



August 10, 2023

Canadian Transportation Agency  
60 Laval Street, Unit 01  
Gatineau, QC J8X 3G9

To Whom It May Concern:

**COMMENTS – PROPOSED CHANGES TO CLARIFY, SIMPLIFY AND STRENGTHEN THE AIR PASSENGER PROTECTION REGULATIONS**

The Northern Air Transport Association (NATA) was formed 46 years ago to support the economic development of northern and remote Canada with safe and sustainable air transportation. Northern air carriers are not the largest in Canada, but we do provide essential service to the largest proportion of Canada's land mass and to many communities that have no road access and/or are not served by mainline carriers. We welcome the opportunity to provide feedback on the Consultation Paper that was recently released by the CTA.

Since the introduction of the current APPR, our members have worked diligently to comply with the requirements of the regulations. We also acknowledge that there have been many reports and complaints submitted by passengers related to provisions of the APPR since that time. That said, our members have worked proactively with passengers that were impacted by flight disruptions to ensure that their needs were met, and their rights were respected, in cases of disruptions to prevent the need to resort to the submission of complaints. It is important to note that, while there has been many complaints submitted to the CTA, there is not a uniform distribution of those complaints across all air carriers. If the root cause of the issue at hand is compliance with the current regulations, changes to the regulations will likely not achieve the desired outcome. Likewise, as you will see in the comments below, one of our key concerns is that the proposed changes may trigger a disproportionate number of unintended consequences.

It is also important to note that the consultation paper largely presented concepts or intents and did not include specifics about the proposed changes to the regulatory language. While we can provide comments on the concepts, it is not possible to provide a complete list of feedback and comments without access to the proposed regulatory text. We expect that we will have additional comments following a review of the proposed regulatory language.

**1. Identifying the exceptional circumstances**

While we do not have significant concerns with the decision to transition from three categories of disruptions, our concern largely revolves with how safety-related items were incorporated. As an example, the exclusion of "Technical problems that are an inherent part of normal airline operations" from exceptional circumstances is concerning. The statement is extremely broad. While there is a great

deal of preventative maintenance and inspections that are carried out to either detect a defect, or to prevent one from occurring, those practices do not guarantee that components won't malfunction at an unexpected time. While much is done to prevent technical problems from developing, it is simply not possible to foresee all technical issues. The statement; however, implies that there is an expectation that the air carriers do just that.

It is also important to note that there are provisions to allow aircraft to continue to operate with unserviceable equipment under the provisions of a Minimum Equipment List (MEL). Those procedures are often used by an air carrier to allow prompt dispatch of an aircraft following a system or component failure, while safely mitigating any risks, and then carry out any required repairs at the conclusion of a flight. The MEL is constructed to ensure that safety risks are managed despite the component failure and may restrict, or prohibit, certain types of operations depending on the issue. Given that many of our members operate to remote airports, with limited infrastructure – specifically, more limited approach aids or gravel runways – they often are restricted from operating in cases where other air carriers could operate to a more advanced airport, or to one with a paved runway. As a result, when faced with an identical defect on the same aircraft type, an operation between Montreal and Toronto could be carried out under the authority of the MEL but an equivalent flight from Yellowknife to Cambridge Bay could not. If the technical problems are excluded from the list of exceptional circumstances, two identical carriers could see different outcomes from identical scenarios based solely on the airport that is being served. This will result in a non-level playing field, which is not consistent with the expected approach to regulation.

## **2. Airlines' responsibilities regarding claims for compensation**

It is difficult to provide a detailed response to this item without a clear understanding of the expected threshold or burden of proof and without a clear understanding of the expected documentary evidence. As can be evidenced by the number of complaints related to our member air carriers, it would be reasonable to assume that they are adequately addressing the concerns of their passengers in the case of denied claims. If the intent of the changes is to increase the requirements beyond what is currently satisfying the majority of our members' passengers, then we are concerned that it will add additional burden to the industry without changing the outcome to our passengers.

## **3. Rebooking and refunds**

Given the size of many of our member airlines, especially when coupled with the remote nature of many of our operations, there may be technical challenges that may prevent the ability to issue a refund immediately. While there certainly isn't an intent to unduly delay the refund, the requirement to do so immediately may not be technologically possible.

During the development of the initial regulations, a conscious determination was made to differentiate the response requirements for large and small airlines. This decision is being reversed through these proposed changes; however, it is not clear if the original justification for that decision was reviewed. We maintain that the rationale for the original exclusion of small airlines from the rebooking requirements remains valid, even with the other changes that are proposed in these regulations. That difference should remain in any updated regulations.

#### **4. Assistance**

While the proposed regulations will reduce the number of categories associated with a travel disruption, they still largely split events into two categories – events that the air carrier is expected to foresee and prevent, and circumstances that the air carrier could not reasonably foresee or prevent. While this section is not clear on what assistance is expected to be provided, the intent is to make the air carrier responsible for providing it, even in cases that they could not reasonably predict. Essentially, it will be expected that the air carrier should carry the risk for all events – those that could have been foreseen and those that could not, including events that are clearly well outside of the control of the air carrier. While those events are unfortunate, and clearly have a negative impact on the customer’s plans and experience, they also have an impact on the air carrier. To also mandate that the air carrier shoulder the risk for providing assistance during the unforeseeable events does not seem reasonable.

#### **5. Communications**

Given the remote areas that our member air carriers serve, it is important to note than many operations are extremely small and lack much of the support infrastructure that is common at major airlines. The proposed regulatory change will require significant technical investment that will exceed what currently exists at many of those operators. The need to relay communication, via email, text message, website updates and via other digital platforms, in addition to what is currently being used, is simply not possible for many air carriers that are subject to the APPR. Likewise, the disruptions may occur at locations where the passenger cannot receive messages via their initially stated preferred method of communication. The proposed changes will generate scenarios where passengers have expectations that simply cannot be met. That will almost certainly lead to increased frustrations and complaints as opposed to the stated objective of reducing them.

#### **6. Chain reactions (knock-on effects)**

These proposed changes cause significant concern for our member air carriers. Given the remote nature of many of their operations, flights are often planned with more than two stops before the aircraft returns to the home base. Those flights generally have some passengers disembarking at each station stop along the route, some passengers continuing along the route towards a subsequent destination, and new passengers embarking to travel to a destination further along the route. In those cases, there is clearly a direct impact on the third, fourth, or subsequent flight along that route. The moment that there is a delay on the first flight, delays are automatically triggered on the fourth or fifth leg, without any opportunity to mitigate the delay given that all locations are remote and are away from an operating base. If there is a true knock-on effect of an event, it is not reasonable to arbitrarily identify when that effect must be excluded.

This is also an area of the proposed changes where we are concerned that unintended consequences may result and that an air carrier will be motivated to cancel a flight as opposed to triggering a delay on subsequent flights. Many of our air carriers service remote communities that do not have road access and air travel is the only means to secure essential travel as well as the provision of critical supplies – including food, medication, and critical infrastructure. As a result, the flights are not simply occurring to move passengers engaged in discretionary travel. On a single flight, they may carry passengers on leisure travel, passengers traveling to/from critical medical appoints, essential cargo of medical supplies or samples with a limited shelf life, and food required to support the community. As a result, the flights are not just a means of moving passengers, but they are critical to the community residents that aren’t

travelling. The air carriers understand their essential role in the health and safety of the communities that they serve, and they often elect to delay a flight as long as possible in the interest of ultimately moving the passengers and essential cargo as opposed to cancelling the flight – even when this triggers knock-on effects for subsequent flights. Often, when flights are cancelled, public officials and the local government challenge the air carrier and, justifiably, raise concerns about the failure to deliver essential goods to/from the community. The limitation of consideration for knock-on effects proposed in the consultation paper is directly at odds with the concerns expressed by the community leaders in the remote communities that many of our air carriers serve. While the proposed changes may prevent delays to some passengers on subsequent flights, the resulting need to cancel earlier flights only to avoid knock-on effects will almost certainly have a negative impact on the health and safety of the residents in remote communities.

## **7. Refunds for changes to Government Travel Advisories**

Currently, these travel advisories are published by the Government of Canada and only the current advisory risk level is provided. Will the air carriers be expected to monitor for changes to determine when risk levels are changed, or will the Government of Canada be providing an easily accessible online report that would allow the air carriers to determine the effective dates of those changes (along with the historical risk level)? Without access to that information, an air carrier cannot be reasonably expected to manage the requirements under the proposed change.

Ultimately, the NATA-member air carriers take their responsibility to the passengers that they carry quite seriously. While it is always unfortunate that disruptions may occur during their travels, our members have a long history of ensuring that their passengers are managed in an effective way. This practice can be evidenced by the relatively small number of complaints that are submitted to the CTA following disruptions on our member carriers under the existing APPR. Given the current situation, we have significant concerns with the proposed changes. In some cases, we feel that they will unduly disadvantage air carriers that serve remote and isolated communities. In other cases, there is a significant risk of unintended consequences which may range from an incentive to trigger premature flight cancellations to causing significant health and safety impacts on the residents of remote communities. In other cases, they impose obligations that simply are not possible for all but a small number of very large air carriers with significant technical infrastructure in place.

Sincerely,



Aaron Speer  
President