

ATAC Response on CTA Consultation Paper: Development of New Airline Refund Requirements

The APPR regulations were published in Canada Gazette 2 on May 29, 2019 for implementation as early as July 15 for certain elements of the regulations and December for all others. This extremely short implementation deadline imposed on industry was contrary to the norm where 1 or 2 years are granted for stakeholders to invest in the proper preparations for compliance of the new regulations. This delay also allows the regulator and industry stakeholders to iron out some of the problematic elements in the practical application of the new regulations.

Unfortunately, instead of applying a widely accepted practice, the CTA fast tracked the implementation of the new regulations. One could easily conclude that the CTA yielded to political pressure imposed due to the election scheduled for the fall of 2019.

Consequently, there are a number of issues that have commercial and/or safety related concerns in the APPR that require fine tuning and realistic implementation timelines. ATAC and other stakeholders have repeatedly tried to get the regulator to acknowledge the need for modification and clarification.

The CTA has now entered a consultation phase to “fill the gap” on the regulations. This is not a response to industry’s request for the review of certain irritants in the regulation but could lead to making these regulations even less practical and more difficult and costly for industry to manage. Unfortunately, none of industry’s concerns are included in the CTA consultation.

Also, the CTA is conducting this consultation during the COVID-19 Pandemic, a time when stakeholders are working with drastically fewer resources available to devote the time necessary to respond to this request for comments.

Finally, the CTA needs to clearly distinguish between a normal socio-economic environment and one severely hampered by a national or world pandemic. In special circumstances such as the COVID-19 Pandemic where the government severely restricts travel, great latitude should be allowed to airlines in defining acceptable delays of service and refund deadlines. Government strategies to stop the spread of the COVID-19 and its variants seriously impede the ability of airlines to provide the services to the traveller under the terms stated in their tariffs.

The second scenario should involve air travel without pandemic imposed restrictions on the air industry. In this business model airlines provide several options for the travelling public to purchase airline tickets at various price points. This model provides the traveller with the option of choosing the price of ticket which best meets his/her travel budget. However, under this business model the airline can determine which price level of ticket is entitled to additional services and full refunds. Therefore, the lower price tickets will have limited additional services and will have a no refund stipulation in the bill of the sale. In order for the airline to offer this selection of ticket price points, a policy of full refunds at all ticket levels is not sustainable for the airline to remain in business and could result in only one higher ticket price being offered with the refund option.

Although this consultation focuses on fixing gaps that came to light during the pandemic, there are unfortunately a number of public safety and security constraints that could have a similar impact on domestic, transborder and international travel.

The intention of the CTA could easily be interpreted as an attempt to apply extraordinary circumstances as currently created by the pandemic to a non-pandemic context. Logically, regulations developed for a normal commercial operational environment should be set aside when a national crisis is declared and until it is over, and the industry has recovered. As it is very unlikely that national or international crises such as pandemics follow the same pattern, it would be illogical to attempt to develop a set of regulations that would apply in circumstances that would vary greatly in scope, impact, and consequences.

Furthermore, confusion about travel restrictions must be avoided. Travel abroad for Canadians has not been forbidden during the COVID-19 Pandemic and the recent freeze by Canadian carriers on service to sun destinations has been voluntary. Unfortunately, this civic minded cooperation inevitably leads to vulnerability and even liability for carriers towards passengers requiring reparation. Unless the Government takes these important realities fully into context, the Government may as well simply ban international and transborder travel rather than create a legal maze and the resultant penalties for passengers and carriers. Of course, we don't recommend this drastic action but wish to make it clear that the current mixed messaging is causing a great deal of unwarranted confusion and stress amongst passengers and carriers.

Please find below ATAC's response to your questions.

Question 1

The entitlement to a refund will apply if the airline cannot complete the passenger's itinerary within a reasonable time. In the context of an event outside of an airline's control - such as a border closure, security incident, or volcanic eruption - what should be considered a "reasonable time" for completing a passenger's itinerary?

ATAC Comment:

The notion of a "reasonable time" should be determined by the frequency of service on any specific route. The less frequent that flights are available on a route, the longer a "reasonable time" should be.

Flights to small or remote communities of Canada are scheduled at longer intervals in response to a smaller demand. The smaller the community, the less frequent the flights and in addition, the frequency may vary significantly from season to season. Canada's North and remote regions in general are where flights vary considerably depending on the season.

If a carrier only flies once a week to a region, be it in Canada or abroad, as that is what demand can support, the carrier should not be obligated to add unscheduled flights unless public safety or security requires it.

The carrier should not be held accountable when passengers are denied boarding because earlier essential provisions supply aircraft have been grounded for weather or mechanical reasons and vital supplies have not reached isolated communities.

Question 2

The entitlement to a refund could potentially apply not just in the context of a flight cancellation, but also a "lengthy delay." What should be considered a "lengthy delay"?

ATAC Comment:

Refunds should not be allotted on the basis of a lengthy delay created by circumstances beyond the carrier's control. Bear in mind that the passenger still completed the travel that he or she paid for. The carrier should definitely not be obligated to fully refund a passenger when the service contract was honored, albeit with delay, when such delay was outside the control of the carrier.

The context is very different in smaller, northern or remote communities. Availability of flight and cabin crews and aircraft should be factored in the determination of what is considered a "lengthy delay". Air service in remote communities is usually offered by regional carriers who don't readily have other aircraft available to replace an aircraft that is either delayed or unfit to fly. Due to their overall size and available financial resources, regional carriers can't be expected to have aircraft on stand-by in case of delays or mechanical issues on one of the carrier's routes. This is not a sustainable business model.

Also, the absence of partner airlines in remote regions eliminates the option available in larger centers where airlines can rely on the availability of another airline to help when service is unexpectedly interrupted.

A delay longer than a few hours usually translates into a flight cancellation, especially if no alternatives are available.

Unreasonable compensation obligations for delayed flights might lead to more outright flight cancellations as these would be easier to manage for both the carrier and the passenger.

Question 3

What should a refund cover? For example:

- *The unused portion of the passenger's ticket;*

ATAC Comment:

Only the unused portion of a ticket should be reimbursed. The very notion of reimbursement of the cost of already completed services, i.e. the completed portion or leg of a trip, can only lead to significant fare increases. The same was said repeatedly during the APPR consultations about compensation levels set in excess of the price of the unused portion of a ticket. Such reimbursement and compensation policies inevitably lead to increases in the cost of flying.

- *Any additional services the passenger purchased, but did not use (for example, seat selection or extra baggage);*

ATAC Comment:

Most unused services should be reimbursed or credited. Seat selection, for example, is an option that may not be guaranteed on a later flight and not be reimbursable but only credited for future travel.

- *The full cost of the passenger's ticket, if their trip no longer serves a purpose because of the flight disruption.*

ATAC Comment:

If the client can prove that the trip no longer serves its purpose, then the full cost of the ticket, including all government and airport fees and charges, should be reimbursable. Examples of cases when the trip no longer serves a purpose are specific business meetings, conferences, weddings, resort bookings, and perhaps medical appointments if they can't be rescheduled in the short term.

Question 4

How should airlines be required to refund passengers? For example:

- *Using the same method used to buy the ticket.*

ATAC Comment:

The method of reimbursement should be the same as that used for the purchase of the ticket. This is customary for most reimbursement policies used in retail sales. This also allows the passenger an easier reimbursement experience and, in the case of payment made by credit cards, an easily traceable reimbursement process.

- *In monetary form (for example cash, cheque, or a bank account deposit);*

ATAC Comment:

Carriers should be able to determine their policies for reimbursement, monetary or otherwise, as long as the passenger receives fair value, and it is explicit in the tariff of the airline.

- *Passenger's choice of money or other forms offered by the airline (such as vouchers or rebates).*

ATAC Comment:

Carriers should be free to offer enticing credit options in lieu of outright reimbursement. Such an option would be acceptable to many passengers and would spare the carriers the cash flow strain of reimbursement.

Question 5

How much time should airlines have to provide refunds to passengers under the new requirements?

ATAC Comment:

Airlines should be allowed no less than 90 days to make reimbursements of any kind.

Airlines may wish to offer different forms of reimbursement or compensation, either in cash, credit, or otherwise. The delay for this reparation should be the same regardless of what is offered by the airline.

Question 6 a)

Should there be greater flexibility in the requirements for certain types of airlines, or in certain situations? For example:

- *Based on airline size (smaller airlines may be, for example, less able to recover quickly after an event outside their control);*

ATAC Comment:

Smaller airlines have less aircraft than the larger ones. This makes it harder to find additional or substitute aircraft to engage in the case of service disruptions. This would inevitably result in longer delays if no spare aircraft is readily available.

Flexibility should be allowed on routes serviced on a limited basis, namely northern, remote, seasonal, and small urban communities. As regular service to those communities is not as frequent as service to the larger urban communities, the carrier should be afforded more time to complete the service before reimbursement is required.

- *If an airline provides essential services (for example, to remote, regional or northern communities);*

ATAC Comment:

Carriers providing essential services should be allowed greater flexibility as these carriers must prioritize the needs of the community in terms of cargo vs passengers, as many aircraft are of a combi (passenger and cargo) configuration, and the urgency of the medical and other needs of passengers and the community they serve must be taken into account. Therefore, compensation policies on essential combi aircraft should reflect the possibility that passengers on these flights may be replaced with essential cargo and will have to accept alternative travel options at a later time or date.

- *If the event is large-scale (as opposed to an isolated event like a collision with wildlife);*

ATAC Comment:

The use of the term “Large scale” in CTA communications is unclear and thus requires a clear definition.

Government imposed disruptions are clearly outside of the carriers’ realm. The same applies to major weather disruptions. In such circumstances, all flights are generally suspended or cancelled, and this has a much greater impact on the company’s operations and finances. The greater the event, the more tolerant the law and regulations should be as the financial and operational consequences for the carrier are much more threatening.

- *If the event could threaten an airline's financial viability (for example, one that results in operations being shut down for months).*

ATAC Comment:

Complete shutdowns for significant periods of time are a real threat to the very survival of air carriers. The regulations should not be imposing reimbursement policies that will likely result in insolvency as this would jeopardize the likelihood of passengers ever obtaining reimbursement as they stand far down the priority line of creditors.

Question 6 b)

If so, in what areas should flexibility be given? For example, should there be a different:

- *definition of "lengthy delay";*

ATAC Comment:

The delay for providing the service in the case of a service disruption. The length of the acceptable delay should be defined by the circumstances causing the cancellation. What is the likelihood that the airline can quickly send a replacement aircraft or have available crews?

As for the delay for reimbursement, the circumstances need also be considered. Is this a case of one aircraft being grounded or the whole fleet, as in the case of a national crisis or regulator-imposed aircraft safety grounding? Imposing rapid reimbursements in the case where a company's complete operation is impacted would destabilize or even threaten the carrier financially. Carriers should never be forced into insolvency because of having to reimburse tickets unused due to events outside of their control.

- *deadline to provide a refund to passengers.*

ATAC Comment:

See answer in 5.

Question 7

Events since March have shown that some situations caused by a pandemic are outside of airlines' control, while others may be within airlines' control. An airline's business decision to consolidate flights during a pandemic could sometimes be considered within its control, while government travel restrictions, employee quarantine or self-isolation, and additional hygiene procedures are examples of pandemic-related situations the CTA considers outside airlines' control. Are there other, specific pandemic-related situations that you think should be considered either within or outside airlines' control?

ATAC Comment:

Domestic and international in scope service interruptions due to requirements imposed by government agencies such as PHAC and others, including provincial/territorial, national and international, should all be considered outside the airlines' control.

Anytime the Government dictates special operational restrictions, standard regulations should be suspended in favor of a regulatory framework tailored to the circumstances created by the event and measures taken to contain it. Operational consequences should be considered outside of airlines' control.

Such crises are not limited to pandemics of the COVID-19 type.

Question 8

The CTA will consider the legal frameworks in the European Union (EU) and the United States (US) in developing the new regulation on refunds. What particular aspects of these frameworks should the CTA consider?

The CTA welcomes input on the issues for discussion, as well as any comments on other air passenger protection issues brought to light by the COVID-19 Pandemic.

ATAC Comment:

Passenger protection issues expected of airlines by the Government should be a factor of the financial support it offers industry. What we are seeing now is a government crippling our industry, not offering significant industry financial support while unilaterally demanding complete and costly cooperation. The air transport industry has responded and met every operational request imposed by the Government. It is time that the Government stopped simply dictating conduct and acted as a partner in the necessary recovery of this key economic driver.