

NAV CANADA BRIEF

Canadian Transportation Agency

Submission regarding proposed changes
to clarify, simplify and strengthen the Air
Passenger Protection Regulations

August 2023

Serving a world in motion
Au service d'un
monde en mouvement
navcanada.ca



TABLE OF CONTENTS

.....	1
INTRODUCTION	3
1. NAV CANADA’s Mandate and Principles.....	4
About NAV CANADA	4
Safety First	4
Revenue Model	5
Staffing	6
2. Amending Air Passenger Protection Regulations (APPR).....	6
Identifying the exceptional circumstances	7
Airlines’ responsibilities regarding claims for compensation	9
Rebooking and Refunds	10
Assistance	10
Communications	11
Chain Reactions	11
Refunds for changes to Government Travel Advisories	12
CONCLUSION.....	12

INTRODUCTION

NAV CANADA welcomes the opportunity to make the following submission to the Canadian Transportation Agency (CTA) on the proposed changes to the Air Passenger Protection Regulations (APPR) as it drafts the proposed regulatory amendments.

NAV CANADA plays a limited role in terms of causality for the air travel delays such as those that Canadians faced during the past year. NAV CANADA has played an exceedingly critical role in continuing to ensure the safe departure, transit and arrival of hundreds of thousands of flights into, across and out of Canada despite the disruptions at times in schedule regardless of the cause. NAV CANADA remains committed to working responsibly with everyone in the sector to address our shared challenges.

NAV CANADA recognizes the considerable effort the Government of Canada has put into the development and implementation of Air Passenger Protection Regulations (APPR) and is supportive of responsible protections for consumers. We also believe that any approach regarding the application of Air Passenger Regulations must be sustainable for the aviation sector to remain strong and competitive and consider impacts on affordability of air travel and competitiveness of the unique Canadian operating environment.

Regarding our operations, safety of air travel is the driving force behind every decision we make. With one of the best safety records in the world, NAV CANADA has built a trusted, collaborative environment amongst all aviation stakeholders, where safety information is regularly shared, to drive continuous improvement in the reduction of operational safety risks. As such, all standards setting and regulation should not interfere with our primary mission to keep Canada's skies safe, nor that of the broader industry's prioritization of safety.

NAV CANADA, by virtue of its mandate, is neutral on many of the APPR issues raised on the topic of passenger protection regulations (e.g. length of rebooking times, length of time to resolve customer complaints by airlines and the Canadian Transportation Agency (CTA), etc.). We do agree in substance with many of our stakeholders that financial and competitiveness impacts of the proposed regulations must be carefully considered by the CTA, especially in Canada's unique operational environment. We also believe that it is critical that any future adjustments to language signal that safety is not taken for granted in any way by the Federal Government.

This brief provides information related to:

1. NAV CANADA's mandate and principles
2. Amending the Air Passenger Protection Regulations

1. NAV CANADA's Mandate and Principles

About NAV CANADA

NAV CANADA is the not-for-profit corporation that owns and operates the world's first fully privatized Air Navigation System (ANS), ensuring the safest, most efficient movement of aircraft from the Pacific to the Arctic to the mid-Atlantic, 24 hours a day, seven days a week. Our mandate and associated services to aircraft operators are set out by legislation through the *Civil Air Navigation Services Commercialization Act (CANSCA)*, including outlining specific services such as aeronautical information services, air traffic control services and flight information services.

As Canada's Air Navigation Service Provider (ANSP), we oversee air traffic through a sophisticated network of area control centres, air traffic control towers, flight service stations, maintenance centres, flight information centres and navigation aids across the country. NAV CANADA supports 45,000 customers, including airlines, business aviation and air cargo operators, air charters and air taxis, helicopter operators and general aviation pilots and owners.

NAV CANADA is but one part of a vast aviation system. While a critical component from an essential safety perspective, NAV CANADA is a relatively small component of the air transportation challenges which beset consumers through 2022-2023 air transport recovery period. NAV CANADA strives to work with airlines, airport authorities, Transport Canada, and industry associations to provide a timely, seamless service within the context of its mandate to aircraft operators who provide their services to travelers and businesses.

NAV CANADA's air navigation system is also a critical part of the supply chain infrastructure that allows people, goods, medevac and services moving by air to go to and from communities large and small across Canada and around the world. From the biggest cities to some of the most remote places in Canada, our employees support and maintain equipment and infrastructure critical to operating a safe and efficient air navigation system.

The private not-for-profit model that is regulated by the federal Government has served Canada, the aviation sector, and the public extremely well. It has resulted in enhanced safety, increased efficiency and cost effectiveness, a more modern air navigation system which that has supported a reduction in greenhouse gas emissions.

Safety First

Aviation safety – in the air or on the ground – is a responsibility NAV CANADA shares with all aviation stakeholders and one that we take very seriously. For the past 26 years, we have continually introduced leading procedures and world-class technologies to enhance the safety and efficiency of air travel. NAV CANADA is regulated by Transport Canada on all safety matters.

We are continuously building a culture of safety, and our record demonstrates our success. Tactical management of airspace requires our operational personnel to make swift, safety-based

decisions at all times. During peak periods, air traffic controllers at major airports in Canada maximize the arrival and departure rates to support airline schedules and demand for air travel. In planning this rate, the team must take into consideration a number of factors. These factors can range from weather and visibility, the number of arrivals versus departures, runway conditions, configurations and occupancy times, airport construction, gate or taxiway layout and availability, as well as the traffic mix (types and weight/size of aircraft) in the surrounding airspace.

These factors are assessed on an ongoing basis throughout the day in coordination with airlines and airports to determine the optimal and safe movement rate for periods of the day. While NAV CANADA must respond to all these factors, it has limited control over most of them and must prioritize safety above all while working actively to maintain high-capacity levels.

Maintaining and increasing our safety focus has been achieved through significant investments in system upgrades since acquiring the ANS, and the work of our air traffic services professionals, technologists, and managers. Today, NAV CANADA is internationally recognized for our safety track record, and its expertise is sought by many across the world.

Revenue Model

Contrary to taxpayer-funded models that exist in many countries, NAV CANADA recovers the cost of providing civil ANS through customer service charges. As a not-for-profit corporation, the fees we charge are designed to cover our operating costs and financial requirements in the air navigation system while maintaining the highest safety levels amongst our ANS peers.

The COVID-19 pandemic saw passenger travel down more than 80 per cent during the pandemic. As an essential service, we still had to operate 100 per cent of the Air Navigation System and associated services, despite the reduced traffic. These services have a significant fixed cost base that is not easily scalable to traffic levels. Therefore, to cover our financial requirements, we were forced to increase our fees and our debt levels. In recognition of the impact of the pandemic on our customers, we took a balanced approach where we increased our fees by the minimum required to meet our existing bond covenants and provided a five-year deferral for the first-year increase to support the airlines as they gradually recovered.

Prior to the pandemic, our fees have consistently been below inflation with multiple decreases for our customers over the past 15 years. Even today, and in the context of significant and necessary infrastructure investment by NAV CANADA, our service charges remain well below the rate of inflation since our inception.

NAV CANADA's new strategic and planned investments to provide advanced air navigation systems and services to our customers will leverage industry-leading technologies and procedures, and the expertise of our employees and partners to control costs and deliver even greater value to air navigation system users and the flying public we collectively serve while ensuring safety and enhancing resiliency to future shocks.

Staffing

NAV CANADA – as are many in the complex global air industry– is currently experiencing frontline air traffic services staffing challenges. This occasionally impacts our services at some major airports in Canada. Having enough people to deliver safe and efficient air navigation services is a top priority for NAV CANADA.

That being said, NAV CANADA is in a better position than many air navigation service providers as it relates to staffing, and we are applying a multifaceted approach to addressing our challenges. We are currently leveraging a number of short-term options, including optimizing staff scheduling, rehiring recently retired controllers, temporary assignments and overtime. At the same time, our front-line air traffic services training programs are currently running at full capacity. We have more than 400 employees in training and more than 600 individuals will enter our training programs in the following two years. It takes 12 to 27 months for an air traffic services employee to qualify for front line duty. Our training activities are already yielding results, with close to 120 air traffic services employees receiving qualification since the beginning of our current fiscal year.

Ensuring that Canada’s air navigation service provider is adequately staffed to meet the evolving needs of Canada’s aviation industry is one of the many ways the company is helping to reduce the frequency of delays. The organization employs various roles, including air traffic controllers, flight service specialists, technologists, pilots, engineers and support staff. To meet the increasing demand for staff, NAV CANADA has expanded its training programs and is actively recruiting and training new employees across Canada.

2. Amending Air Passenger Protection Regulations (APPR)

NAV CANADA recognizes the considerable effort the Government of Canada has put into the development and implementation of Air Passenger Protection Regulations (APPR) and the thought that the Canadian Transportation Agency has put into the proposed amendments following engagement with industry and other stakeholders. NAV CANADA has taken the liberty to provide views on some aspects that may be beyond the air navigation space; this is because impacts to one area of the industry can create challenges for the broader air sector.

NAV CANADA is supportive of responsible protections for consumers. We also believe that any approach regarding the application of APPR must be sustainable for the aviation sector to remain strong and competitive and consider impacts on affordability of air travel and competitiveness of the unique Canadian operating environment.

NAV CANADA supports the view that the timing of the introduction of the APPR vis-à-vis the impact of the pandemic and the unprecedented industry upheaval must still be considered. Any changes to the terms and conditions for compensation under the APPR and obligations of the airlines and potentially other parties should be deferred until the industry experiences a sustained and lengthier period of operational and traffic stability.

The global aviation industry experienced an unprecedented shock due to the pandemic. This meant that when demand started to recover, there were many challenges to resumption of services across the sector. Since then, the industry has observed gradual stabilization – whether it be security processing times, overall staffing levels, and technology improvements, the passenger experience is improving.

There is still much work to do to achieve an optimum operating environment for all players in the system; few industry players will deny that. However, using the period immediately following a generational black swan event as the reference point for future regulation is concerning. The existing APPR has not been fully tested and a more punitive and costly APPR environment will negatively impact the recovery and increase costs for passengers.

Identifying the exceptional circumstances

- **What are your views on the proposed criteria for exceptional circumstances?**

At NAV CANADA, teams across the country support efforts to keep aircraft moving on time and on schedule. We're part of a highly interconnected and interdependent system that requires many players including airlines, airports, security agencies and various ground services.

Air traffic controllers and flight service specialists need to have the flexibility to use the traffic management tools at their disposal to ensure safe navigation. The Canadian airspace is the second largest in the world, and with 18 million square kilometres comprised of various aircraft operations, populations, climates and terrains, it is a unique and complex airspace to manage. NAV CANADA's privatized model is recognized internationally for its safety record and continues to invest directly in our operations, people and infrastructure to keep Canada's air navigation system as safe, efficient and innovative as it can be.

Delays involving NAV CANADA actions always have important safety considerations. To that end, NAV CANADA fully supports that air traffic management (ATM) restrictions are considered exceptional circumstances outside of the control of airlines and not be subject to compensation requirements.

Delays can arise from adverse weather such as thunderstorms and snowstorms, maintenance and construction at airports, or the operational capacity of airlines, airports, third-party providers and our air navigation system. While NAV CANADA is the body which typically communicates the implementation of a traffic management initiative (TMI) to various affected parties, it is important to note that, in most cases, NAV CANADA is not the cause of the delay. TMIs are an important tool in the air traffic system. These initiatives contribute to the safe and orderly movement of air traffic and are used by air traffic control organizations globally in the regular course of day-to-day operations and often serve to protect future capacity by avoiding gridlock.

In the same way, NAV CANADA supports the inclusion of official Notice to Airmen (NOTAMs) as criteria for exceptional circumstances. NOTAMs are implemented to ensure safety of operations, first and foremost. They are an efficient way to communicate airspace closures, visual interference, or potential physical obstruction. NOTAMs can be requested by many parties, including airlines and airports, for reasons such as a runway or taxiway being closed due to an

Response to APPR Consultation

aircraft experiencing a mechanical issue or airspace restrictions due to specialized operations taking place (e.g., policing, air shows, military operations).

NAV CANADA believes that all traffic management restrictions and initiatives should be captured in the “exceptional circumstances” under the proposed APPR. Specifically, the APPR should define air traffic restrictions as the following:

“Any measure that NAV CANADA puts in place to safely and orderly manage the movement of air traffic in the Civil Canadian airspace, including, but not limited to: Traffic Management Initiatives, Ground Delay Programs, Ground Stops, Miles in Trail, APREQs and NOTAMs.”

- **Are there circumstances that should be added or removed from the list?**

The Canadian Transportation Agency has proposed eliminating “disruption” categories and replacing them with an “exceptional circumstances” category. In particular, the proposed regulations have eliminated the “required for safety” category.

The CTA states, “It has been noted, through implementing the regulations and processing air passenger complaints, that the three disruption categories are not clear, especially those ‘required for safety’ and ‘situations outside the airline’s control’. This lack of clarity leaves significant room for differing interpretations, which results in passengers often lacking the information they need to determine whether they are entitled to compensation. For these same reasons, the APPR have proved difficult to enforce.”

NAV CANADA appreciates the CTA’s concerns that the interpretation of these situations can be challenging and that there is concern that some parties could apply a vague and too broad interpretation of “safety” to avoid compensation under the current regulation. However, we are disconcerted by the proposed complete elimination of a critical subclass of exceptional circumstances.

Safety is always first and foremost in all operational decisions for NAV CANADA. We believe that the current classification does not represent a problem, but rather that there is an opportunity to potentially enhance the definition with respect to the examples used in the APPR.

Safety is a core pillar of the aviation industry. Every player in the system is focused on safety; it is critical that any future adjustments to language that speak to exceptions to compensation signal that safety is not taken for granted in any way by the Federal Government. For example, NAV CANADA believes that any delays related to aircraft mechanical failure or malfunctions – such as those discovered during a pre-flight inspection – must be protected as an exceptional circumstance. While they may be an inherent part of the normal operation of an airline, they are safety-related and cannot be foreseen in many or most circumstances.

We believe that a definition of what safety constitutes in exceptional circumstances should be included in the APPR.

Airlines' responsibilities regarding claims for compensation

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

During prior engagements and submissions, some parties have proposed that airlines and airports should be able through legislation/regulation to recover costs from third parties for some instances of refunds or compensation. In considering any changes to APPR, the CTA should not by default seek to mimic regulations from other jurisdictions, such as Europe, as our operating environment is distinct. This includes the unique status of NAV CANADA as a private, non-for-profit provider of air navigation services in Canada. The assignment of responsibility for cost of recovery from NAV CANADA would at best be circular, with NAV CANADA needing to pass these costs back on to the airlines through its service charge mechanism defined in *CANSCA*. If NAV CANADA were to compensate airlines, this added cost would put pressure on the very service charges airline customers and other aircraft operators pay to NAV CANADA.

NAV CANADA is a not-for-profit corporation which recovers the cost of providing civil ANS through customer service charges. The COVID-19 pandemic saw passenger travel down more than 80 per cent during the pandemic. While there was some cargo traffic increase, the net decline severely impacted NAV CANADA's revenue. During this period, we still had to operate 100 per cent of the Air Navigation System and associated services, despite the reduced traffic. These services have a significant fixed cost base that is not easily scalable to traffic levels. Therefore, to cover our financial requirements we were forced to increase our fees and our debt levels. In recognition of the impact of the pandemic on our customers, we took a balanced approach where we increased our fees, in accordance with *CANSCA*, by the minimum required to meet our bond covenants and provided a five-year deferral for the first-year increase to allow the airlines to recover profitability. Prior to the pandemic, our fees have consistently been below inflation with multiple decreases to our customers over the past 15 years. Even today, and in the context of significant infrastructure investment by NAV CANADA, our service charges remain well below the rate of inflation since our inception.

Given the continued uncertainty that the aviation industry faces, we remain focused on carefully controlling our spending to mitigate the need for any further rate increases while positioning ourselves to support the post-pandemic recovery in air travel. An assignation of responsibility for cost of recovery from NAV CANADA could affect our ability to decrease service charges to the airlines adding to their cost burden, not reducing it. Furthermore, any such mechanism would financially penalize all operators, including those not experiencing delays, by directing [potentially increased] NAV CANADA service charge revenues to compensating an operator or operators who may have experienced a delay.

Increasing costs for travelers

Any significant new costs would create greater risks for airlines, hindering the creation of new routes to non-hub locations, thus potentially reducing accessibility of Canada's rural and remote areas. As well, these costs would ultimately be passed onto consumers, resulting in higher fares

and impacting affordability of travel. These factors would heighten the challenges faced by the industry and thwart progress towards a more competitive air transportation sector.

Increasing the punitive force of the APPR will not further the primary goal of avoiding delays for the flying public and will only result in the diversion of resources that could otherwise be directed at addressing delays. Additionally, NAV CANADA supports the view that the timing of the introduction of the APPR vis-à-vis the impact of the pandemic and the unprecedented industry upheaval must still be considered.

Again, the Government must be cautious in its response given what was the most challenging time for aviation globally. Focusing on punitive measures that will further burden the industry, with impact into the future at a time when the focus should be investing in our supply chains, would be inappropriate.

Rebooking and Refunds

NAV CANADA believes that a greater timeframe may need to be applied for situations outside airlines' control, as identified in the criteria for exceptional circumstances.

Additional consideration should also be given to smaller air carriers who often serve remote and rural communities where there may not be many alternate options for rebooking and who face additional financial sensitivity in doing so.

Additionally, we need to better understand and communicate the root causes of delays and cancellations. NAV CANADA is actively working on performance data that will increase understanding and information availability, which will support greater transparency. We have a significant initiative underway to improve performance measurement and develop new metrics with and for stakeholders and our business.

We are engaging directly with operators and others to understand what metrics will best serve to drive improved performance, such as how the industry can measure delays effectively, and how our stakeholders assign value to our services. This will require data held by industry partners. Continued and enhanced data sharing with our customers and airlines is essential as it assists us in optimizing our staff scheduling as we introduce new technology and capabilities as part of our strategic transformation and establish increasingly seamless operations. The time commitment and cost associated with the development of such data must be considered when analyzing the financial impact that the new APPR will have on the industry. The CTA must also consider the availability of that data when establishing complaint processing timelines; at this time, comprehensive data to decipher the range of contributors to delay is very limited.

Assistance

With respect to item 4, NAV CANADA is of the view that this again is solely the purview of the relationship between the airlines and the passengers. As per previous comments, we are opposed to any assignation of financial responsibility to third parties in this regard.

Communications

- **Is there a better or more efficient way that information (including the communication requirements included in Section 2 – Compensation) can be shared with passengers other than proposed.**

As the CTA notes in the APPR consultation paper, the proposed amendments increase the onus on airlines to communicate the reason for disruption.

As stated previously, there are many sources of delays that can affect air traffic. Our goal is to get aircraft moving as expeditiously as possible within the constraint of safety, which is regulated by Transport Canada.

NAV CANADA supports the development of communications protocols that are fact-based, and data driven where involved parties can support the messaging provided to passengers in the case of delays and cancellations.

To that end, and to ensure travelers have access to accurate and timely information relevant to their travels, NAV CANADA is moving forward with plans to inform the public of air traffic management-related delays. Through our new communication protocol, NAV CANADA will publicly release information pertaining to air traffic control operations at Vancouver International Airport (YVR), Calgary International Airport (YYC), Toronto Pearson International Airport (YYZ), and Montréal-Trudeau International Airport (YUL). Whether it is due to staffing levels, weather, airport construction or other similar factors, NAV CANADA will now share when implementing traffic management initiatives that cause average delays of 60 minutes or more. Our future plans also include providing status updates and information about our operations at these four major airports.

Chain Reactions

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

When there is a challenge in the system, such as a significant adverse weather event, recovery from that event is much more lengthy and costly compared to other jurisdictions, despite best efforts by airlines. Aircraft can be out of position and many hours away thereby creating a domino effect. APPR needs to take a balanced approach that recognizes the unique challenges of the Canadian operating environment without creating undue costs that are ultimately passed on to the passenger. Furthermore, justifiable events upstream that have a knock-on effect on performance later in time should not result in compensation requirements.

The proposed two-flight limit which mirrors EU regulations is questionable in the Canadian context. In the case of a severe weather event, the current and proposed requirements for rebooking and refunds under (3) would appear to conflict with this restriction, where airlines are

required by law to expeditiously rebook and then would be forced to compensate should a weather event be continuing after the second flight limit.

NAV CANADA is concerned that this will result in pressure from airlines and airport operators to have air traffic controllers release flights for takeoff or allow landings in adverse weather because of the financial implications of further delaying or cancelling the flight. We would therefore propose that the CTA consider exemptions to the two-flight limit for weather and other extended exceptional situations.

Additionally, airlines may seek to “de-risk” the potential of compensation downstream of justifiable delays by adding more buffer time between flights, resulting in reduced service frequency and reduced choice for consumers.

Refunds for changes to Government Travel Advisories

While NAV CANADA does not have a direct role to play in this area, we wish to express some concern on potential effects to international connectivity and financial impacts to air carriers who have no role in setting Government Travel advisories. While we fully support the work of the Federal Government in keeping travelers safe by informing them of travel risks, the proposed amendments in this area position airlines as the insurer of these advisories and may increase the financial risk of providing service to certain destinations.

CONCLUSION

Canada will always experience some level of weather-impacted travel delays and other disruptions. We believe that a balanced approach, which supports a competitive industry as well as protects airline passengers is essential to maintain a healthy aviation industry in Canada.

Safety must remain a priority for the Federal Government when considering changes to the APPR. It is the driving force behind every decision we make at NAV CANADA. With one of the best safety records in the world, NAV CANADA has built a trusted, collaborative environment amongst our aviation stakeholders, where safety information is regularly shared to drive continuous improvement in the reduction of operational safety risks. As such, standards setting and regulations should not interfere with our primary mission to keep Canada’s skies safe, nor that of the broader industry’s prioritization of safety.

NAV CANADA makes the following recommendations to the CTA with respect to any consideration being given to further amendments of the Air Passenger Protection Regulations:

- (1) Safety must always be prioritized; safety-driven decisions resulting in delays and/or cancellations by any player in the system – including airlines – should continue to be protected from compensation requirements. This includes air traffic management activities administered by NAV CANADA.
- (2) NAV CANADA should continue to be exempt from any assignment of financial responsibility for refunds or compensation. These costs would ultimately be passed back to our customers and would have an adverse financial impact on the ecosystem at a time when we are all still recovering.