



**NACC**  
National Airlines  
Council of Canada



**CNLA**  
Conseil national des lignes  
aériennes du Canada

**SUBMISSION BY THE NATIONAL AIRLINES COUNCIL OF  
CANADA TO THE CANADIAN TRANSPORTATION AGENCY**

**On Proposed Changes to the Air Passenger  
Protection Regulations**

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## Who We Are

The National Airlines Council of Canada (NACC) is the trade association that represents Canada's largest passenger air carriers: Air Canada, Air Transat, Jazz Aviation LP and WestJet. We promote safe, accessible, sustainable, and competitive air travel through the development of policies, regulations and legislation that foster a world-class transportation system. As such, we have a significant interest in the development of amendments to the Air Passenger Protection Regulations (the "APPR") and the broader changes to the *Canadian Transportation Act* that were contained in the Budget Implementation Act, Bill C-47. It is important that these legislative and regulatory changes are developed in a comprehensive, consultative, and fair manner that balances both passenger rights with the impact to industry and the realities of the operating environment that is faced in Canada.

## Background

The current APPR regime came into force in Canada in 2019, with additional amendments having come into force in September 2022 to address gaps as applicable to refund requirements as identified in the context of the pandemic. It is important to emphasize that just a few months after the coming into force of the original APPR regulations in 2019, aviation in Canada and around the world faced the devastating impacts of the COVID-19 pandemic. In fact, the current regulation may still be fit for purpose but has never been tested in normal operating circumstances. Rather, throughout the pandemic, Canada implemented some of the most stringent travel-related measures as compared to other countries. These restrictions included pre-departure and arrival testing, quarantine, hotel quarantine, and declarations, among other restrictions. Demand for travel was significantly impacted from March 2020 to the gradual easing of restrictions in spring 2022, especially as Canada was one of the last G20 countries to ease restrictions. Pandemic measures resulted in massively reduced schedules and substantial reductions in staff capacity across all ecosystem partners.

As pandemic restrictions began to be lifted in spring 2022, the aviation ecosystem then faced the historically unique challenge of responding to a surge in travel demand of approximately 300% in a few weeks' time. This rapid increase in passenger volume, combined with the strict application of remaining travel measures and entry requirements led to air travel disruptions in summer 2022 - a situation that was compounded by delays in Transport Canada processing of certifications for critical operational airline staff, CATSA staffing shortages at screening checkpoints, and aircraft waiting for hours to offload into Canada Customs due to CBSA staffing shortages. Capacity growth and staffing began to return to normal levels in fall 2022; however, the system was subsequently struck by a "once in a generation" multi-day weather system that spanned across Canada and into the U.S during the busiest travel days of the year in December 2022, which resulted in additional disruptive events during this time period. Nevertheless, as of spring 2023, carriers had recovered in a relatively short period of time from the cumulative effects of these disruptions.

As a result, airlines have seen a significant increase in the volume of claims received, many of which were caused by performance issues related to the pandemic, the transition period following easing of restrictions, and other ecosystem stakeholders - thereby providing no period of “normalcy” by which to evaluate the effectiveness of the current APPR regime. Yet despite these unique recent historical challenges, the Canadian Transportation Agency’s own audits and spot checks conducted since 2019 have found that airlines have adhered to their obligations under the APPR. To suggest that the APPR regime is fundamentally flawed, especially during a time of unique, historical circumstances, is simply not accurate.

Furthermore, despite claims to the contrary, Canadian passengers have overall been satisfied with air travel over the past year. In a passenger survey conducted by the independent market research agency Motif for the International Air Travel Association (IATA) in spring 2023, 93% of Canadian passengers who flew over the past 12 months indicated that they were “very satisfied” or “somewhat satisfied” with their flying experience – suggesting that claims of widespread passenger dissatisfaction are not consistent with available evidence.

## Comparison to the EU Commission’s Regulation 261/2004 on Air Passenger Rights

Politicians and commentators in Canada have suggested that the APPR should emulate the European Union’s (the “EU”) passenger rights regime, also known as EU261. Aside from the fact that Canada and the EU face significantly different operating environments, such as Canada’s large geography and low population density, and of course, very different weather conditions, the EU261 model also has significant flaws and should not serve as a model for other countries. For instance:

- Although the EU261 model has an “exceptional circumstances” exemption, the definition of “exceptional circumstances” has been left to EU courts. The definition has been developed through successive landmark court decisions which has led to a convoluted and complex interpretation which is difficult for passengers and airlines to understand. Most importantly, the reliance on interpretation from courts to define the application of exceptional circumstances has significantly altered the safety principle that was the original basis for exceptional circumstances.
- Due to the necessity of court appeals for clarity on whether situations constitute exceptional circumstances, the EU261 regime is highly litigious, resulting in the clogging of the court system(s) and putting extra costs and burdens on the consumer and airlines.
- A January 2020 fact finding report<sup>i</sup> by the European Commission found that the cost for European airlines to comply with EU261 increased from the equivalent of close to CAD\$2.5 billion in 2011 to more than CAD\$8 billion in 2018. The bulk of this increase came from increased compensation costs (it should be noted that this was equivalent to the net post-tax profit per passenger in the EU at this time). Further, a study on the current level of protection of air passenger rights in the EU lists a substantial number of airlines that have become insolvent from 2011 to 2019. This is a concerning and cautionary tale. EU261, known in some circles as “the airline killer”, has put an unbearable financial burden on airlines that operate on very low margins. This has led to some airlines abandoning routes that are not profitable, including subsidized routes.

- In this regard, it is worth mentioning that the compensation levels provided in the EU 261 regime are overall significantly lower compared to those in the APPR – we have attached a comparative chart outlining various cost scenarios. Should Canada adopt a similar approach to the EU without changing the compensation levels, cost of compliance will be significantly higher than in Europe, and will disproportionately impact regional markets, likely leading to increased ticket costs and reduced regional service.
- Despite the added costs to adhere to EU261, operational performance declined in the EU from 2011 to 2018; new obligations did not result in performance improvement. This is evidence that EU261 has not been successful in incentivizing airlines to mitigate the risks of disruptions, as many disruptive situations are simply beyond their control.
- Further to the fact-finding report issued in January 2020, the President of the Commission has proposed amendments to EU 261, to exempt from compensation delays and cancellations caused by unexpected safety events such as mechanical<sup>1</sup>.
- The Chair and CEO of the CTA herself seemed to recognize the perils and challenges of EU 261 and has stated that the EU261 regime has its flaws.<sup>2</sup>

**Comparable Compensation Costs for Select Routes under EU261 and APPR**

Disruption	Routing	Distance	Payable in EU	Payable in Can
9 Hour Delay	YYC-YVR	689 KM	€250	\$1,000
	YYC-YEG	245 KM		
	YYZ-YUL	508 KM		
	YYC-YWG	1,195 KM		
	YYZ-YHZ	1,292 KM		
	YVR-YQR	1,336 KM		
9 Hour Delay	YVR-YWG	1,870 KM	€400	\$1,000
	YYZ-YWG	1,507 KM		
	YVR-YHZ	4,442 KM		
	YYZ-YXE	2,215 KM		
	YYT-YYZ	2,129 KM		
9 Hour Delay	YUL-CUN	2,965 KM	€400	\$1,000
	YVR-LAS	1,597 KM		
	YYC-JFK	3,285 KM		
	YHZ-FLL	2,565 KM		
9 Hour Delay	YVR-LHR	7,601 KM	€600	\$1,000
	YYC-OGG	4,974 KM		
	YUL-IST	7,707 KM		

In short, as Canada moves ahead with amendments to the APPR regime, it should be very cautious in attempting to align itself with a flawed international model. However, if it chooses to do so, it should also align with the compensation levels.

<sup>1</sup> Proposed Annex 1 to EC261, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52013PC0130>

<sup>2</sup> <https://sencanada.ca/en/Content/Sen/Committee/441/TRCM/55EV-56219-E>

## Cost Analysis

On July 12, 2023, the CTA sent out a questionnaire to airlines requesting detailed data in relation to the implementation of the APPR and the controllability of flight disruptions. The note accompanying the questionnaire stated the purpose of the request:

*“The Treasury Board of Canada Secretariat requires agencies and departments to prepare a Cost-Benefit Analysis (CBA) on the potential impacts of all proposed regulations and regulatory amendments. The CBA monetizes, quantifies and qualitatively analyzes the costs and benefits to stakeholders of a regulatory proposal, by assessing the impacts in comparison to a baseline scenario.”*

Given the potential cost implications of the proposed amendments to the APPR, NACC strongly believes that the data collection and associated cost analysis should have been conducted prior to the launch of pre-consultations, rather than during the process. To provide feedback and comments on regulatory proposals in the absence of a comprehensive cost analysis as required by Treasury Board guidelines is to provide information “in the dark” particularly when the potential cost impact on airlines and passengers is likely to be significant.

NACC would urge the CTA to not make any final decisions on APPR regulations, including the forthcoming consultation on the “cost recovery” levy, until such time as the full cost analysis is completed and made public. This fulsome analysis should include information on cost impacts on airfares paid by passengers.

## Issues Contained in the July 2023 CTA Discussion Paper

NACC offers the following comments and recommendations on the proposals set out in the CTA Consultation Paper released on July 11, 2023. We note that several of the proposals contained in the CTA consultation paper are vague, ambiguous, and lack necessary clarity. For instance, the proposed test for events deemed “inherent to normal exercise of the activities of an airline”, is unclear, ambiguous and could be interpreted as not fully acknowledging the importance of safe airline operations and the unexpected nature of mechanicals defect. If Canada is to avoid the litigious nature of the European model, regulations should be clear as possible to avoid misinterpretation of the regulations in the air travel system.

### **1. Exceptional Circumstances List: Airlines Cannot be Penalized for Complying with their Safety Obligations**

Safety is the top priority of airlines in Canada and around the world. NACC member airlines are global leaders in aviation safety. Significant resources are allocated by airlines to ensure adherence to strict safety regulations and maintenance requirements. As a result, air travel in Canada continues to be the safest mode of transportation. Carriers’ operations are carefully planned to take into account all applicable safety rules and regulations. However, given the unique nature of aviation, some situations, like a mechanical failure discovered during the pre-flight inspection, are simply not foreseeable and force

airlines to delay or cancel flights. Airlines should not be penalized for this, and compensation should not be payable in situations when airlines have not committed any fault and are following mandatory safety regulations that prohibit the operation of the aircraft until the defect is rectified.

One of the significant changes that is proposed by the CTA is the elimination of the safety-related category that exempts carriers from paying compensation to passengers, and the adoption of a narrow list of “exceptional circumstances” that will limit the situations for which airlines would not be required to pay this compensation. However, there is a sound reason for the safety exemption. It was clearly understood by the original drafters of the APPR that there needed to be a balance between passenger rights, and the associated compensation and maintaining the safety of aviation. Safety has always been and will always be the top priority for airlines and the entire aviation industry. Airlines can only operate as efficiently and as on time as safety regulations and requirements allow. Punitive consequences should not be tied to adhering to safety regulations.

Canada has always been a leader in aviation safety. The adoption of the Safety Management Systems (SMS), which is the global standard of identifying and mitigating safety risks, is a proactive method of improving safety rather than the reactive approach previously only sought following an incident or accident. Without a clear and comprehensive exceptional circumstances list that prioritizes safety, Canada would turn the clock back on the principles of adherence of the SMS. It is critical for the entire industry to establish a healthy, robust, and positive safety culture and continuously improves aviation safety, and this example must be reflected by the Government of Canada itself and in its regulations. The APPR regulations should be consistent with existing (and planned) safety rules and practices that are applicable to airline regulated activities so that there are no overlaps and/or contradictions. Canada must not go backwards on safety; it needs to continue to move forward and to be a global leader in this regard.

As a result, NACC recommends that a list of circumstances exempting airlines from the obligation to pay compensation be defined within the regulations that includes a clear, logical, and comprehensive list of safety related exemptions for unexpected situations. NACC is proposing the following list which has been developed in consultation with input from safety, technical and operational experts of our member airlines, and a review of other regulatory regimes. Although this list has several similarities to the list proposed in the CTA Consultation Paper, the list below more accurately identifies the safety-related events and circumstances that should reasonably be considered extraordinary circumstances.

With respect to technical or mechanical defects, the proposed wording contained in the CTA Consultation paper related to mechanical events is insufficient and does not reflect the operational realities of maintaining fleets of highly complex and technical aircraft. It also does not account for the unexpected nature of mechanical defects that may arise despite strict compliance with their regulatory approved maintenance program. In the list below, NACC has provided more specific and detailed language related to mechanical defects that more accurately identifies when a mechanical issue should be considered an exceptional circumstance.

Finally, NACC has concerns with the two-pronged test proposed by the CTA in the consultation document. The first criteria requires that the event in question causing the flight disruption is “not inherent to the normal exercise of the activities of the airline.” This part of the test is too vague and can capture virtually all events that may result in a flight disruption despite the airline not having any control. It is this vagueness in the first prong of this test that greatly prompted the proposed revisions of EU261 as courts, passengers and airlines had difficulty in consistently applying the requirement. This demonstrates that when the rules do not match with airline operational realities, overreach and venture into the area of micro-management will bring unintended consequences—for both the airlines and for passengers.

#### **Exceptional Circumstances List – NACC Proposal**

- 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:
  - o 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)
  - o 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.

### ***Shifting burden of proof to airlines – “Guilty until proven innocent”***

In a legal dispute, one party typically has the burden of proof to demonstrate and provide the evidentiary basis for their position. The burden of proof requires that party to produce evidence to establish the truth of facts needed to satisfy all the required legal elements of the dispute. In Canada’s system, the burden of proof is always on the party who brings a claim in a dispute. However, the amended act reverses this onus, effectively generating a strict liability regime where the airline is presumed to be liable for compensation unless the event in question falls under a narrow scope of exceptional circumstances.

This will require significant evidence from airlines that it does not have today, including some that is in the hands of third parties responsible for the delay, such as airports, security, customs, and/or navigational services. Similarly, providing evidence could constitute the provision of commercially sensitive information including safety information, sensitive aircraft logs, and intellectual property that could be in the form of manuals, procedures, or other documents which should not be provided to the public. Airlines are currently required to provide this evidence at the adjudication stage; any requirement to provide evidence should be at the stage when airlines respond to claims.

NACC is calling for a shared accountability system, so that airlines have access to the supporting data and evidence required to be able to properly respond to and defend against passenger claims. If the APPR amendments put the onus on airlines to prove or disprove a passenger claim, certainly the expectation must be that this can only be achieved if airlines have access to all information and data with respect to the service disruptions of third parties.

## **2. Rebooking and Refunds**

The CTA consultation paper outlines several new proposed regulations with regard to rebooking and refund options when passengers are faced with flight disruptions, particularly for smaller carriers. NACC’s comments are related primarily to the rebooking provisions contained in the consultation document.

The proposed rebooking amendments to the APPR do not reflect the operational realities of airlines. For instance, airlines may not have partners with similar schedules or itineraries to be able to effectively and promptly rebook passengers in the event of a disruption. There may not be any alternative flights available within the time frame specified in the regulations, including at nearby airports. Put simply, alternative flight options as envisioned by the regulations do not always exist. Further, when large scale disruptive events occur, all airlines will be impacted and as such, flight options to rebook passengers will be significantly diminished, as was seen during the significant weather disruptions over the December 2022 holiday period.



To address this reality, NACC is recommending that the rebooking proposals in the CTA consultation document be amended to include the recognition that the rebooking obligations only apply when viable options exist – it is not reasonable to expect that an airline can rebook if no options exist. Such a recommendation would reflect diverse and unique operating realities such as flight frequencies (not one-size-fits-all) and encourage airlines to complete disrupted flights as quickly as possible when safe and practicable. Put another way, an airline cannot be held liable if no viable rebooking option is available, including within their own airline, a partner airline (especially when there are no partnerships), or when flights at competing airlines are not available. As a result, the obligation to rebook within a 9 hour window may not be viable or achievable – the APPRs must reflect what is realistic and attainable.

**Refunds:** The CTA consultation paper suggests that *“For flight delays, passengers could choose a refund once the delay reaches 3 hours at departure.”* Three hours is too short a time window to allow passengers to choose a refund. This could cause significant disruption to the operation of the flight if allowed to stand; as a result, we would suggest this time requirement be extended.

### **3. Standards of Care and Assistance**

The proposals in the CTA consultation paper would require airlines to provide passengers with assistance for all flight disruptions after a defined delay at departure, including in exceptional circumstances. In order to enhance the clarity of this provision and reflect operational realities, NACC provides the following recommendations:

- The regulations assume that every airport will always have access to relevant standards of care at any given time. This is not always the case. For instance, smaller airports may not have food and beverage options such as a restaurant available, and when they do, they may not be available at all hours of the day. Similarly, hotel capacity is limited, and hotels are frequently at capacity in larger cities, especially during summer peak travel season, or in an instance when there is a significant exceptional circumstance such as a snowstorm. Additionally, access to communications may be limited in the event of a power outage or a telecommunications outage.

The regulations need to reflect that assistance be offered if the capacity is available to do so. Airlines cannot be expected to provide standards of treatment when the availability of this assistance does not exist or is not attainable due to circumstances not within their control.

- The CTA Consultation paper states, on page 12, that: *“When disruptions are caused by exceptional circumstances, an airline would be responsible to provide passengers with some assistance for a certain period of time.”* By its nature, it can be difficult to predict how long an exceptional circumstance may last. In order to strike an appropriate balance between passenger needs and the uncertainty around the duration of some events that may be classified as an exceptional circumstance, NACC is recommending a 24-hour limit be placed on the provision of assistance in the event of an exceptional circumstance. Of course, this would be subject to the condition that forms of assistance are available, as outlined above. NACC also acknowledges that assistance may need to

be provided in the case of flights impacted by knock on effects. We propose that assistance be provided for the duration of the delay caused by allowable knock on effects (note NACC's recommendation for a 48 hour period for knock on effects in the section below).

#### 4. Communications

The CTA consultation paper proposes new regulatory requirements with respect to communicating information about flight delays or disruptions. NACC's comments on the regulatory proposals are as follows:

***Confirmation of preferred means of communication at check-in:*** Although NACC does not object to confirming a passenger's preferred means of communication at check-in, the list of preferred means of communication must meet a test of reasonableness and be attainable. For instance, it is not reasonable for passengers to expect individual phone calls or one on one in-person communications. In order to be attainable, the list of preferred communications should be limited to electronic communication (e.g., email, SMS text). Similarly, as this type of effort requires significant development of air carrier systems and notification tools, this provision should not come into effect for a 12-month period following the initial introduction to allow for carriers to modify, code, and create the appropriate notification systems. In order to expedite this element, the regulations should explicitly regulate that any Departure Control System (DCS) utilized by an airline, must allow for the collection of this information by air carriers.

Furthermore, in the case of a collective booking, such as a family or group booking, we would recommend that confirming preferred means of communication could be limited to the lead passenger rather than each individual member of a group.

***Requirement for third party travel booking organizations to collect and share with airlines preferred means of communication:*** Many passengers book flights with third party booking organizations. Not all third-party booking organizations collect information on the passengers' preferred means of communication, which means that airlines do not have access to this information, which therefore must be collected manually at check-in, adding to the time required to process a passenger. In order to expedite communications and avoid unnecessary delays, NACC is recommending that the CTA require, through regulation, all third-party flight booking organizations to collect information on preferred means of communication, and that third party organizations be required to provide that information to airlines. Given that travel agents are overseen by provincial regulations, it is important for the CTA to lead, liaise and ensure alignment with all entities overseen by provincial jurisdiction as applicable to these provisions.

***Airlines must tell passengers, via their preferred means of communication, about the specific entitlements they have at that moment, and how to claim them:*** Rather than the more vague regulatory requirement of informing passengers of entitlements they have "at that moment", NACC proposes establishing specific time thresholds whereby communications would be required, and what that communication would need to contain. For instance, after a 2-hour delay, information on how to claim assistance could be provided. A specified communications schedule would remove ambiguity from the

regulations. NACC proposes that a joint CTA-industry body could be established to define such a communications schedule.

A key issue remains with this proposal as the airline may not know what compensation or rebooking entitlement a passenger may have at that time as the controllability or the full delay context of the traveler's actual time of arrival at final destination may still be unknown.

***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:*** Airlines routinely provide proactive and timely information to passengers when disruptions arise, including such information as the projected length of the delay and known cause. The current APPR requirement to communicate this information in 30-minute increments is not always possible nor helpful to the customer given lack of comprehensive information on the nature of the flight disruption at that time and may result in misinformation. NACC agrees that this information should be provided as soon as possible, but to maintain an arbitrary limit of 30 minutes to provide accurate information is not always attainable and has led to confusion. We would support the concept of proactive and timely information provided as quickly as possible without a specified time allotment. Similarly, the requirement to provide the reason should be removed, as the reason for a delay, or extension can evolve and change very regularly, leading to a lack of clarity for passengers. The requirement should simply be to notify passengers of delays and updated departure times.

## **5. Chain Reactions (Knock-on effects)**

The current APPR regime does not put any limit on the number of flights that can claim the original disruption as the reason why they were delayed or cancelled – i.e., in the case of a safety related disruption or a situation outside the airlines' control, there is recognition that one disrupted flight will likely lead to subsequent disrupted flights given the displacement of crew, planes, or other equipment. Allowance for this so-called "knock on effect" is logical and reasonable, as it reflects the realities of an interconnected air travel system.

The CTA has proposed that this so-called "knock on effect" in the case of an exceptional circumstance be limited to two flights, specifically, the originally impacted flight and one additional flight. However, this proposed restrictive measure of two flights reflects a complete lack of understanding of the interconnectedness of the aviation system and in some cases will not permit for operational recovery, a reality that was recognized in the original iteration of the regulations. For instance, aircraft used in short haul operations may be used on multiple legs per day and would be severely impacted by any knock-on that originated from a "primary" event early in the schedule. Airlines work tirelessly in the face of an exceptional circumstance to return schedules back to normal and depending on the nature and duration of the original exceptional circumstance, and depending on schedules and locations of subsequent flights, knock on effects can last for several subsequent flights – and often at no fault of the airline. Further, this proposal unjustly prejudices regional airlines that operate short haul flights.

To reflect this operating reality, NACC recommends that airlines be able to claim knock-on effects for a period of 48 hours after the original disruption. This proposed time frame is more realistic to allow airlines to work out operational impacts and to reposition and/or reallocate resources as necessary.

## 6. Government of Canada issued travel advisories

Bill C-47 includes a new provision whereby airlines would need to provide refunds following the issuance of a Government of Canada travel advisory with certain regulatory conditions. The CTA consultation paper lists those conditions as:

- *The advisory is for the passenger's destination country or a connecting country;*
- *The advisory risk level has risen since the passenger bought their ticket; and*
- *The new recommendation is either "avoid non-essential travel" or "avoid all travel."*

NACC recommends that only level 4 travel advisories be considered under this requirement. Level 3 advisories, which are increasing in occurrence, can be covered by the applicable travel insurance or by the traveler purchasing a more flexible ticket. Airlines should not be expected to be the quasi-insurance industry for these types of circumstances.

Furthermore, airlines should not be expected to be liable to pay compensation if a flight is cancelled pursuant to a government issued travel advisory, and passengers are refunded.

## Lack of a Shared Accountability Framework

As NACC has stated publicly on repeated occasions, one of the fundamental flaws of the APPR is that they solely target airlines, leaving other service and infrastructure providers and stakeholders in the aviation ecosystem with no accountability nor responsibility in the event of avoidable disruptions. The proposed changes to APPR do nothing to resolve this situation. They will, to the contrary, continue to make airlines the de facto "insurance agent" for the entire aviation ecosystem, making them financially responsible for flight disruptions that were caused by other stakeholders.

In May 2023, NACC issued a report that recommended the creation of a shared accountability system containing the following four elements for all entities within the air travel ecosystem:

- Publicly reported data in real time
- Establishment of measurable service standards
- A real time communications protocol
- Financial accountability provisions when service standards are not met

The proposed APPR amendments do not include any of the above elements. Yet as we have already seen in the early summer of 2023, service performance shortcomings amongst other non-airline entities in the air travel ecosystem have been the cause of flight delays and disruptions, but the airline remains the sole entity financially liable.

NACC is recommending that shared accountability be put in place prior to the APPR amendments coming into force. Shared accountability would provide the tools for a better understanding of the cause of disruptions and a fairer process to allocate financial liability when a delay or disruption occurs that results in APPR related compensation.

## Conclusion

The APPR amendments passed by Parliament in June 2023 will not lead to a more efficient air travel system. They will increase administrative burdens and costs for airlines, which translates into higher fares for passengers, less choice, and a less competitive market. Unless the regulations contain a well-defined and comprehensive exceptional circumstances list, the amendments threaten to penalize airlines for safety related decisions, ultimately adding operational pressures and cost on compliance with safety protocols and requirements.

Some aspects of this regulation venture into the area of micro-management which will bring unintended consequences. An insufficient or rushed consultation can result in rules that do not align with airline operational realities. This is why NACC is calling on the CTA to take the time necessary to develop regulations that are fair, evidence-based, are focused on truly improving the traveler experience, reflect the key importance of safety, and that minimizes any significant cost increases and resource burdens that the legislation potentially will have on passengers and industry.

In this case what is particularly worrisome are what we view as regulations whose costs outweigh their benefits, where competitiveness is diminished, and where safety-driven decisions are penalized. It will potentially have dire effects on the connectivity to, from and within Canada, including in more remote regions. It would also very likely further encourage cross border leakage to U.S airlines, where taxes and fees imposed on travelers are already significantly lower. Not all regulations are equally successful. And in this case, the government is interjecting themselves into airline regulations in ways that have no parallel in other industries.

Although the CTA is attempting to tackle travel disruption issues via these proposed revised regulations, nobody is predicting a quick fix regardless, and it will not come without the investments in infrastructure to truly target the root causes that author many delays and flight cancellations.

As currently proposed, the new regulations paint a worrying picture. Canada's major airlines are eager to work with the government on a smarter approach to this and other regulations, and to tackle the various conundrums—to truly deliver value to consumers and enable the economic and social benefits that the aviation industry can deliver to Canada from coast to coast to coast.

## Summary of Recommendations

1. **Exceptional Circumstances:** NACC recommends a list of exceptions based predominantly on the principle that airlines cannot be penalized for unexpected safety situations.
2. **NACC is calling for a clearly spelled out process that reflects a shared accountability system and communications protocols amongst all the entities in the air travel system, so that airlines may have access to the supporting data and evidence required to be able to properly respond to passenger claims.** <sup>ii</sup>
3. **Rebooking and Refunds:** NACC recommends that the rebooking proposals in the CTA consultation document be amended to include the recognition that the rebooking obligations only apply when viable options exist.
4. **Standards of Care and Assistance:** Regulations need to reflect that the provision of assistance is not always possible (e.g., lack of hotel capacity, restaurants not available, communication outages), therefore regulations should clarify that standards of care and assistance be offered when the capacity is available to do so. In the case of lengthy exceptional circumstances, NACC recommends a maximum of 24 hours during which assistance is provided, subject to capacity availability.
5. **Communications:** The list of preferred communications that a passenger identifies should 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 are clearly identified. 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):** NACC recommends that in the event of an exceptional circumstance, regulations allow for a 48-hour window for knock-on effects, rather than a 2-flight limit.
7. **Government of Canada issued travel advisories:** NACC recommends that only level 4 travel advisories be considered under this requirement, and that compensation not be required in the event of a travel advisory.
8. **Shared accountability:** Put in place a true shared accountability system that for each entity in the air travel ecosystem focuses on continuous improvements and that includes:
  - a. real time data sharing;
  - b. measurable service standards;
  - c. a communications protocol; and
  - d. financial accountability for those entities that do not meet established service standards.Implement such a system prior to the coming into force of the revised APPR provision.

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<sup>ii</sup> [Shared-Accountability-Report\\_May-2023\\_Amended.pdf \(airlinecouncil.ca\)](#)