10 August 2023

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Submitted via the online Web Form

Re: Proposed changes to clarify, simplify and strengthen the Air Passenger Protection Regulations

On behalf of our members that operate services to, from and within Canada,[1] the International Air Transport Association (IATA), appreciates the opportunity to provide comments in response to the Proposed changes to clarify, simplify and strengthen the Air Passenger Protection Regulations (APPR) consultation paper published by the CTA as per the Budget Implementation Act, 2023 (BIA) that received royal assent on June 22nd, 2023.

Introduction

The Budget Implementation Act's modification of the Canada Transportation Act was designed to address a concern on the part of the Government of Canada over the differing interpretations by passengers, airlines and the courts as to when airlines were responsible for providing compensation for passengers inconvenienced by flight disruptions. The stated goal was to "clarify, simplify and strengthen the Canada air passenger protection regime."

In undertaking this revision, the Government of Canada has taken the unique approach of eliminating the logical distinction between what is within and not within an airlines control and instead, for all practical purposes mandating airlines compensation in almost all circumstances, including those in which the safety of air passengers is potentially impacted.

Unfortunately, experience in Canada as well as the European Union (EU) suggest that if the language in the consultation paper is ultimately including in regulation, it will result in unprecedented passenger claims for compensation from airlines for situations well beyond their ability to control, avoid or mitigate.

This approach will result in higher costs for passengers and airlines as well as more confusion on both sides as has been the case in Europe with the same "inherent to normal operations" test being proposed

[1] IATA represents some 300 airlines around the world, including Air Canada, WestJet, Air Transat and Cargojet in Canada.

here. It will also raise potential unintended consequences for aviation safety generally. We respectfully request that the CTA reconsider its approach based on the comments contained herein.

EU 261

During this APPR revision process, the CTA has looked to model the revised APPR in whole or part on the European Union Air Passenger Rights Regime EC no 261/2004 and its interpretation though caselaw (hereinafter EU261), despite not having a clear mandate from Parliament to take such an approach. IATA and our member airlines have had extensive experience with EU261 since it was first implemented almost 20 years ago. IATA hopes that the CTA can leverage the experience with EU261 when it drafts the updates to the APPR. To that end, IATA offers the CTA the following perspective on EU261 – its original intention, its application in practice and the need for change – and compare it to the proposals now contained in the Consultation paper.

First, it is important to recognize that the original intention of EU261 was to influence commercial decisions made by carriers, in particular their overbooking policies and cancellations for commercial reasons. Unfortunately, the 70+ judgements by the European Court of Justice (ECJ) have resulted in the bulk of claims under EU261 being related to operational disruption.

Further, the original regulation only contemplated compensation for cancellations, not lengthy delays. That changed in 2009 when in the *Sturgeon* ruling[2] the ECJ decided that a long delay is *de facto* equivalent to a cancellation.

It is important to recognize that EU261 has not resulted in improved airline operational performance. A European Commission (EC) study found that from 2011 to 2018, operational performance in the EU declined even as the cost of claims under EU261 increased. [3]The reason was not due to lack of effort or desire by the airlines to improve operational performance but rather because airlines did not have control over every aspect of the aviation ecosystem, particularly in the international context. While the APPR is primarily designed to compensate passengers for delays and cancellations, we expect that the CTA hopes that in doing so airline operational performance would improve, certainly in terms of addressing issues within the airlines control. That was not the case in Europe.

We recognize that the CTA has not yet undertaken a study of the cost and benefits associated with these proposed changes to the existing APPR. However, when it does, it should look carefully at the experience of airlines in Europe under EU261. The EC study cited above determined that the cost to airlines of complying with claims under EU261 reached US $6.25 billion in 2018, an increase from approximately US $1.8 billion in 2011.[4] This is equivalent to a per passenger cost that is greater than US$5, which is almost identical to the net post-tax profit per passenger in 2018. Today, airlines globally earn a profit of US $2.25 per passenger. Further, the average cost per passenger affected by a flight disruption is equal more than 90% of airlines' average fare. As noted in the comments by the National

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[2] **Sturgeon v Air France SAA (C-432/07), November 19, 2009**
[3] **Study on the Current Level of Protection of Air Passenger Rights in the EU, Steer Group, January 2020, at 11**
[4] **Id, at 192**

Airlines Council of Canada (NACC), EU261 compensation requirements are significantly lower than that set forth in the existing APPR. As such, the cost for airlines to comply with the new APPR could be much higher than those being imposed in Europe by EU261. IATA will capture these increased costs in future submissions to the CTA.

The experience of EU261 is a cautionary tale for the CTA as it crafts the revised APPR. One major lesson to take from the EU261 experience is that it is extremely important to draft a regulation that clearly defines when compensation for delays and cancellation is appropriate. Our comments below will identify when imprecise language in the Consultation Paper could result in court interpretations that go far beyond what the CTA originally intended with these modifications. In Europe, so-called Claims Management Companies (CMCs) emerged over the past 20 years to take advantage of imprecise regulatory language on compensation eligibility, particularly as those compensation levels were vastly expanded by the courts. These CMCs can take as much as 50% of the value of compensation as a commission. While Canada has taken steps to discourage such businesses, we believe claims companies in Canada remain involved in supporting and promoting passenger claims.[5]

Finally, it is important to note that EU261, like the APPR, does not include accountability for other stakeholders in the aviation value chain, e.g., air navigation service providers, airports, ground handlers, security and immigration – the performance of each can contribute significantly to airline delays and cancellations. Under EU261, airlines are often held accountable/liable for these types of disruptions even though they often have limited factual or contractual control over the performance of the parties that are often state-owned (such as airports or certain ground handlers) or work in an environment where they are either a monopoly or oligopoly (due to the situation at the airport). Unfortunately, the proposed Bill C-52, the Enhancing Transparency and Accountability in the Transportation System Act, does not incentivize these other stakeholders to improve their performance in support of reducing delays and cancellations. In contrast, airlines are already fully incentivized to operate to schedule, given the fact that delays cost an estimated US$101 per block minute, in addition to the compensation due passengers.[6] This disconnect between financial burden and operational control is a primary reason why, like EU261, the APPRs have not, and will not with these proposed modifications, lead to an improvement in punctuality across the system or a reduction in cancellations.

In 2013, the EC acknowledged the shortcomings of EU261 and published a proposed revision to the regulation. Discussions on that revision have been ongoing since 2013. Unfortunately, the revision was stalled by a territorial dispute between the UK and Spain (over Gibraltar) and, later, COVID. The major thrust of the proposed revisions included:

- Increasing the delay thresholds for payment of compensation in case of long delays;
- Defining upper limits for care and assistance costs;
- Defining a list of circumstances to be considered as extraordinary.

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[5] S. 113.1(2) ATR
[6] https://www.airlines.org/dataset/u-s-passenger-carrier-delay-costs/

The lessons of EU261 are quite clear:

- Regulating operational performance is very challenging, especially if accountability is disconnected from control / influence;
- The costs to passengers under rules like EU261 are likely to exceed the benefits to those whose travel is disrupted;
- While it is difficult to define precisely what circumstances are appropriate for compensation, it is preferable to more subjective language that opens the opportunity for multiple interpretations of the regulation;
- Delays and cancellations are rarely the sole fault of airlines.

We hope that the CTA will take these lessons into account when drafting the revisions to the APPR. The experience of EU261 and its lack of clear definitions has led to claim agencies who forum shop until they receive a judgement in their favor in a certain jurisdiction, under which they then consolidate other similar claims. A classic example of this was European Court of Justice's decision in May 2023[7] that the death of a co-pilot at an outstation two hours before a flight was to depart and the rest of the crew subsequently declaring themselves unfit to fly cannot be considered an extraordinary circumstance. IATA cannot imagine that CTA would support such an approach, particularly when they potentially impacted aviation safety.

<u>Response to the Consultation Paper proposals:</u>

Exceptional Circumstances

As noted above, the CTA is proposing to change the existing APPR to limit the opportunities for airlines to claim that they should not be responsible for compensation in the case of irregular operations. In addition to putting the burden of proof on the airline to demonstrate that they are not liable, the CTA is proposing a two-part test of when an event can be considered exceptional and therefore not subject to airline compensation:

- The event that caused the disruption must have been outside the airline's control, and not inherent to the normal exercise of activities of the airlines; and

- The event could not have been avoided even if the airline took all reasonable measures to do so.

The Consultation Paper then goes on to suggest a number of circumstances that would be considered exceptional or non-exceptional.

By defining exceptional circumstances in this context, the CTA is attempting to avoid the unintended consequences faced by the EC when in EU261 it simply mandated that airlines would not be responsible for compensation when "extraordinary circumstances" were the primary cause of the operational disruption, without clearly defining those "extraordinary circumstances." The last 20 years of EU 261 has

[7] Joined Cases 156/22 to 158/22: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62022CJ0156

demonstrated that imprecise regulatory language results in confusion on the part of the regulated and those for which the regulation was designed to protect. The proposed revision of EU261 attempts to avoid this confusion by clearly defining what would be considered extraordinary circumstances. We commend the CTA for learning from the experience of the EU over the past 20 years and adopting most of the elements of "extraordinary circumstances" in the proposed EC revision to EU261 into the CTA list of "Exceptional Circumstances".

We are however concerned that, unlike the EC, the CTA has stated that it is purposely seeking to limit the circumstances in which airlines are able to cite safety as a reason for an irregular operation and therefore be immune from passenger compensation. In the first part of its two-part test, the CTA is proposing that an event cannot be extraordinary if it is "inherent to the normal exercise of activities of the airline." In the CTA's list of exceptional circumstances, it only lists three categories where safety of the passengers is a consideration: in severe weather/natural disasters, when there is a hidden manufacturing defect that effects flight safety and when there are health risks or medical emergencies on route that require a flight diversion.

Similarly, in its list of circumstances that would <u>not</u> be considered exceptional, it lists "technical problems that are an inherent part of normal airline operations." The CTA offers no definition of "inherent" in this context.

The fact that the CTA is seeking to limit airlines ability to point to safety to justify an irregular operation can be seen by a review of what the proposed change to the APPR is eliminating from the list of events considered outside the control of airlines:

- Mechanical malfunctions the airline could not foresee or prevent through regular maintenance;
- Decisions the airlines make based on its Safety Management System;
- Safety related decisions pilots makes at their discretion.

We are not suggesting that the CTA does not care about safety. However, we are concerned that this effort to limit the instances when airlines can cite safety as a primary contributor to an irregular operation raises the likelihood of two major unintended consequences.

First, these revisions will most certainly result in a substantial increase in the number of claims for compensation by passengers for delays and cancellations, thereby undermining the government objective of reducing the CTA's claims backlog. Any passenger who is subject to a delay or cancellation due to an airline's claim that there is a safety issue with the aircraft will be able (and indeed likely encouraged by third parties) to claim that technical problems like malfunctioning sensors or aircraft parts are "inherent part of normal airline operations." Similarly, if an airline delays or cancels a flight based on their Safety Management System, passengers or their representatives can point to the fact that the new APPR clearly eliminated that as an exceptional circumstance. Based on the European experience, over time, there will be likely be almost no circumstances that will be deemed not inherent to normal operations. Higher number of claims will result in significantly increased costs for airlines both from managing the claims as well as paying the compensation. The table set forth in the NACC comments clearly demonstrates that those costs could far exceed those of the billions of Euros paid in

compensation by carriers under EU261 to date. The policy will essentially make airlines the insurer of last resort even if the airline has done everything in its control to avoid the delay or cancellation.

These costs will ultimately have to be passed on to the consumers in terms of higher fares. A 2022 Ipsos/Airlines for America survey confirmed that the number one priority of flyers in choosing a flight is ticket price. [8] These high compensation fees will in effect force all passengers to pay for a protection that they would not buy if they had the choice, rather than giving passengers the freedom to buy their own flight insurance policy if they are concerned about delays or cancellations.

Second, and more troubling, the minimization of safety exceptions to the APPR compensation requirements will likely have a negative impact on the safety culture of an airline operating in Canada. In the current APPR, the ground staff will delay or cancel a flight when, based on their knowledge and experience, they believe allowing the flight to proceed under the circumstances would raise potential safety concerns. With the new APPR, that same staff will know that their safety related concerns could result in extraordinary financial consequences for their employer. While safety is the highest priority of all involved in airline operations, it is dangerous to put incentives in place for airline employees to make decisions not based solely on that priority.

We therefore recommend that the list of exceptional circumstances proposed in the consultation paper be supplemented to include circumstances when the airline must delay or cancel a flight in circumstances where it is well established by safety professionals that such a delay or cancellation is appropriate. To that end, we strongly endorse the list of exceptional circumstance proposed in the NACC submission on this file (attached for reference). This list is based almost entirely on the list of "extraordinary circumstances" proposed as part of the revision of EU261. By adopting this list, we believe the CTA will strike the right balance between passenger rights, airline business freedoms and safety.

We recognize that the safety language in this list may result in more exemptions from compensation than what is envisioned by the CTA in its revision of the APPR. However, it will at the same time serve to promote safer airline operations, which the CTA and industry agrees must be the priority. Further, removing the safety exemption would in fact be punishing airlines for doing their jobs properly, as dictated by accepted safety procedures.

We are similarly concerned with the second part of the proposed test of exceptional circumstances, whereby airlines will be required to prove that they took all "reasonable measures" to avoid the event that caused the delay or cancellation. EU261 has demonstrated that precise language is required in order to find the balance between airline and passenger interests. We can predict with certainty that airlines will be continuously second guessed by passengers and their representatives to prove that the measures they took were "reasonable" under the circumstances. We urge the CTA to define the term "reasonable" within this context to avoid this result.

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[8] https://www.ipsos.com/sites/default/files/ct/news/documents/2023-03/A4A%202023%20Trended%20Topline%2003%2023%202023.pdf **(page 8)**

Airlines' Responsibilities Regarding Claims for Compensation

As noted in the consultation paper, the amendments to the Canada Transportation Act shift the burden of proof from passengers to airlines in terms of compensation claims. The airlines would be required to present a detailed explanation and documentation to passengers as to why their claim is not valid as well as advise passengers on how to file claims. The amendments require the airlines to do all of this within 30 days of the passenger claim. For this part, the passengers can appeal a negative airline compensation decision to the CTA.

The cause of delays and cancellations vary tremendously per incident. Airlines facing a complaint from a passenger must do an extensive investigation to gather the facts about the particular incident in question. It is unrealistic for airlines to be able to assess whether the cause of the irregular operation falls within the list of exceptional circumstances and present proof of that fact to a passenger within 30 days of the passenger complaint. The passenger has little incentive to document his claim adequately as he knows that an airline denial will result in an appeal to the CTA that could cost the airline more than just paying the faulty claim. We recommend that the CTA stipulate that the 30 days begins when the passengers provide adequate documentation to prove that they are eligible for compensation.

Rebooking and refunds

We endorse NACC's proposal that airlines should not be penalized for not rebooking passengers on other flights after 9 hours when those options do not exist, either because there are no flights or because of a lack of available inventory with either the carrier or other airlines. This is particularly true in the case of international operations, where carriers are very often unable to rebook passengers until the next day because of airport curfews at the destination. We also oppose a mandate that airlines rebook on the first available carrier, even if the original carrier does not have an agreement in place with that carrier. Interlining agreements are designed to ensure that passengers can seamlessly travel on multiple airlines, have confidence that their luggage will follow them on the trip and that the connecting airline both expects the passenger and has ensured they have the proper documentation to enter any country on the route. Simply rebooking a passenger on a random carrier (or potentially multiple random carriers if the alternative routeing is indirect) reduces the ability of the original carrier to support the passenger's overall travel experience. It also puts a potential significant financial burden on airlines that far exceeds the cost of the inconvenience of the passenger. We recommend that any requirement for rebooking focus on airlines with whom the original carrier has a contractual relationship. We also recommend that language be included in the regulation that makes it clear that passengers have the flexibility to choose the rebooking option that best suits their needs. In many instances, continuing with the original carrier may be the preferred option from a consumer perspective even if it is not the quickest alternative.

Assistance

The consultation paper proposes that airlines be required to provide passenger assistance for all flight disruptions, not just the ones within the airlines' control. The paper acknowledges that some airlines already take steps to support their passengers irrespective of the cause of the disruption. However, the

paper suggests that regulation is required to ensure that all passengers receive assistance after a set period of delay.

The deregulation of the Canadian airline industry was based in part on the premise that a free market will deliver greater results to passengers than government regulation. Today, airlines compete vigorously for airline passenger loyalty, which comes in large part from the way airlines treat their customers during irregular operations. Regulating passenger assistance will reduce the incentive for airlines to compete in this area, thereby producing inferior results for passengers.

In addition, requiring assistance presupposes that those airlines are able to provide the assistance set forth in the consultation proposal. The limitations at certain airports (and their surrounding areas) may inhibit an airline's ability to provide food, drink and or accommodations to passengers during an operational disruption. Similarly, hotel availability can be very limited in certain circumstances and in certain locations. The CTA appears to appreciate that fact by saying such assistance may depend on "the length of the delay, the time of day and the location of the airport." IATA recommends that the final rule clearly specifies mandatory assistance includes only that which is within the airlines' ability to provide.

Most troubling, however, is the CTA's proposal for carriers to provide assistance even in exceptional circumstances. Given that assistance under the APPR can include accommodations and meals, the CTA appears intent to burdening airlines for not operating as a result of a situation they did not create. The CTA must take a reasonable approach since exceptional circumstances be for an extended period of time. If, however, the CTA requires airlines to provide assistance during exceptional circumstances, it must adopt a balanced, reasonable requirements. For example, the CTA should allow carriers to place limits both on cost and type of assistance, as well as duration.

Communications

The consultation paper suggests that the current APPR is inadequate in terms of communications to passengers during irregular operations. In particular, the paper identifies the lack of consistent communication between passengers, travel agents and other third parties.

IATA members already encourage passengers to provide contact information when checking in for a flight. Airlines cannot be held liable if the passenger refuses to provide that information. However, it is important to note that travel agents already are obligated under IATA Resolution 830d to ask passengers for whether they wish to have their contact details (mobile number and/or email) provided to airlines for the purposes of contact in an operational disruption.[9] Agents are obligated to follow this resolution if they participate in the IATA settlement process. However, compliance is historically less than universal out of fears that airlines will use the passenger contact information to market their website etc. A regulatory mandate that agents seek to collect this information will help address the

[9] **IATA Resolution 830d: Reservation Procedures for Accredited Agents (paragraph 4)**

shortfall in communications identified by the CTA and reduce the time it takes to collect that information during the airport experience (for those who do not check in online).

We recommend that the means of communication be limited to texting or emails. It is not reasonable to expect airlines to call passengers to give them updates on delays. Texting and emails would address the needs of anyone with a mobile phone. The already existing requirement that airlines make on-site audible announcements at the gate would accommodate those without a mobile phone and visually impaired persons.

We oppose the proposed requirement that the airline advise passengers about specific entitlements they have "at the moment." Instead, we recommend that airlines include a link in their communication on the update on the delay a link to the CTA website that clearly states what they rights are under any given circumstance.

IATA is opposed to the proposed requirement that airlines provide disruption information in a "proactive and timely manner" on airline websites and digital platforms. Given the APPR's expansive scope[10], this proposal is highly questionable in both feasibility of execution and effectiveness, especially since IATA members have global networks. It begs the question on how proactively posting information about flights with a flight disruption anywhere in the world is helpful or of interest to someone using an airline's website to, among other things, book future travel that may not even be to a place where an operational disruption is currently occurring. Many IATA member airlines operate hundreds of flights a day. Posting information on the airline.com website on every irregular operation anywhere in the world at any given time will make the website unnavigable for the average consumer. Moreover, airlines already have a robust system for sharing flight status information: they send updates to passengers who provide their contact details and also allow passengers to share their itinerary with any interested party who may need information about the passenger's travel. In addition, airline websites and apps already have a "Flight Status" section/function where a precise, targeted search for information on a specific flight (or route) can be obtained by those who are interested in a specific flight or route on a specific day of travel.

Chain Reactions (Knock-on effects)

IATA opposes the proposal that only two flights in a row can claim the same exception as a reason for a delay or cancellation. The CTA's arbitrary two flight limit simply ignores the operational realities of commercial airline operations, particularly international ones. While the interconnectivity of air travel has produced substantial benefits for air travelers, it also creates limits for airlines. As noted by NACC, an aircraft used in remote short-haul operations may be used on multiple legs per day, where there is insufficient buffer time to allow recovery. On international flights, the lack of substitute aircraft could result in one delayed flight impacting multiple legs of a trip over days, not hours. For disruption, such as an air traffic control outage, that affects multiple flights rather than a single operation, the knock-on impacts may be even more extensive. We recommend that if, despite practical realities, the CTA insists

[10] APPR requirements apply to flights to, from and within Canada, even connecting flights.

on placing a limit to flights that can claim exceptional circumstances, it should adopt a 48hr limit from the original disruption time for carriers to claim an exception to compensation because of the original delay.

Refunds for changes to Government Travel advisories

IATA opposes any requirement that airlines refund passengers any time the Government of Canada issues or changes travel advisories. Refunds should only be required when the government prohibits travel, as it did during the pandemic. IATA supports a rule that airlines offer travel credits if the Government issues an "avoid all travel" advisory after the passenger has purchased its ticket. Passengers have the option to buy travel insurance or a flexible ticket to protect themselves in cases where they are planning to fly to destinations that could be subject to travel warnings. Further, a credit is more appropriate as it is highly likely that the warning will eventually be lifted, thereby enabling the passengers to fulfil their original travel intention.

Summary of Recommendations

- IATA urges the CTA to leverage the experience of EU261 when drafting the implementing regulations;

- IATA supports the CTA's exceptions list but recommends including an additional safety element and eliminating the "inherent to normal operations" and "all reasonable measures" tests;

- IATA recommends that airlines continue to be provided 30 days to respond to a passenger claim starting when the passenger provides adequate documentation to support that claim;

- IATA recommends that the requirement of airlines having to rebook passengers on the first available flight of another airline not apply in an automatic fashion, that the rebooking not be required on unaffiliated carriers, and that passengers have the flexibility to choose the rebooking option that best suits their needs;

- IATA recommends that mandatory assistance be limited to what is within the airlines' ability to provide;

- IATA recommends that communication between airlines and passengers be limited to texting and email (in addition to gate communication); that agents be required to collect contact information on passengers and share it with the airline, and that the final regulation specifies the communication that is required at any particular time after consultations between airlines and the CTA;

- IATA supports a 48 hour limit from the original disruption time for carriers to claim an exception to compensation because of the original delay; and

- IATA opposes refunds for travel advisories that are not new or serious.

Conclusion

IATA appreciates that it is both natural and expected that passengers would like to be compensated for the time they have lost due to an irregular airline operation. Passengers and the governments that represent their interests look to airlines to provide this compensation as it is the airline who is delivering what they consider the less than acceptable transportation experience. However, flight delays and cancellations are rarely the sole responsibility of airlines and a regulatory scheme that ignores that fact is doomed to failure. IATA greatly appreciates the attempt by the CTA to provide clear definitions of what would be considered an exceptional circumstance that excuses an airline from compensation obligations. Our comments on those circumstances, as well as on other aspects of the proposal, are designed to support the CTA in developing rational cost-effective regulations that have minimal unintended consequences.

Respectfully submitted,

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Exceptional Circumstances List

a) war or political instability;

b) illegal acts or sabotage;

c) Weather or other atmospheric conditions, or natural disasters, that make it impossible to safely operate the flight, including items such as: actual or forecasted blizzards, heavy winds, lightning, hurricanes, etc

d) instructions from air traffic control;

e) a NOTAM, as defined in subsection 101.01(1) of the Canadian Aviation Regulations;

f) a security threat or risk, incompatible with the safe operation of the flight, including unruly passengers;

g) airport operation issues;

h) a medical emergency;

i) a collision with wildlife, drones, or any other unforeseeable accident

j) a labour disruption within the carrier or within an essential service provider, or labour shortages within an essential service provider such as an airport or an air navigation service provider;

k) a manufacturing defect in an aircraft that reduces the safety of passengers and that was identified by the manufacturer of the aircraft concerned, or by a competent authority;

l) technical defect(s) and/or problems, provided that all of the following criteria is fulfilled:

- the maintenance has been executed in accordance with the approved maintenance program, including taking into account Minimum Equipment List (MEL) and Configuration Deviation List (CDL)
- the defect is related to the airworthiness of the aircraft, is not listed in the Minimum Equipment List (MEL) and results in the defect having to be fixed before the flight can operate, or several defects occur which are listed in the MEL and/or CDL, and in accordance with the Canadian Aviation Regulations the pilot decides that it is not safe to operate the aircraft with the combination of these defects.

m) a defect or concern discovered via the carrier's, a supplier's, or a relevant 3rd party's safety management system or quality assurance program that requires immediate action to ensure the safety of further flight(s).

n) an order or instruction from a manufacturer of an aircraft, engine or part, or from an official of a state or a law enforcement agency or from a person responsible for airport security;

o) system outage or infrastructure breakdown by governmental or essential service providers, essential to the operation of a flight;

p) a delay, cancellation or denial of boarding that is directly attributable to earlier delay(s) or cancellation(s) which has occurred within the last 48 hours and that was due to exceptional circumstances, is considered to also be due to situations of exceptional circumstances if that carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation;

q) any other situation that cannot be reasonably foreseen if the carrier proves that it and its servants and agents took all measures that could reasonably be required to avoid the delay or cancellations or that it was impossible for it or them to take such measures.