobility.

Beyond service reductions, the new rule could also negatively impact market competition. To reduce their risk carriers may consolidate operations on select routes to meet the nine-hour requirement, and fewer carriers may serve certain airports. This could lead to less competition and higher fares for consumers, as airports see increased frequency from fewer airlines rather than a diverse mix of carriers. This could also lead to reduced consumer choice, as passengers have fewer airline options for specific routes.

For example, consider a carrier that operates only one flight per day from Ottawa to Calgary. If this flight is cancelled, the carrier would be forced to purchase seats on competitors that operate multiple daily flights on this route. Over time, the financial pressure created by such scenarios may discourage the carrier from continuing service on this route, effectively ceding the market to larger competitors with higher frequency. This outcome reduces consumer options and market diversity.

Although the Proposed Amendments aim to enhance consumer rights, the unintended consequence of this amendment would be less competition, higher costs, and reduced access for passengers.

In the *Regulatory Impact Analysis Statement*, the Agency asserts:

> *"This analysis treats rebooking as a net zero cost. If being rebooked on the same air carrier, no additional cost is assumed by the air carrier. If an air carrier rebooks a passenger with another air carrier, the revenue received by the initial air carrier is passed on to the new air carrier, and thus it is considered as a transfer of funds."*

This assumption is woefully simplistic and does not account for the operational realities of rebooking. Rebooking is not a "net zero" cost for airlines, as it imposes significant administrative burdens, including costs associated with processing flight changes, reassigning passengers, and managing logistical complexities. These factors substantially increase carriers' administrative expenses.

Furthermore, the assertion that revenue simply transfers from one carrier to another overlooks key market dynamics. Not all carriers operate on the same scale, meaning some will disproportionately benefit while others face heightened financial strain. Additionally, this assumption ignores the premium costs associated with last-minute bookings, which can be significantly higher than standard fares. The financial pressure of routinely securing last-minute seats on competitors' flights could make it economically unfeasible for some airlines to maintain service on certain routes, particularly those with lower flight frequencies.

Finally, the analysis fails to consider that rebookings may involve non-Canadian carriers, leading to revenue outflows that could negatively impact the Canadian economy and domestic airlines. By forcing carriers to rebook passengers on any available flight this could divert business away from Canadian carriers.

WestJet maintains that the 48 hours rebooking window should remain unchanged. However, if the Agency insists on modifying this timeline, WestJet proposes adjusting the rebooking window

to 36 hours instead of 9 hours. This adjustment strikes a more reasonable balance between passenger protection and operational feasibility, allowing carriers to:

1. Prioritize rebooking on their own flights or through carriers with existing commercial agreements to minimize costs.

2. Maintain service to multiple communities without excessive financial risk.

3. Avoid lessening competition in the airline industry, ensuring affordable fares and consumer choice.

For all these reasons, WestJet proposes the following amendments:

> *"In the case of a large carrier, the alternate travel arrangements consist of a confirmed reservation for*
>
> > *(a) the next available flight or series of connecting flights that*
> >
> > > *(i) is operated by the carrier or a carrier with which it has a commercial agreement,*
> > >
> > > *(ii) departs from the same airport as the affected flight,*
> > >
> > > *(iii) is scheduled to depart within <u>36 hours</u> of the departure time that is indicated for the affected flight on the passenger's ticket, and*
> > >
> > > *(iv) uses any reasonable route to arrive, as soon as feasible, at the final destination airport that is indicated on the passenger's ticket;*
> >
> > *(b) if there is no available flight that satisfies paragraph (a), the next available flight or series of connecting flights that*
> >
> > > *(i) is operated by any carrier,*
> > >
> > > *(ii) departs from the same airport as the affected flight,*
> > >
> > > *(iii) is scheduled to depart within 48 hours of the departure time that is indicated for the affected flight on the passenger's ticket, and*
> > >
> > > *(iv) uses any reasonable route to arrive, as soon as feasible, at the final destination airport that is indicated on the passenger's ticket; or*
> >
> > *(c) if there is no available flight that satisfies paragraph (b), the next available flight or series of connecting flights that*
> >
> > > *(i) is operated by any carrier,*
> > >
> > > *(ii) departs from the same airport as the affected flight or from any other airport located within a reasonable distance of that airport, and*

(iii) uses any reasonable route to arrive, as soon as feasible, at the final destination airport that is indicated on the passenger's ticket."

SUBSECTION 14(2)—ELIGIBILITY

A. Proposed Regulatory Text by the Agency

"Subsection (1) applies in respect of a passenger

(a) whose flight is or is likely to be delayed by three hours or more from the departure time that is indicated for the flight on the passenger's ticket;

(b) whose flight is delayed and who, as a result of that delay, has missed or is likely to miss a connecting flight on the same itinerary;

(c) whose flight has been cancelled; or

(d) who has been denied boarding of a flight."

B. WestJet Comments and Recommendations

#1 Eliminating Subjective Standards for Refund Eligibility

The use of terms such as "likely to be delayed" and "likely to miss a connecting flight" introduces unnecessary ambiguity regarding passenger eligibility for refunds. The inherently subjective nature of determining whether a delay or missed connection is "likely" will lead to inconsistent application of refund policies, creating uncertainty for both passengers and carriers.

Moreover, the lack of clarity on which party serves as the arbiter of probability will result in disputes, increasing administrative burdens and potential litigation. Without a clear, objective standard, carriers will face significant unintended consequences. To ensure fairness and predictability, it is essential that refund eligibility be based on clear, measurable criteria rather than subjective likelihood assessments.

To address this concern, WestJet recommends revising the language to use only definitive terms such as "is" rather than "likely." This change ensures a clear and consistent approach to refund eligibility, reducing potential disputes and ensuring a fair and predictable system for both passengers and carriers.

"Subsection (1) applies in respect of a passenger

(a) whose flight is ~~or is likely to be~~ delayed by three hours or more from the departure time that is indicated for the flight on the passenger's ticket;

(b) whose flight is delayed and who, as a result of that delay, has missed ~~or is likely to miss~~ a connecting flight on the same itinerary;

(c) whose flight has been cancelled; or

(d) who has been denied boarding of a flight."

SUBSECTION 15(4)—EXPLANATION - EXCEPTIONAL CIRCUMSTANCES

A. Proposed Regulatory Text by the Agency

> *"If the carrier determines that compensation is not payable due to the existence of a circumstance referred to in section 18, the explanation referred to in section 2.1 must be accompanied by any documents, reports or other evidence that establish the existence of that circumstance."*

B. WestJet Comments and Recommendations

#1 Excessive Administrative Burden of the Proposed Evidentiary Requirement

The Proposed Amendment requires carriers to provide supporting documentation, reports, or other evidence when denying passenger compensation due to exceptional circumstances. This evidentiary burden would be required as part of the explanation given under Section 2.1 to justify the denial of compensation.

As mentioned above, WestJet strongly opposes this requirement due to the unprecedented administrative burden it would impose on carriers. This obligation does not align with global aviation standards and would be impractical to implement on a large scale.

The proposed requirements would see the investigative and evidentiary requirements for airlines raised to levels comparable with APPR case investigations undertaken by the Agency. Using the Agency's reported throughput as a benchmark, WestJet would require over 1,000 additional staff at an annual cost of tens of millions of dollars in 2025, with costs expected to increase each year thereafter just to meet these specific requirements. This severe and costly administrative burden would be passed through to consumers through ticket prices.

In many cases, the required documentation may be irrelevant to passenger understanding or incomprehensible for a person without the knowledge and background of an airline expert, such as an aircraft maintenance engineer. For example, if a specific aircraft component requires replacement, the related technical documentation would not provide meaningful insight into how it led to the disruption. Also, certain third-party communications, such as air traffic control instructions, are delivered verbally between pilots and controllers, making them inherently difficult to document. In addition, some operational details may involve security-sensitive materials or intellectual property of third parties, preventing airlines from disclosing them.

Given these significant concerns, WestJet strongly recommends the complete removal of Subsection 15(4). This provision will not help passengers, is unworkable in practice, imposes an undue financial and administrative burden on carriers, and is inconsistent with global aviation regulatory frameworks. Removing this requirement would ensure that passenger protections remain balanced with industry feasibility, preventing unintended negative consequences for both carriers and consumers.

SUBSECTION 16(6)—EXPLANATION EXCEPTIONAL CIRCUMSTANCES

A. Proposed Regulatory Text by the Agency

> *"If the carrier determines that compensation is not payable because of the existence of a circumstance referred to in section 18, the carrier must provide to the passenger, within 48 hours after the denial of boarding, a clear and detailed explanation as to why compensation is not payable that is accompanied by any documents, reports or other evidence that establish the existence of that circumstance."*

B. WestJet Comments and Recommendations

#1 Excessive Administrative Burden of the Proposed Evidentiary Requirement

The Proposed Amendment mandates that when a carrier determines compensation is not payable due to circumstances outlined in Section 18, it must provide the passenger with a clear and detailed explanation within 48 hours of the denial of boarding. This explanation must be accompanied by supporting documents, reports, or other evidence substantiating the carrier's decision.

WestJet reiterates its concerns expressed regarding Section 2.1, Subsection 2.2(2) and Subsection 15(4) of this submission. The requirement to provide extensive documentation within a 48-hour timeframe imposes an unreasonable administrative burden on carriers and is unprecedented in the global aviation industry.

Compliance with this requirement would necessitate significant additional staffing, substantially increasing operational costs. These costs would ultimately be passed on to consumers, resulting in higher ticket prices.

Denial of boarding claims fall within the scope of Subsection 85.01(2) of the Act, which allows carriers 30 days to review and respond to compensation requests. Imposing a separate 48-hour deadline for providing an explanation under Subsection 16(6) is both operationally unworkable and legally contradictory. The time required to investigate, gather, and verify supporting evidence varies depending on the complexity of the circumstances, making strict compliance practically impossible.

WestJet strongly recommends the complete removal of Subsection 16(6). Retaining Subsection 16(6) would create regulatory inconsistencies, disrupt airline operations, and increase costs for passengers—all without providing meaningful benefits to consumers.

SUBPARAGRAPH 18(a)(i)—EXCEPTIONAL CIRCUMSTANCES

A. Proposed Regulatory Text by the Agency

> *"A carrier is not required to provide compensation under section 15 or 16 if*
>
> *(a) the delay, cancellation or denial of boarding was*
>
> *(i) directly caused by*

(A) war or political instability,

(B) one of the following situations, if it is incompatible with the safe operation of the flight:

(I) a security threat,

(II) an act of sabotage or other unlawful act,

(III) a natural or environmental disaster, or

(IV) disruptive passenger behaviour,

(C) meteorological conditions that are incompatible with the safe operation of the flight or that result in capacity restrictions at the airport of departure or of arrival,

(D) 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 an act or omission of the carrier or of any person for whom they are responsible,

(E) 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,

(F) 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,

(G) an unforeseeable technical defect in, or other unforeseeable technical problem with, the aircraft if

(I) the required scheduled maintenance of the aircraft is up-to-date,

(II) the defect or problem was discovered after the completion of the most recent required scheduled maintenance,

(III) the pilot-in-command 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, and

(IV) 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,

(H) a medical emergency discovered at short notice before flight departure or necessitating the interruption or deviation of the flight,

(I) air traffic management restrictions or closure of an airspace,

(J) an unscheduled partial or full closure of an airport,

(K) a NOTAM, as defined by subsection 101.01(1) of the Canadian Aviation Regulations,

(L) 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, or

(M) an order or instruction from an official of a state or law enforcement agency or from a person responsible for airport security, or"

B. WestJet Comments and Recommendations

#1 Explicitly Recognizing Safety-Related Decisions as an Exception

The *Canada Transportation Act* and the *Budget Implementation Act* do not use the term "exceptional circumstances." Instead, the Acts provide that exceptions must be specified in the regulations. If Parliament had intended to use the term "exceptional circumstances" in the Budget Implementation Act, it would have done so explicitly, as it has in other federal statutes.

Therefore circumstances "within the carrier's control but required for safety" should be included in the list of exceptions. The global aviation industry prioritizes safety above all else. No pilot or airline employee should ever be placed in a position where a decision is influenced by commercial interests over safety. Ensuring safety remains the highest priority is fundamental to the industry.

For example, if a pilot determines that a fellow crew member is unfit to safely operate an aircraft, their decision to cancel a flight should never be influenced by commercial considerations. The well-being of passengers, crew, and the aircraft itself must always come first. Safety must remain the paramount concern, regardless of the nature or source of the risk.

In light of this, WestJet suggests that the Agency modify Subparagraph 18(a)(i) to explicitly recognize safety-related decisions as an exception.

"A carrier is not required to provide compensation under section 15 or 16 if

(a) the delay, cancellation or denial of boarding was

(i) directly caused by

(A) war or political instability,

(B) one of the following situations, if it is incompatible with the safe operation of the flight:

(I) a security threat,

(II) an act of sabotage or other unlawful act,

(III) a natural or environmental disaster, or

(IV) disruptive passenger behaviour,

(C) meteorological conditions that are incompatible with the safe operation of the flight or that result in capacity restrictions at the airport of departure or of arrival,

(D) 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 an act or omission of the carrier or of any person for whom they are responsible,

(E) 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,

(F) 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,

(G) an unforeseeable technical defect in, or other unforeseeable technical problem with, the aircraft if

(I) the required scheduled maintenance of the aircraft is up-to-date,

(II) the defect or problem was discovered after the completion of the most recent required scheduled maintenance,

(III) the pilot-in-command 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, and

(IV) 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,

(H) a medical emergency discovered at short notice before flight departure or necessitating the interruption or deviation of the flight,

(I) air traffic management restrictions or closure of an airspace,

(J) an unscheduled partial or full closure of an airport,

(K) a NOTAM, as defined by subsection 101.01(1) of the Canadian Aviation Regulations,

(L) 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, ~~or~~

(M) an order or instruction from an official of a state or law enforcement agency or from a person responsible for airport security, or

(N) situations within the carrier's control but required for safety, or

CLAUSE 18(a)(i)(C)—EXCEPTIONAL CIRCUMSTANCES, WEATHER

A. Proposed Regulatory Text by the Agency

"A carrier is not required to provide compensation under section 15 or 16 if

(a) the delay, cancellation or denial of boarding was

(i) directly caused by

(C) meteorological conditions that are incompatible with the safe operation of the flight or that result in capacity restrictions at the airport of departure or of arrival,"

B. WestJet Comments and Recommendations

#1 Ensuring Clarity and Operational Flexibility for Meteorological Conditions

The Proposed Amendment introduces limitations that create ambiguity and inconsistencies in its application.

Currently, the regulation broadly categorizes "meteorological conditions" without restriction. However, the Proposed Amendment narrows this definition to "meteorological conditions that are incompatible with the safe operation of the flight or that result in capacity restrictions at the airport of departure or arrival." This revised wording may be too restrictive to account for the full range of operational realities.

The phrase “incompatible with the safe operation of the flight” introduces a standard, which could lead to inconsistent interpretations among operators, regulators, and other stakeholders. Determining what qualifies as “incompatible” with the safe operation of the flight may vary based on factors such as operational policies, aircraft capabilities, and pilot discretion.

For example, snowfall may be considered “compatible” with safe operations if adequate de-icing, anti-icing, and runway clearing procedures are in place. Nevertheless, snowfall can cause operational disruptions, including airport congestion, reduced taxi speeds, and extended de-icing or anti-icing times.

Additionally, the term “capacity restrictions” in the Proposed Amendment lacks clarity. It is unclear whether this refers exclusively to airport-imposed limitations, such as runway clearing, or whether it encompasses broader operational constraints imposed by third parties, such as ground handling limitations, fuel availability, de-icing operations or air traffic control restrictions.

To avoid ambiguity and ensure operational flexibility, WestJet recommends retaining the existing language rather than adopting the more restrictive wording in the Proposed Amendment. WestJet proposes the following amendments:

“A carrier is not required to provide compensation under section 15 or 16 if

(a) the delay, cancellation or denial of boarding was

(i) directly caused by

(C) meteorological conditions ~~that are incompatible with the safe operation of the flight or that result in capacity restrictions at the airport of departure or of arrival~~”

CLAUSE 18(a)(i)(E)—EXCEPTIONAL CIRCUMSTANCES, COLLISION

A. Proposed Regulatory Text by the Agency

“A carrier is not required to provide compensation under section 15 or 16 if

(a) the delay, cancellation or denial of boarding was

(i) directly caused by

(E) 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,”

B. WestJet Comments and Recommendations

#1 Maintaining Comprehensive Coverage for Wildlife-Related Collisions

The Proposed Amendment revises the category from “collision with wildlife” to “collision with a bird,” unnecessarily narrowing its scope. While bird strikes are a common aviation hazard, they are not the only type of wildlife-related collision that can impact aircraft operations. Other animals, such as deer, coyotes, or other ground-based wildlife, also pose collision risks, particularly during

taxiing, takeoff, and landing. The removal of broader “wildlife” terminology may lead to gaps in coverage for such situations.

WestJet recommends retaining the broader term “wildlife” rather than limiting the category to “bird” to ensure comprehensive coverage of all potential wildlife-related incidents.

“A carrier is not required to provide compensation under section 15 or 16 if

(a) the delay, cancellation or denial of boarding was

(i) directly caused by

(E) a collision with <u>wildlife</u> or other object during flight that could affect flight safety and that requires immediate assessment and possible repair to the aircraft,”

#2 Clarifying Flight Phase Definitions

Additionally, the Proposed Amendment introduces a new limitation by specifying that the collision must occur “during flight” but fails to provide a clear definition of “flight.” It is unclear whether this term encompasses all phases of aircraft movement, including taxiing and ground operations, or if it applies strictly to airborne incidents. Under the current language, collisions that occur while the aircraft is taxiing, or on its takeoff roll are included. However, the proposed change raises uncertainty about whether these scenarios would still be covered. Given that wildlife strikes frequently occur on or near runways and taxiways, this ambiguity could create operational and regulatory inconsistencies. WestJet recommends removing reference to term “during flight”, as follows:

“A carrier is not required to provide compensation under section 15 or 16 if

(a) the delay, cancellation or denial of boarding was

(i) directly caused by

(E) a collision with wildlife or other object ~~during flight~~ that could affect flight safety and that requires immediate assessment and possible repair to the aircraft,”

<u>CLAUSE 18(a)(i)(F)—EXCEPTIONAL CIRCUMSTANCES, MANUFACTURING DEFECTS</u>

A. Proposed Regulatory Text by the Agency

“A carrier is not required to provide compensation under section 15 or 16 if

(a) the delay, cancellation or denial of boarding was

(i) directly caused by

(F) 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,"

B. WestJet Comments and Recommendations

#1 Overly Restrictive Definition of Safety Impact

The Proposed Amendment changes the current APPR language from "reduce the safety of passengers" to "could affect flight safety and that requires immediate assessment or repair." This revision introduces a more stringent standard, limiting the category to situations that present an immediate safety concern. By requiring that an issue both "affect flight safety" and necessitate immediate action, the new wording may exclude operational concerns that, while not requiring instant repair, still have safety implications. This could lead to gaps in safety-related decision-making.

To ensure clarity and comprehensive safety oversight, WestJet recommends removing the phrases "and that requires immediate assessment or repair"

"A carrier is not required to provide compensation under section 15 or 16 if

(a) the delay, cancellation or denial of boarding was

(i) directly caused by

(F) 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~~,"

#2 Ambiguity in the Definition of "Hidden" Defects

Additionally, the use of the term "hidden" is problematic, as the Proposed Amendment fails to clearly define what qualifies as a "hidden" issue, leading to ambiguity in its interpretation. It is unclear whether this term applies solely to non-visible structural damage or whether it also includes latent defects that are not immediately detectable but become apparent over time or under specific conditions.

For example, the gradual degradation of critical components presents a gray area under the new language. Consider a scenario where an engine manufacturer issues an advisory indicating that a particular engine model may be prone to premature fan blade degradation. During standard inspections, no visible defects are detected. However, just before a flight, the pilot notices signs of fan blade fatigue. In such cases, the lack of clarity surrounding the definition of "hidden" could lead to uncertainty about whether this issue falls within the scope of the provision.

To prevent misinterpretation and ensure a more objective standard, WestJet recommends removing the word "hidden."

"A carrier is not required to provide compensation under section 15 or 16 if

(a) the delay, cancellation or denial of boarding was

(i) directly caused by

(F) ~~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.

#3 Inadequate Scope of "Manufacturer of the Aircraft"

Moreover, the reference to "the manufacturer of the aircraft" is problematic. Aircraft are composed of multiple components manufactured by different entities, and not all defects originate from the aircraft manufacturer itself. Critical systems such as engines, brakes, wheels, avionics, and seating are often produced by third-party suppliers rather than the aircraft manufacturer. As a result, the wording of the Proposed Amendment fails to account for defects identified by component manufacturers, potentially limiting the scope of covered manufacturing defects.

Further to this point, airlines often operate aircraft models in large fleets alongside other carriers worldwide. When a defect is identified by multiple global operators or through manufacturer advisories, these reports can provide critical safety insights independent of the aircraft manufacturer's findings and competent authority findings. The current wording fails to account for these broader sources of defect identification.

To reflect the complex supply chain of modern aircraft and ensure a comprehensive safety approach, WestJet recommends removing the reference to "the manufacturer of the aircraft", allowing for defects identified by any relevant stakeholder.

"A carrier is not required to provide compensation under section 15 or 16 if

(a) the delay, cancellation or denial of boarding was

(i) directly caused by

(F) a manufacturing defect in <u>or with</u> an aircraft that was identified <u>and</u> ~~by the manufacturer of the aircraft concerned, or by a competent authority,~~ that could affect flight safety.

<u>CLAUSE 18(a)(i)(G)—EXCEPTIONAL CIRCUMSTANCES, TECHNICAL DEFECT</u>

A. Proposed Regulatory Text by the Agency

"A carrier is not required to provide compensation under section 15 or 16 if

(a) the delay, cancellation or denial of boarding was

(i) directly caused by

(G) an unforeseeable technical defect in, or other unforeseeable technical problem with, the aircraft if

(I) the required scheduled maintenance of the aircraft is up-to-date,

(II) the defect or problem was discovered after the completion of the most recent required scheduled maintenance,

(III) the pilot-in-command 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, and

(IV) 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,"

B. WestJet Comments and Recommendations

#1 Lack of Clarity in "Unforeseeable" Standard

The use of the term "unforeseeable" is problematic, as the Proposed Amendment fails to define what qualifies as an "unforeseeable" technical defect, creating ambiguity in its interpretation. While some defects arise suddenly and without warning, others—such as component fatigue, avionics malfunctions, or software anomalies—may develop over time due to gradual wear or systemic design issues. Without a clear definition, the foreseeability standard will lead to disputes over whether a particular technical issue qualifies for this exception, creating regulatory uncertainty for carriers.

For example, consider a scenario where an aircraft experiences engine blade fatigue, requiring immediate grounding. While this issue may not have been detectable during the most recent scheduled maintenance, regulators or passengers could argue that the failure was not entirely unforeseeable, given known industry concerns regarding engine blade fatigue. The absence of a clear foreseeability standard could therefore result in inconsistent interpretations and unnecessary challenges for carriers, potentially leading to unfair liability exposure.

To ensure clarity and operational feasibility, WestJet recommends removing the term "unforeseeable" to avoid inconsistent interpretations of whether a defect falls under this exception.

"A carrier is not required to provide compensation under section 15 or 16 if

(a) the delay, cancellation or denial of boarding was

(i) directly caused by

(G) a~~n unforeseeable~~ technical defect in, or other ~~unforeseeable~~ technical problem with, the aircraft if

(I) the required scheduled maintenance of the aircraft is up-to-date,

(II) the defect or problem was discovered after the completion of the most recent required scheduled maintenance,

(III) the pilot-in-command 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, and

(IV) 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,"

#2 Overly Restrictive Timing Requirement for Defect Discovery

Furthermore, the requirement that a defect must be discovered exclusively after the most recent scheduled maintenance is overly restrictive. Many technical defects develop progressively rather than being immediately identifiable during a maintenance inspection. Restricting the exception to only post-maintenance discoveries fails to account for gradual or intermittent technical issues that may not manifest until a specific threshold is reached.

There are various types of technical defects or issues which may occur on a Boeing 737 that, while not immediately rendering the aircraft unairworthy, could worsen over time and ultimately lead to an airworthiness concern. For example, an increase in oil consumption, which is documented and within manufacturer limits, may initially seem non-critical and could remain non-critical. However, if the oil consumption continues to rise, it could indicate a developing internal engine issue that, if undetected or unresolved, could lead to power loss or engine failure. The strict requirement that a defect must only be recognized after a scheduled maintenance check fails to accommodate such progressive technical issues, which may only become apparent over multiple operational cycles.

WestJet recommends removing the requirement that the defect or problem be discovered only after the completion of the most recent scheduled maintenance, as this overlooks gradual defects that develop over time.

"A carrier is not required to provide compensation under section 15 or 16 if

(a) the delay, cancellation or denial of boarding was

(i) directly caused by

(G) a technical defect in, or other technical problem with, the aircraft if

(I) the required scheduled maintenance of the aircraft is up-to-date,

~~*(II) the defect or problem was discovered after the completion of the most recent required scheduled maintenance,*~~

(III) the pilot-in-command 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, and

(IV) 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,"

#3 Limiting Authority to Pilot-in-Command is Inaccurate

The Proposed Amendment states that the pilot-in-command must determine whether the defect affects airworthiness. This is too restrictive and does not reflect the full scope of airline operational decision-making. While pilots play a critical role, they are not the sole arbiters of such determinations. Certified aircraft maintenance engineers and other technical personnel also assess and determine airworthiness concerns. The Proposed Amendment should reflect this operational reality.

WestJet recommends broadening the language to reflect the full scope of expertise involved in such determinations by replacing "pilot-in-command" with a more inclusive term.

"A carrier is not required to provide compensation under section 15 or 16 if

(a) the delay, cancellation or denial of boarding was

(i) directly caused by

(G) a technical defect in, or other technical problem with, the aircraft if

(I) the required scheduled maintenance of the aircraft is up-to-date,

(III) <u>an authorized person by the airline to make such determinations</u> 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, and

(IV) 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,"

<u>CLAUSE 18(a)(i)(I)—EXCEPTIONAL CIRCUMSTANCES, AIR TRAFFIC</u>

A. Proposed Regulatory Text by the Agency

"A carrier is not required to provide compensation under section 15 or 16 if

(a) the delay, cancellation or denial of boarding was

(i) directly caused by

(I) air traffic management restrictions or closure of an airspace,"

B. WestJet Comments and Recommendations

#1 Adding Air Traffic Instructions and Keeping Management Restrictions

The proposed amendment replaces the term "air traffic instructions" with "air traffic management." However, the scope of "air traffic management" is unclear. It is uncertain whether this term encompasses air traffic instructions issued to pilots or is limited to broader administrative matters, such as staffing or other internal management functions of air traffic authorities.

To ensure clarity and prevent misinterpretation, WestJet recommends retaining the original language, explicitly including "air traffic instructions." Additionally, we believe that "air traffic management restrictions" should also be preserved, as this term covers situations such as air traffic controller staffing shortages.

"A carrier is not required to provide compensation under section 15 or 16 if

(a) the delay, cancellation or denial of boarding was

(i) directly caused by

(I) air traffic instructions, air traffic management restrictions or closure of an airspace,"

CLAUSE 18(a)(i)(J)—EXCEPTIONAL CIRCUMSTANCES, AIRPORT

A. Proposed Regulatory Text by the Agency

"A carrier is not required to provide compensation under section 15 or 16 if

(a) the delay, cancellation or denial of boarding was

(i) directly caused by

(J) an unscheduled partial or full closure of an airport,"

B. WestJet Comments and Recommendations

#1 Restore Broad "Airport Operation Issues" Exception

The Proposed Amendment restricts this exception to cases of "unscheduled partial or full closures of an airport," replacing the broader "airport operation issues" found in the current version. This narrowing of scope is problematic, as it excludes many operational disruptions that, while not resulting in a full or partial closure, can still significantly impact airline operations and cause delays or cancellations beyond a carrier's control.

For example, a software malfunction in an airport's IT infrastructure could affect critical operational systems, such as the public announcement system, baggage handling, or check-in kiosks, causing significant delays for flights for which a carrier should not be responsible.

To ensure comprehensive coverage of all airport-related operational disruptions, WestJet recommends restoring the broader language of "airport operation issues" rather than limiting the exception to "unscheduled partial or full closures", as follows:

> *"A carrier is not required to provide compensation under section 15 or 16 if*
>
> *(a) the delay, cancellation or denial of boarding was*
>
> *(i) directly caused by*
>
> *(J) airport operation issues"*

PARAGRAPH 18(b)—REASONABLE MEASURES TEST

A. Proposed Regulatory Text by the Agency

> *A carrier is not required to provide compensation under section 15 or 16 if*
>
> *(b) the delay, cancellation or denial of boarding could not have been avoided even if all reasonable measures had been taken by the carrier.*

B. WestJet Comments and Recommendations

#1 Retain One-Step Test for Exceptional Circumstances

The Proposed Amendment introduces a fundamental shift from the current APPR. Under the existing framework, a carrier seeking to invoke an exceptional circumstance under Subsection 10(1) of the APPR only needs to demonstrate that the situation falls within one of the listed categories. In contrast, the proposed amendment imposes an additional requirement: the carrier must also prove that it took all reasonable measures to avoid or mitigate the resulting delay or disruption.

For example, under the current APPR, if a flight is delayed due to a passenger medical emergency on board, the carrier's sole obligation is to establish the existence of the medical emergency. However, under the proposed amendment, this would no longer be sufficient. The carrier would also have to prove that it took all reasonable measures to avoid the delay caused by the emergency.

The determination of what constitutes "reasonable measures" is based on an objective standard under Canadian law, which will require judicial interpretation over time. Courts will need to assess various factors, leading to the development of case law to clarify what actions a carrier must take.

For instance, if a passenger exhibited signs of illness during boarding, should the airline have refused boarding to prevent a potential in-flight medical emergency and the resulting delay? Alternatively, if a medical emergency occurs mid-flight, should the captain continue the planned route rather than re-routing, assuming the condition is not severe enough to warrant an

unscheduled landing? These are complex questions that will ultimately be resolved through case law, shaping the scope of what constitutes “all reasonable measures.”

In practical terms, this new standard is likely to result in a significant increase in litigation, as both passengers and carriers dispute whether adequate measures were taken in a given situation. The increased legal uncertainty and volume of disputes will further strain the complaint resolution system, leading to delays in processing claims both at the carrier level and within the Agency and judicial courts.

Notably, this shift contrasts with the approach taken in the recent Supreme Court of Canada decision in International *Air Transport Association v. Canada (Transportation Agency)*, 2024 SCC 30. Writing for a unanimous court, Justice Rowe clarified that, unlike the Montreal Convention, the APPR do not provide carriers with a due diligence defense to avoid liability:

> *“90 […] Unlike the Montreal Convention, the Regulations do not enable a carrier to avoid having to pay compensation otherwise due to a passenger by invoking a due diligence defence or pointing to contributory negligence…”*
>
> *“19 […The Montreal Convention] also enables carriers to avoid liability by showing that they “took all measures that could reasonably be required to avoid the damage”, suggesting that the Montreal Convention envisages defences related to due diligence akin to those that can be invoked in a court of law […]”*

By introducing an “all reasonable measures” test, the proposed amendment moves the APPR to a due diligence-based regime, requiring carriers to demonstrate efforts to avoid disruptions. This transformation creates new legal uncertainties, as it effectively mandates courts and regulators to determine, on a case-by-case basis, whether a carrier’s actions were sufficient under the circumstances.

This shift makes the proposed amendment more analogous to an “action for damages” within the exclusivity principle of Article 29 of the Montreal Convention. Article 29 establishes that any action for damages related to air transportation must conform to the liability limits and conditions set out in the Montreal Convention. The proposed amendment mirrors this approach where carriers must establish that they exercised due diligence to avoid liability. In doing so, the new test blurs the line between a regulatory compensation scheme and a traditional damages-based liability framework, making compensation disputes more akin to tort-based litigation rather than a streamlined regulatory process.

Given the potential legal and operational challenges posed by the proposed amendment, WestJet recommends a complete removal of Paragraph 18(b). WestJet’s position is that the test for exceptional circumstances should remain a one-step test, as it currently exists under the APPR. Requiring carriers to demonstrate “all reasonable measures” creates unnecessary litigation risks, administrative burdens, and unpredictability in the compensation system.

> *A carrier is not required to provide compensation under section 15 or 16 if*
>
> > ~~*(b) the delay, cancellation or denial of boarding could not have been avoided even if all reasonable measures had been taken by the carrier.*~~

SECTION 19—TRAVEL ADVISORY

A. Proposed Regulatory Text by the Agency

> *"If, after a reservation is made, the Government of Canada issues or upgrades a travel advisory to recommend avoiding all travel, or all non-essential travel, to a country that is a passenger's destination or through which they have a connecting flight, the carrier that issued the ticket must, on request of the passenger, refund the ticket, without charge or penalty, if the passenger cancels the reservation before the check-in period for the first flight of their itinerary begins."*

B. WestJet Comments and Recommendations

#1 Remove Refund Obligation Until Historical Advisory Data Is Accessible

The Proposed Amendment requires carriers to issue refunds if, after a reservation is made, the Government of Canada issues or upgrades a travel advisory recommending against all travel or non-essential travel to a passenger's destination or transit country. While this provision aims to protect passengers, it presents significant administrative challenges for carriers due to the lack of accessible historical data on government-issued travel advisories.

The Government of Canada's travel advisory website does not maintain publicly available historical records indicating when an advisory was first issued or removed. Instead, the website only displays the date of the most recent update, which does not necessarily reflect when the advisory was originally put in place. As a result, carriers have no reliable way to verify whether the travel advisory was issued before or after a passenger made their reservation.

This lack of historical data creates an operational gap that makes it impossible for carriers to consistently and fairly administer refunds under this provision. Without a verifiable record of when the advisory came into effect or was lifted, disputes may arise between passengers and carriers over eligibility for a refund, leading to administrative inefficiencies and potential legal challenges.

Given this impracticality, we recommend that this obligation be removed entirely until the Government of Canada implements a proper system that provides carriers with access to historical advisory data.

#2 Alternatively, Impose a Time Limit on When Refunds Can Be Requested

The current proposal allows passengers to cancel any time before check-in for the first flight, which can be as late as 24 hours before departure. This could expose carriers to significant last-minute cancellations and financial losses. To mitigate this risk, WestJet recommends a seven-day deadline for passengers to request a refund following the issuance or upgrade of a travel advisory. This window would help balance passenger protection with the operational realities faced by carriers, allowing carriers an opportunity to remarket seats if a passenger chooses to cancel.

> *"If, after a reservation is made, the Government of Canada issues or upgrades a travel advisory to recommend avoiding all travel, or all non-essential travel, to a country that is a passenger's destination or through which they have a connecting flight, the carrier that issued the ticket must, on request of the passenger, refund the ticket, without charge or penalty, if*

(1) the passenger cancels the reservation within seven days of the date on which the travel advisory is issued or upgraded; and

(2) the passenger cancels before the check-in period for the first flight of their itinerary begins."

By limiting the refund request period to seven days from issuance or upgrade of the advisory, carriers would be better positioned to mitigate cancellations while still accommodating passengers who wish to avoid traveling to higher-risk destinations. Should the Government of Canada implement a reliable historical advisory data system, the above provision can be revisited to provide additional flexibility if appropriate.