



The Association of Canadian Travel Agencies and Travel Advisors

Brief Submitted on

Air Passenger Protection Regulations

Prepared for:

The Canadian Transportation Agency

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About ACTA

The Association of Canadian Travel Agencies and Travel Advisors (ACTA), which represents approximately 1,200 travel agencies and more than 12,000 travel agents across Canada, is pleased to be an active participant in the consultation on Air Passenger Protection Regulations (APPR).

ACTA represents and defends the interests of retail travel professionals and, by extension, those of travel consumers. Our members, Canadian retail travel agencies and travel agents, act as intermediary between buyers and sellers of travel products and services. Consumer-centric relationships that are based on loyalty and trust are the cornerstone of our industry.

Introduction

On June 22, 2023, the Budget Implementation Act, 2023 (BIA) received Royal Assent and came into force. With this came modifications to the Canada Transportation Act (the Act). The stated intent of the changes to the Act are to clarify, simplify and strengthen the Canadian air passenger protection regime. ACTA supports the Canadian Transportation Agency's (CTA) objective of improving the air passenger experience in Canada. The purpose of this submission is to share ACTA's observations and recommendations on the proposed changes to the Air Passenger Protection Regulations (APPR) arising from the legislation.

ACTA believes that achieving a regulatory balance that supports both consumers and the travel ecosystem in Canada is critically important to the recovery, growth, and return of the travel sector as a key contributor to Canada's national economy.

Through this submission, ACTA's goal is to help achieve a balanced approach whereby air travelers receive a consistent and quality customer service experience, and that when issues do arise, that the resolution is fair and equitable for all stakeholders. With this, ACTA recommends a cautious approach to ensure regulations do not create unnecessary complexity or negatively impact the travel ecosystem's recovery and competitiveness.

Section 1: Identifying exceptional circumstances

Currently, the Air Passenger Protection Rights (APPR) regulations provide for compensation and assistance to be given to passengers only when the disruption is “within airline control”. It also includes a non-exhaustive list of situations that are considered outside airline control (e.g., labour disruptions, weather). If the disruption falls within the "required for safety" category, the airline must provide rebooking or a refund and assistance, but not compensation. If the disruption falls within the "outside the airline's control" category, the airline must only provide rebooking or a refund.

Under the proposed regulations there would be no disruption categories. Passengers would be entitled to compensation for inconvenience for all flight disruptions unless there are “exceptional circumstances.” As is currently the case, the compensation regime will continue to apply only when passengers are informed of the delay or cancellation 14 days or less before the departure time.

The following criteria for events to be considered “exceptional” are being considered:

- The event that caused the disruption must have been outside the airline's control, and not inherent to the normal exercise of the activities of the airline; and,
- The event could not be avoided even if the airline took all reasonable measures to do so.

Recommendation: ACTA believes that any revised list of “exceptional circumstances” should avoid vague language wherever possible, such as the proposed “Any situation the airline knew about, or **should** have known about, when it sold the ticket to the passenger.” In addition, ACTA agrees with NACC’s recommendation that a list of “exceptional circumstances” be based predominantly on the principle that airlines cannot be penalized for unexpected safety situations.

Section 2. Airlines’ responsibilities regarding claims for compensation

Under the current regulations, airlines do not have to pay compensation for inconvenience for flight delays and cancellations outside their control or required for safety. But if the delay or cancellation was within their control, airlines must pay compensation for any delay or cancellation that makes the passenger three or more hours late to their final destination. Compensation is due for delays and cancellations that occur 14 days or less before the passenger's original departure time.

Currently, airlines must - after they receive a passenger complaint - either provide the appropriate compensation, or an explanation as to why compensation is not payable. If a passenger chooses to subsequently file a complaint with the CTA, it is up to the passenger to prove that they are eligible to be compensated. In most cases, passengers have to rely on information they received from the airline.

While the CTA does expect the airline to substantiate a claim that a disruption is outside their control or required for safety, the passenger must provide the evidence to make their own case. Amendments to the CTA, which took effect through the passing of the 2023 Budget Implementation Act, shift the “burden of proof” from air passengers to airlines.

Under the proposed regulations, it would be specified that if an airline refuses a compensation claim, it must give the passenger a detailed explanation, including evidence that the circumstances were exceptional, and reference the applicable terms and conditions of the passenger's ticket, including fare rules. In addition, the proposed regulation would;

- Require airlines to explain to their passengers how to make a claim for compensation, in a prominent area on their websites;
- Specify that when people travel together, one adult can make a claim for compensation on behalf of the group. In this way, a single claim could cover everyone in a group.

ACTA believes that making information available to air travelers regarding the terms and conditions of a ticket and how to make a claim for compensation is achievable for airlines that do not already do so. However, ACTA observes that the NACC recommendation for a clearly spelled out process to adjudicate passenger claims could benefit air passengers, airlines, and the CTA. This could outline requirements of both air travelers and airlines which would help alleviate confusion about the claims process, clarify details relevant to a claim, and assist the timely management of claims and compensation decisions.

Recommendation: ACTA believes making information available to air travelers regarding the terms and conditions of a ticket and how to make a claim for compensation is achievable for airlines that do not already do so. In addition, ACTA agrees with NACC that a clearly spelled out process to adjudicate passenger claims should be explored.

3. Rebooking and refunds

Currently, regulations state that if a flight disruption is outside the airline's control, it has 48 hours to try to rebook passengers, and only after that can a passenger request a refund instead. For flight disruptions within their control, even if required for safety, the airline has a shorter time limit for rebooking passengers and passengers can more quickly choose the refund option. This combination of provisions and requirements is complex and can have unintended consequences for passengers. For example, some air passengers on small airlines may have felt "stranded" at their destination or connection points because of the long rebooking time.

Under the proposed regulations, air passengers would have a right to choose a refund if their flight has been disrupted and they cannot complete their trip within a reasonable time (for example, if the offered rebooking was so delayed from the original departure time that the trip would no longer serve the passenger's original purpose). Specifically, it is proposed that:

- If passengers' flights are cancelled or they are denied boarding, they can request a refund immediately.
- For flight delays, passengers could choose a refund once the delay reaches 3 hours at departure.
- During all such disruptions, the airline must provide information in a proactive and timely way. This information must include the air passengers' right to rebooking or a refund and how to claim these.
- The period of time for an airline to provide a refund be reduced.

ACTA recognizes the importance of striking a balance for air passengers and airlines where rebooking and refunds are concerned. In this respect, the ability to request a refund makes sense for air passengers. In addition, ACTA acknowledges the recommendations put forth by the NACC to strengthen the proposed regulation:

“NACC recommends providing passengers with the flexibility to rebook on a partner airline prior to the 9-hour window, or rebook on the same airline after the 9-hour window if there is a more convenient

option for the passenger that better meets their needs. Rebooking regulations can only come into force when viable rebooking options are available.”

Recommendation: ACTA believes that the proposed regulations should be revised to include both the refund provisions and rebooking flexibility as proposed by NACC.

4. Standards of Care and Assistance

Under the current APPR, airlines do not have to provide any standard of treatment (“assistance”) to air passengers if a disruption is outside their control. For disruptions within their control, even if required for safety, airlines must give passengers assistance. Specifically, they must provide:

- Food and drink in reasonable quantities;
- Assess to a means of communicating; and
- Hotel or other comparable accommodation if the passenger must wait overnight.

Under the proposed regulation, airlines would be required to give passengers assistance for all flight disruptions after a defined delay at departure, including exceptional circumstances. It proposes that:

- Airlines would have to offer passengers assistance starting 2 hours after the scheduled departure time unless passengers were advised of the delay at least 12 hours before the departure time.
- When a disruption occurs, airlines would have to inform passengers, in a proactive and timely manner, of their right to assistance and how to obtain it.
- When disruptions are caused by exceptional circumstances, an airline would be responsible for providing passengers with some assistance for a certain period of time.

ACTA observes that the regulations should reflect the fact that the provision of assistance may not always be possible. For example, there may be a lack of hotel/accommodation capacity, or limited access to food and drink.

Recommendation: ACTA supports the NACC recommendation that regulations should clarify that standards of care and assistance be offered when the capacity is available to do so. In the case of exceptional circumstances, NACC recommends a 24-hour window by which assistance is provided, subject to availability.

5. Communications

In all disruption situations, an airline must explain the reason for the disruption in plain language. It must tell passengers about the assistance, compensation, and remedies they are entitled to, including filing a complaint with the CTA. Airlines must also relay any new information about a disruption as soon as possible; during delays, this means every 30 minutes until a new departure time is confirmed or the passenger has been rebooked. Despite these protections, passengers complain that they do not always receive complete or timely information.

Under the proposed regulation, the stated intent is to clarify, simplify and strengthen existing requirements around what information airlines need to communicate to passengers and how they must communicate it. The proposals include:

- Airlines ask for/confirm air passengers' preferred means of communication, such as their cell number or email, at check-in (check-in desk, kiosk, online check-in), so that passengers can receive detailed information without delay in the event of a flight disruption.
- Airlines would have to provide disruption information in a proactive and timely manner on their websites and other digital platforms, and to passengers using each passenger's preferred means of communication. This information would also have to be provided through on-site audible announcements when passengers are at the gate.
- Airlines must tell passengers, via their preferred means of communication, about the specific entitlements they have at that moment, and how to claim them. This includes:
 - Food, drink, and (when applicable) overnight accommodation;
 - The passenger's right to rebooking or a refund; and
 - The passenger's right to compensation.
- Airlines' disruption announcements and information in their preferred means of communication must tell passengers about the recourse they have, including their right to make a complaint to the CTA.

Recommendation: ACTA supports measures to improve communications to air passengers, and the NACC recommendation that the list of preferred communications that a passenger identifies be limited to electronic means of communications. Regulations should spell out a clear schedule with time requirements and the sorts of information to be communicated. ACTA agrees that third party booking organizations should be required to collect information on preferred means of communication and to provide that information to airlines.

6. Chain Reactions (knock-on effects)

The current APPR recognizes that a disruption affecting one flight sometimes leads to a disruption on a subsequent flight that was meant to use the same plane or flight crew. If a disruption is caused by a situation outside the airline's control or required for safety, the subsequent flights affected can claim the same "situation" as the reason for their disruption. In these instances, the airline does not owe the passengers any compensation or assistance.

In addition, the APPR does not put a limit on the number of affected flights that can claim the original disruption was the reason why they were delayed or cancelled.

Under the proposed regulation, air passengers would be entitled to compensation for all flight disruptions unless there are "exceptional circumstances." It also proposes that only two flights in a row can claim the same exceptional circumstances as the reason they have been delayed or cancelled. This would limit the exemption to pay compensation for inconvenience to:

- The flight that actually experiences the exceptional circumstance; and
- The next flight scheduled to use that plane or flight crew.

In practice, no further flights beyond those first two could claim the original exceptional circumstance as the cause of a disruption.

ACTA observes that the proposed 2-flight minimum may have unintended consequences in some situations deemed "exceptional circumstances." For example, the proposed regulation does not provide flexibility that may be necessary in some "exceptional circumstances."

ACTA recognizes that NACC believes a regulation that allows for a “48-hour window” for knock-on effects, rather than the 2-flight limit, may be more suitable.

Recommendation: With respect to the proposed regulation, ACTA recommends that consideration should be given to the “48-hour window” option highlighted by NACC.

Shared Accountability

ACTA agrees with NACC and other stakeholders’ recommendations to put in place a true shared accountability system for each entity in the air travel ecosystem focused on continuous improvements that includes:

- Real time data sharing;
- Measurable service standards;
- A communications protocol; and
- Financial accountability for those entities that do not meet established service standards.

Implementation of such a system prior to the coming into force of the revised APPR provisions would be timely and preferred.

ACTA welcomes the opportunity to discuss its perspective and these recommendations with respect to the proposed APPR regulations. Thank you for your consideration.

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