



August 10, 2023

VIA EMAIL

France Pegeot
Chair and Chief Executive Officer
Canadian Transportation Agency
15 Eddy Street
Gatineau, Quebec K1A 0N9

RE: Consultation on Amendments to the Air Passenger Protection Regulations

Dear Ms. Pegeot:

Please find enclosed the WestJet Group's response to the consultation on proposed amendments to the *Air Passenger Protection Regulations* ("**APPR**") published by the Canadian Transportation Agency (the "**Agency**") on July 11, 2023.

As will be discussed in detail in our submission, WestJet is very concerned about the proposed amendments. If implemented, these amendments would punish carriers for making safety related decisions. This is contrary to Canada's National Transportation Policy and the duty of care we share with the Minister of Transport for the safety of the travelling public. Moreover, the proposed amendments would be the most punitive air passenger compensation regime globally and would increase the cost of travel in Canada and inevitably lead to a reduction in regional connectivity and service to underserved markets.

Canada's aviation industry has gone through significant challenges since the APPR's were introduced in 2019. As the Agency is aware, the financial impact of the COVID-19 pandemic was devastating on WestJet, our employees, and the Canadian communities that rely on our investments. During the recovery phase from the pandemic in 2021, airlines faced unprecedented demand for travel following the removal of pandemic travel restrictions, which placed immense pressure on all actors in the travel supply-chain. This surge in demand reached its peak during the summer of 2022 and led to flight disruptions caused by many entities, including airports, ground handlers, air navigation service providers, and government agencies such as CATSA, CBSA, and USCBP. Consider, for example, the following:

- Airports and CATSA:
 - Canada's airports faced acute security screening bottlenecks due to a lack of CATSA contracted screening staff, resulting in insufficient pre-board screening capacity and traveler's experiencing hours-long delays and line-ups that spanned entire airports.¹
 - During the summer of 2022, Toronto Pearson was ranked as the world's worst airport for delays.²
 - Recently, on June 23, 2023, Calgary International Airport experienced a power outage

¹ <https://toronto.citynews.ca/2022/06/14/airport-delays-passports-nexus-canada/>

² <https://simpleflying.com/toronto-pearson-airport-worlds-worst-delays/>

when a transformer that powers approximately one third of the terminal failed. This outage took down the baggage system and check-in kiosks for approximately 6 hours, causing significant delays and flight cancellations.³ While some flights were able to operate on schedule, they did so without baggage on board, causing further inconvenience to passengers, requiring carriers to transport the baggage at a later date, at their cost.

- International Airports:

- In July, 2022, London Heathrow issued Notice to Air Missions (NOTAM's) to carriers on 36-hours' notice, mandating that carriers not take further bookings for flights departing LHR, and imposing a daily cap of 100,000 passengers.⁴
- In June, 2022, Schiphol Amsterdam Airport, citing a shortfall of security employees, imposed passenger caps, limited daily flights by 22% and witnessed passenger lineups extending from the terminal to over a mile down the road. CEO Ruud Sondag recently stated that the "whole system – from security to handling – came close to breaking point during the spring and summer of 2022."⁵

- Communication Outages:

- On July 8, 2022, Rogers Communications experienced a major service outage impacting significant services across the country, including airports, call centres and the Interac payment network. This resulted in delays across the country at airports utilizing Rogers services. Similarly, passengers were unable to submit ArriveCAN data because it also utilized the Rogers system, impacting their ability to submit required documentation.⁶
- On July 14, 2022, a train derailed in British Columbia rupturing two primary fiber optic lines which resulted in a loss of connection to both WestJet and Nav Canada systems. This outage resulted in over 100 cancelled flights, and widespread delays across our network which took two days to recover from.⁷

- Adverse Weather & Natural Events:

- Canada experienced extreme winter weather conditions during the 2022 holiday travel season – the busiest Canadian travel period of the year.⁸ This adverse weather occurred across the country:
 - Vancouver experienced 12-months of snowfall in 1 day and did not have adequate working equipment to clear all runways and maneuvering areas.
 - Calgary's weather dropped to historical lows which prevented the safe application of anti-icing and de-icing fluid as the temperatures were so low, the fluid was ineffective.
 - Toronto Pearson's baggage system was inoperable due to weather conditions, further compounded by bursting pipes in the baggage room from extremely low temperatures.
 - All but one Canadian province received an extreme weather advisory during this period.
 - The knock-on effects caused by these disruptions was immense, and it took

³<https://calgary.ctvnews.ca/calgary-airport-power-outage-caused-by-smoke-in-electrical-room-officials-1.6459990>

⁴<https://www.cnbc.com/2022/07/12/londons-heathrow-imposes-capacity-cap-of-100000-passengers-a-day.html>

⁵<https://www.business traveller.com/business-travel/2023/06/26/amsterdam-schiphol-came-close-to-breaking-point-last-year/>

⁶ <https://simpleflying.com/rogers-outage-impact-canadian-airports/>

⁷ <https://www.cbc.ca/news/canada/calgary/calgary-westjet-airport-flights-1.6520313>

⁸ <https://calgaryherald.com/news/local-news/winter-weather-brings-havoc-for-calgary-holiday-travelers>

WestJet a full 48 hours to stabilize the underlying operation, however due to intermittent but continuous weather systems impacting the operation across the country it took another five days to fully recover our operations.

- Disruptive weather continued to occur throughout January 2023, including: (i) fog and a CAT II navigation system failure on January 5th in Toronto, (ii) a significant freezing fog event on January 10th in Kelowna, (iii) freezing rain in Halifax on January 15th, and (iv) a weather system that brought significant snow from Calgary through to Toronto between January 27th to 29th. Each event caused significant disruptions with A15 (arrival within 15 minutes of scheduled arrival time) dropping to as low as 40% and completion factors (percentage of flights scheduled that operated) dropping to as low as 85% versus a normalized completion factor that would typically exceed 98%, which took three days to stabilize and effectively recover operations.
- Volcanic Eruption: Shiveluch volcanic eruption on April 14-15th 2023, and corresponding ash cloud disrupted operations in Western Canada from British Columbia to Saskatchewan.⁹
- Supplier/Parts Issues: On three separate occasions this year, WestJet experienced aircraft technical issues caused by components/parts supplied by various manufacturers or their vendors. While these issues did not result in regulatory groundings or the issuance of an airworthiness directive, they posed potential safety issues. WestJet followed its (mandated) Safety Management System and self-grounded impacted aircraft to ensure the issues were resolved before they presented a safety concern to the public. This caused disruption to a number of flights, and was an issue we had no control over.
- NOTAM Outages: On January 11, 2023, the U.S. Federal Aviation Administration (FAA) experienced a system-wide outage when contract personnel deleted files while working on its NOTAM System.¹⁰ This resulted in the FAA issuing a grounding order; the outage lasted 11 hours and 50 minutes and impacted all flights to, from, and within the United States. Millions of passengers were disrupted as a result. In total, 32,578 flights were delayed and another 409 were cancelled. The same day, Nav Canada experienced a similar outage that lasted over 2.5 hours.¹¹
- Nav Canada Delays:
 - In June 2023, WestJet incurred over 550 Air Traffic Control related departure delays, averaging 18 minutes in length. This amounted to over 9,900 delay minutes - the equivalent of 165 hours, or nearly 7 full days' worth of delays.
 - In July 2023, WestJet incurred over 664 Air Traffic Control related departure delays, representing an 18% month-over-month increase, and the average delay was 20 minutes in length. This amounted to over 13,280 delay minutes - the equivalent of over 221 hours or over 9 full days' worth of delays.

We have provided this non-exhaustive historical summary of challenges our industry has faced since the introduction of the APPR's to remind the Agency of two critical points. First, despite everything experienced by our operations – from the COVID-19 pandemic, disastrous airport operation issues, and extreme weather events – **we have maintained a safe operation**. Second, **we do not operate alone in the travel supply chain** - when one link in this chain fails, the entire system suffers. A disproportionate number of disruptions highlighted above were caused by third parties or exogenous events that we have no control over.

⁹ <https://vancouversun.com/news/local-news/russia-volcano-flight-cancellations-delays-yr>

¹⁰ <https://www.usatoday.com/story/travel/airline-news/2023/01/20/faa-update-notam-human-error/11088911002/>

¹¹ <https://simpleflying.com/canada-notam-disruption-2023/>

Despite the foregoing, the Agency is now seeking to alter Canada's regulatory framework by placing all responsibility on carriers for every flight disruption, and, **most alarmingly, disregarding the most critical component of our industry: safety.**

As we will outline in our response to the Consultation Paper, there exist serious problems with the proposals, but the most concerning flaw is the failure to consider the safety of passengers and crews. At its core, the Consultation Paper discourages and penalizes airlines for ensuring the safe operation of an aircraft, imposing substantial financial liability on carriers when flights are cancelled or delayed for safety reasons. It is counterintuitive to the promotion of aviation safety for the Government of Canada to implement a system of penalties to be imposed on airlines precisely because they will not operate in instances when passenger safety could be jeopardized. The Agency has advised that the Consultation is not intended to change the safety or operations framework of airlines, but is rather intended to provide benefit to passengers for inconvenience. It is critical for the Agency to be aware that even the strongest safety culture can be undermined by external factors such as financial penalties that may incite behavior that seeks to avoid or minimize financial costs.

Canada's recognition and adoption of the International Civil Aviation Organization's (ICAO) State Safety Program (SSP) to ensure harmonization with global civil aviation standards is the highest commitment to safety. The cornerstone of these standards is the requirement for airlines, through their operating certificates, to have developed and functioning safety management systems (SMS) appropriate for the size and scale of their operation. The proposed amendments to remove events "Required for Safety" under the APPPR's would diminish Canada's position as a safety leader in the aviation industry.

Safety has been the top priority throughout the entirety of Canada's regulatory framework governing aviation. If the proposals outlined in the Consultation Paper are drafted into regulation, this principle will effectively be undone. Passenger convenience and entitlements appear to be of greater concern than passenger safety in the drafting of the Consultation Paper, and that is not acceptable.

Canada's National Transportation Policy is clear in this regard:

*"It is declared that a **competitive**, economic and **efficient** national transportation system that meets the **highest practicable safety** and security standards and contributes to a sustainable environment and makes the best use of all modes of transportation at the **lowest total cost** is essential to serve the needs of its users, advance the **well-being of Canadians** and enable competitiveness and economic growth in both urban and **rural areas** throughout Canada" [emphasis added]*

This policy is a declaratory provision in the *Canada Transportation Act* (the "**CTA**"), and sets out clear policy objectives to be implemented by the regulatory provisions of the CTA. Unfortunately, the Consultation Paper reverses and directly undermines six of these objectives (as emphasized above), as it fails to consider safety related matters, will increase the cost of transportation through the imposition of what would be the most punitive compensation and assistance regime in the world, and, correspondingly, sets the table for a significant reduction in regional connectivity and direct air service routes due the proposed removal of the knock-on effects provision in the APPPR's.

Finally, by seeking to emulate the European Union passenger bill of rights (Regulation (EC) No. 261/2004) ("**EC261**") the proposals outlined in Consultation Paper will cause significant consequential financial impairment of our industry that cannot be ignored. On certain routes, the proposed

amendments to passenger compensation and standards of treatment for extended delays could be in the order of 100x the average profit per flight. This will not be sustainable.

We would like to thank the Agency for providing the opportunity to discuss the significant impact the proposals outlined in the Consultation Paper will have on our industry. We agree that clarity is needed, specifically in circumstances where carriers need to weigh correct safety or operational decisions against financial penalties imposed under the APPR's. As we will further explain in our response submission, there exist unintended consequences of the proposed regulations that are not in the best interest of the travelling public, our industry, or Canadian communities that rely on our service.

We look forward to participating further in the regulatory development process, and thank you for your time and consideration.

Yours truly,

A handwritten signature in black ink, appearing to read "Robert McCulloch". The signature is fluid and cursive, with a large initial "R" and a long, sweeping underline.

Robert McCulloch
Associate General Counsel, WestJet

cc.

Honorable Pablo Rodriguez, Minister of Transport
Arun Thangaraj, Deputy Minister of Transport
Tom Oommen, Director General, Analysis and Outreach – Canadian Transportation Agency
Allan Burnside, Senior Director Analysis Regulatory Affairs – Canadian Transportation Agency
Alexis von Hoensbroech, Chief Executive Officer, WestJet

EXECUTIVE SUMMARY

- The proposed amendments would punish carriers for making safety related decisions. This is contrary to Canada's National Transportation Policy, Canadian Aviation Regulations (CARs), conditions of our Air Operator Certificate (AOC) and our shared duty of care with the Minister of Transport for the safety of the travelling public.
- Safety is sacred to carriers, and the threat of fines or financial obligations will never impact WestJet's approach to safety. However, the Agency must consider potential unintended consequences. If even one operator made a decision to cut corners on safety based on economic outcomes it could have catastrophic consequences.
- The proposed amendments would be the most punitive air passenger compensation regime globally, will have devastating financial impacts on Canadian carriers, increase the cost of travel in Canada, and will inevitably lead to a reduction in regional connectivity and underserved markets. This will disproportionately impact low-income Canadians and small communities that rely on aviation to access the national transportation system.
- Although largely modelled after EC261, the proposed amendments do not take into account distance flown, and instead provide the highest compensation entitlements to passengers for all flights. Consider for example, that a flight from Calgary to Kelowna would be treated the same as a flight from Calgary to Tokyo. The Agency must consider compensation amounts that are tied to a percentage of base fare paid, or, alternatively, distinguishing between short-haul and long-haul flight segments (and corresponding compensation amounts) similar to EC261.
- The proposed amendments will not clarify or simplify the APPR. Rather, given the strict liability regime being created and vague two-part test to define exceptional circumstances, complaints will increase, as passengers have nothing to lose, and everything to gain, by filing a complaint or seeking compensation through our court system.
- Air Carriers cannot continue to be the only entity responsible for passenger rights – we do not act alone in the travel supply-chain. **Accountability must be shared** amongst airports, third parties, and government agencies. Carriers cannot recover APPR related costs from these entities without further legislation/regulation providing this. Consider these inconsistencies:
 - An air carrier would be required to pay compensation for an IT outage leading to flight disruptions, but an airport authority experiencing a similar IT outage causing flight disruptions would pay nothing.
 - The Agency expects carriers to pay APPR compensation for flight disruptions caused by staff shortages, as seen with those that were caused by Omicron, but when Nav Canada and the CBSA cause significantly more flight disruptions due to staff shortages both entities pay nothing.
 - A carrier would be expected to provide standards of treatment like hotels during adverse weather events, but an airport authority that lacks snow removal equipment and causes flight disruptions would provide nothing. This example is more confounding when you consider that carriers do not create or control the weather, yet would be financially responsible for it.
- Clarity is key, and the proposed amendments must not undergo a rushed implementation. Rather, they must be carefully measured and thoroughly reviewed against the complexity of our operations, and the equally complex environment we operate in.



CONSULTATION PAPER: Proposed Amendments to the Air Passenger Protection Regulations

*WestJet Submission to the Canadian Transportation Agency
August 10, 2023*

On July 11, 2023, the Canadian Transportation Agency (the “**Agency**”) published a paper (the “**Consultation Paper**”) and opened a public consultation regarding proposed amendments to the *Air Passenger Protection Regulations* (the “**Proposed Regulations**”). The authority to draft the Proposed Regulations is pursuant to the *Budget Implementation Act, 2023* (the “**BIA**”).

CHANGES TO THE CANADA TRANSPORTATION ACT (2023)

Given the scope of the Proposed Regulations, in particular the expansion of compensation entitlements and standards of treatment owed during (previously categorized) uncontrollable events, the Agency must reconsider the compensation amounts and the triggers upon which they become payable. For example, although largely based off Regulation EC261, the Proposed Regulations will be significantly more punitive by failing to differentiate between short-haul and long-haul flight segments, along with differentiating between domestic and international flights. Regulation EC261 establishes a maximum compensation for short haul flights (0 – 1,500 km’s) at €250, whether they are operated within the European Union (EU) or internationally. Flights wholly within the EU in excess of 1,500 km along with international flights with a range between 1,500 – 3,500 km entitle passengers to a maximum of €400, and wholly international flights in excess of 3,500 km are eligible for €600.

The Proposed Regulations would significantly increase the number of events that would be deemed compensable by the Agency. As the Agency considers these proposed changes, it is critical that the finalized regulations do not make Canada a global outlier, and ensures the continuation of the economic and social benefits that the aviation sector contributes to our country. Having a viable aviation environment in Canada helps support immigration, investment, trade, foreign direct investment, tourism, and other important contributions to our social and economic fabric.

In this context, the Agency must not look to simply mirror Regulation EC261, but consider the impact of certain differences in the operational environment and market in the UK/EU from that in Canada. This includes: (i) a smaller and significantly more dispersed population market overall, which will impact the ability to re-route passengers, (ii) more extreme weather in Canada, thus more weather-related disruptions, and (iii) fewer airport hubs and very few cities with secondary airports serving them, meaning a disruption at one major hub can lead to delays across a carrier’s entire network. Similarly, the Agency must remove the “small carrier”

distinction in the APPR's, as this leads to an unfair distortion of competition and is inconsistent with Canada's obligations under the Montreal Convention (which places obligations on carriers for international travel, irrespective of size).

The Proposed Regulations represent the highest passenger compensation amounts globally, and will present a significant financial burden on air carriers, leading to higher ticket prices, the potential failure of one or more airlines in Canada, and the cessation of service to numerous Canadian communities. This will ultimately increase the cost of travel to, from, and within Canada and would take the highest compensation amount and apply it to *every* flight segment, irrespective of distance travelled and the amount paid for the flight. Thus, a flight from Calgary to Kelowna would engage the same compensation entitlements as a flight from Calgary to Japan. This is highly unreasonable.

We have provided the below images to underscore the imbalance in compensation payments between the EC261 and APPR regimes, and the significantly higher financial impact the APPR's have on Canadian carriers. Compensation under EC261 is tied to distance travelled. It should be noted that as compensation is capped for intra-EU flights, a majority of air carriers in the EU have compensation payouts capped at €400 (approximately \$590 CAD) per passenger. This includes almost all of the low-cost carriers such as Ryanair, EasyJet, Vueling, and Wizz. Other carriers that operate longer haul international flights only assume higher compensation on those particular flights that exceed the certain distance thresholds.

Based on the above noted differences in the compensation between the APPR and EC261, the first and most significant difference is the short haul distance threshold. Under EC261, all flights under 1,500 km (within the EU or international) have compensation capped at €250 (approximately \$368 CAD). As can be seen below in Figure 1, the 1,500 km range covers the majority of the EU. In Figure 2, the 1,500 km range overlayed from Toronto would extend out to the majority of Atlantic Canada and most of the U.S. Eastern seaboard. For these flights, the Canadian compensation requirements under the APPR for large carriers would range from \$400 (1.08x the EC261 max), \$600 (1.6x the EC261 max) and \$1,000 (2.7x the EC261 max). In Figure 3, the same 1,500 km circle covers the large majority of Canada. As a result, most domestic flights in Canada have a passenger rights liability significantly higher than EC261.

Figure 1



Figure 2



Figure 3



To put this into context for the WestJet Group, of all routes (with a route meaning a direct flight between two cities) operated in our network, 25% are less than 1,500 km. Given the multiple frequencies on these routes, this makes up over 40% of the total seats carried in a year. That means over 40% of the WestJet Group seats would be expected to have passenger rights liability that is up to 2.74x that of the EU.

The second significant difference is that EC261 caps compensation at €400 (approximately \$590 CAD) for all flights over 1,500 km that are within the EU and for international flights that are between 1,500 and 3,500 km. For WestJet, this *domestic* distance catchment of 1,500 – 3,500 km represents approximately 11% of routes and 21% of total seats, and *internationally* represents approximately 42% of routes and 26% of total seats. Combining these means that up to 47% of the WestJet Group seats have a passenger rights liability that is up to 1.7x that of the EU.

The third significant difference is that the highest possible compensation payment is for long haul international flights that exceed 3,500 km, which can be eligible for €600 (approximately

\$885 CAD). These routes are generally the most expensive and have the most impact given the duration of the trip and how significant a disruption can be to a passenger. The WestJet Group network has 23% of its routes that fit into this category, but only 11% of total seats – the lowest of all categories – and this is the category that is closest in comparison to the EC261 scheme. Only 11% of WestJet’s eligible seats are the most comparative to EC261 by having a passenger rights liability that is *only* 1.12x that of the EU.

The APPR’s one-size-fits-all approach to every flight irrespective of distance prejudices shorter flights. A short haul domestic flight will almost always be significantly less costly than an international long-haul flight. Despite this, the APPR treats each the same, and imposes disproportionate compensation amounts as a result.

Regulation EC261 started as a deterrent to stop airlines from overbooking or cancelling flights for commercial reasons. From this, the regime has expanded into the financial and administrative burden that it is today, and has not improved operations for passengers. There are very few effective points with this regime; WestJet fully supports the comparative arguments against EC261 as outlined in the National Airlines Council of Canada (“**NACC**”) Consultation submission, and have highlighted the most notable challenges as follows:

- Punitive Compensation: Regulation EC261 is a regime of punitive compensation for a shortfall in service delivery and an unlimited liability of care and assistance to passengers for any reason. Regulators have previously closed very large parts of European airspace stranding hundreds of thousands of passengers. As a direct result of this, airlines are required to provide care and assistance to their passengers for the entire duration of the flight ban. While airlines have no control over these events, they are held responsible for unlimited amounts, and for indefinite periods. Imposing similar requirements on Canadian carriers risks devastating financial implications.
- Legislation re-written by the courts: Due to vague drafting and the complexity of our industry, EC261 has been repeatedly re-drafted by the Courts. In particular, the Courts have: (i) extended the right to compensation to cover delay in addition to cancellation/denied boarding (which was never contemplated by the regulation), and (ii) slowly eroded the types of circumstances regarded as “extraordinary”. Airlines are faced with contradictory judgments throughout the EU – often as a result of lower-level courts with limited aviation experience. The proposed usage of similar EC261 language risks the same concerns – the Agency and our courts will be flooded with complaints due to opaque drafting, particularly in the context of the proposed two-part test and the usage of: *inherent to the normal exercise of the activities of the airline*.
- Creation of a claims industry: There are a number of businesses in the UK and the EU (both law firms and independent companies) whose primary line of business is assisting airline passengers in pursuing claims following delays and cancellations, to an extent which did not exist before EC261 was introduced. This is now being seen in Canada following the introduction of the APPR’s. Ultimately – (unregulated) claims companies, which have not suffered any loss as a result of the delay or cancellation, are financially benefitting from regulations which were intended to protect consumers.

The Consultation Paper requests views on the following:

- (i) whether the Proposed Regulations clarify, simplify, and strengthen passenger protection;
- (ii) whether there are other ways to modify the regulations to achieve the objectives of the legislation; and
- (iii) the impact of these proposals on industry

We have responded to each proposal in the order outlined in the Consultation Paper.

1. IDENTIFYING EXCEPTIONAL CIRCUMSTANCES

Safety has always been the top priority of WestJet. In 27 years of operations, we have fostered a safety culture that allows staff of any role or position to take a “safety time out” without any risk or concern for disciplinary action for reporting a safety or security concern or for taking a pause to make sure that the safest action is being taken.

Removing the ‘safety’ category from the APPR’s is of great concern to WestJet, as it purports to prioritize compensation for inconvenience over the ability for air carriers to be cautious and pragmatic in their approach to safety. Simply put, carriers should not be penalized in situations when following legislated and regulatory requirements to ensure the safety of flight operations. Air carriers have safety compliance obligations under the *Canadian Aviation Regulations* which are reproduced in company operations manuals that are reviewed and approved by Transport Canada. **The Agency should not be imposing penalties or other obligations on carriers for following these fundamental safety requirements.**

The BIA directs the Agency to remove categories of disruption and instead imposes compensation entitlements and standards of treatment for *all* flight disruptions, unless caused by “exceptional circumstances”. Despite the stated goal of clarifying and simplifying the APPR, the Agency has proposed a list of exceptional circumstances (including examples of what would not be included), and a vague two-part test to define exceptional circumstances, as follows:

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

This approach risks further confusion to the travelling public and a corresponding increase in complaints to the Agency and our court system. We have outlined a number of concerns with this proposal, in particular:

Two-Part Test:

- The usage of “inherent to the normal exercise of the activities of the airline” is vague, ambiguous, and drawn from EC261, a passenger rights regime plagued by litigation on these terms.
 - Given the similarities of the Proposed Regulations with Regulation EC261, the

Agency is well aware of the significant issues this drafting has caused throughout Europe.

- For example, as ‘extraordinary circumstances’ is not defined in the text of EC261, carriers have had to rely on interpretive rulings from the Court of Justice of the European Union. Examples include lightning strikes and bird strikes – both of which are clearly outside the control of a carrier, but required court decisions to provide clarity on what EC261 applied to. It is imperative that the Agency clearly define what this drafting means, provide detailed examples, and not leave these interpretations up to the courts or other decision-making bodies.
- Similarly, the usage of “all reasonable measures” is drawn from EC261 and the Montreal Convention, but doesn’t provide additional clarity for carriers on when this standard is met.
 - This vagueness will not reduce the number of complaints brought forth to the Agency’s dispute resolution branch or the court system. Rather, we expect as unintended consequences (i) an increase in complaints as everything is now potentially compensable, undermining the objective of reducing complaints and expediting adjudications, and (ii) a shift of complaints to our courts similar to EC261.
- Critically - only the cause of the safety issue – and whether the carrier could have foreseen and prevented it – matters in the Consultation Paper, not safety itself.
- If an overarching test to define “exceptional circumstances” is deemed necessary, more thought needs to be given to what that test should consist of. In particular, the Agency should consider whether:
 - The event that caused the disruption must not have been due to the airline’s direct actions or inactions; and
 - The event could not have been avoided even if the airline took all reasonable measures to do so, or the airline was following procedures approved by a regulatory authority.
- Consider, for example, a lightning strike during landing which damages the aircraft skin and makes the aircraft inoperable for future flights until repaired. While flying through a thunderstorm in order to land might be inherent in the normal exercise and activities of an airline, it could not be avoided if the carrier took all reasonable measures to do so. The two-part test must be changed to focus on the actions of the airline in a specific situation, and not whether or not it is inherent in an airline’s operation generally.

List of Exceptional Circumstances:

In addition to the above two-part test of exceptional circumstances, the Agency has proposed a list of what would be considered exceptional (including those events that would not be included). While we can appreciate this list is meant to be non-exhaustive and is under consideration, we have noted the following concerns:

Inclusions (events that would be considered exceptional circumstances):

- *"Weather or other atmospheric conditions, or natural disasters, that make it impossible to safely operate the flight"*
 - This drafting needs to include both actual and forecasted weather that could impact the safety of flight or the ability to effectively operate at an airport.
 - For large scale weather events it is critical to apply a broader safety barrier on the unknown impact of a forecast. Forecasts are still relatively unreliable on the severity level for a weather event even 24 hours in advance. Waiting to make operational decisions until the forecast materializes into an actual weather event is never appropriate. A primary focus of safety risk management is proactive decisions – if an air carrier makes operational decisions reactive to weather conditions, it risks much larger operational impacts and a reduction of safety barriers. This is how airport gridlock and extended tarmac delays such as those experienced this past Christmas at YVR occur.
 - Air carriers make arrival and departure decisions in advance of adverse weather events, and are reliant on weather forecasts.
 - Similarly, it must be recognized that air carriers' operational limitations will vary amongst air carriers, aircraft types and even flight crew experience levels. Just because 'airline A' can land or take off in a moment of time does not mean that 'airline B' should be expected to be able to do the same in all cases. Examples of this include minimum runway conditions or crosswind conditions that will vary amongst operators and fleet types.

- *"Airport operational issues for which the airline is not responsible"*
 - This must be clarified to include government agencies, Nav Canada, and IT matters for which the airline has no control over.
 - Flight disruptions caused by a government agency at an airport (i.e., due to CBSA, CATSA, or USCBP) should not be made the responsibility of an air carrier.
 - Similarly, air carriers have no control over the IT systems of airport authorities or other third parties (including government agencies).

- "Health risks or medical emergencies on route that require a flight diversion or discovered shortly before flight departure that make it impossible to safely operate the flight."
 - The word 'shortly' must be removed as it does not properly contemplate significant issues that could occur on an in-bound flight which might take an aircraft out of service, thus delaying a subsequent departure resulting in a disruption.
 - Examples may include a death onboard or any circumstance that requires biohazardous waste removal from an aircraft.

- Reference to "a collision with wildlife" has been removed from the list of exceptional circumstances.
 - We would like to understand why the Agency feels a collision with wildlife would

not be an exceptional circumstance, particularly when airports are responsible for bird control.

- Similarly, this drafting should not be limited to wildlife, but must consider aircraft accidents (as currently contemplated in the APPR's) – a collision with another aircraft on the ground, or a drone, must be included as exceptional circumstances.
- Again, safety should be at the forefront of the Proposed Regulations, not compensation.

Exclusions: The Consultation Paper provides examples of what would not be considered an exceptional circumstance. We have outlined a number of issues for the Agency to consider. Ultimately, given the complexity of our industry, there is no one-size fits all approach and carriers cannot be held responsible for (i) making safety-related decisions, or (ii) the actions and inactions of independent third parties.

- *“Technical problems that are an inherent part of normal airline operations”*
 - As noted above, this drafting is vague, ambiguous, and provides no certainty to an operator or the travelling public.
 - All unscheduled maintenance issues should be considered an exceptional circumstance.
 - The interests of safety must remain at the forefront, not the imposition of compensation entitlements.
 - We would expect the Agency to agree that at all times an aircraft should be properly repaired, without time pressure, and without the unnecessary threat of additional financial penalties (beyond those already being incurred by the operator when its schedule is disrupted).
 - An air carrier should not be held responsible for unforeseen maintenance events, regardless of where or when they are identified. As an aircraft does not make revenue on the ground, a carrier has every financial incentive to keep it operating.
 - Flight disruptions caused by unscheduled maintenance receive frequent media attention and allegations of a “loophole” in the APPR's. This is entirely misplaced and inaccurate. Consider, for example, that unscheduled mechanical delays (including knock-ons) exceeding three hours for Westjet represented only 0.23% of all flights in 2022, and 0.31% of all flights to date in 2023. Similarly, unscheduled mechanical cancellations (including knock-ons) for Westjet represented only 0.38% of all flights in 2022 and 0.38% of all flights thus far in 2023.
- *“Flight crew or cabin crew unavailability”*
 - Crew issues require consideration of a number of factors. The following are not exhaustive, but serve to highlight the challenges carriers face, and issues the Agency must consider:
 - Network Models: Carriers may utilize vastly different network models. A carrier operating under a ‘hub and spoke’ model may have a higher likelihood of recovery if a crew incident occurred at a hub airport. A similar incident at a ‘spoke’ airport, however, may drastically hinder the recoverability. On the other

hand, a carrier operating a 'point to point' network may have challenges at both ends. Given the nature of the industry, it is not practical (and at times, not possible) to require stand-by crew staffing at all locations a carrier serves. While *some* flight disruptions caused a crew shortage at a carrier's hub or crew base may be deemed compensable under the APPR's, this must exclude crew shortage issues at non-hubs and non-crew bases.

- For example, if a flight attendant in Nanaimo calls in to advise that they have COVID (or similar contagious respiratory illness) symptoms and cannot work within an hour of departure. This may cause a flight delay as it is very likely there is no replacement crew at a remote station like this, and it is unlawful for a flight crew member to work when ill pursuant to section 602.02 of the CARs.
 - Alternatively, carriers should not be responsible for crew unavailability or delays if the crew are unable to make it to an aircraft due to CATSA congestion or an inbound delay caused by Nav Canada.
- Environmental Factors: consideration must be given to the time of day an incident occurs, the amount of notice given to resolve the issue, the remoteness of an airport, Transport Canada flight and duty time regulations (discussed further below), additional operational events that impact a carrier's crew reserve (e.g. large scale IROP events), and specific training requirements or equipment type personnel considerations (e.g. widebody vs. narrow-body aircraft).
 - Flight and Duty Restrictions: Carriers continue to face challenges with previous amendments to flight and duty time regulations (specifically subsections 700.63 and 700.63(2) of the *Canadian Aviation Regulations* SOR/96-433 ("CAR's")). For example, these amendments significantly altered the definition of unforeseen operational circumstances for the purposes of allowing an extension to duty days, which is critical for maintaining operations during winter weather events, de-icing delays, airport constraints, airspace or routing constraints. Previously, unforeseen events were tied to a planning cycle, and what can reasonably be foreseen as a schedule was built 30-45 days ahead. Unforeseen events were moved to an unforeseen operational circumstance that occurs within 60 minutes of the beginning of the flight duty period, which is almost impossible to plan effectively against. Similarly, the changes to subsection 700.63(2) included reference to "after take-off" which does not capture events during aircraft taxiing prior to take-off. This may potentially necessitate the offloading of passengers after departing from the gate should the block time appear to exceed the allowable extension time. At airports with significant traffic and congestion, should the crew effectively run out of time to take-off and have to return to the gate, the availability of gate space and ground crews may be problematic. This may lead to potentially extended tarmac delays and late-stage flight cancellations for matters that are typically not within a carrier's control.
 - Unlawful to Operate: It is unlawful for a flight crew member to work when ill:
 - Pursuant to section 602.02 of the CARs, an operator of an aircraft shall not require any person to act as a flight crew member or to carry out a preflight duty, and a person shall not act as a flight crew member or carry out that duty, if the operator or the person has reason to believe that the person is not, or is not likely to be, fit for duty.

- "Fit for duty" is defined in the CARs as follows: fit for duty, in respect of a person, means that their ability to act as a flight crew member of an aircraft is not impaired by fatigue, the consumption of alcohol or drugs or any mental or physical condition.
- *"Staff shortages at the airline"*
 - See our response to flight or cabin crew availability above.
 - The Agency must consider the well-documented instances of flight disruptions caused by staff shortages at CATSA, CBSA, Nav Canada, and Service Canada Passport Offices, etc., and allocate equal responsibility to these entities.
- *"Any situation the airline knew about, or should have known about, when it sold the ticket to the passenger"*
 - This drafting is unacceptably vague, and will only drive additional (speculative) complaints to the Agency. The reverse onus and burden of proof that will be placed on carriers is an invitation to file complaints.
- *"Any action, or failure to act, by the airline or others with which the airline has a contractual relationship"*
 - The industry has experienced significant travel disruptions due to the actions and inactions of third parties including airport authorities, Nav Canada, CBSA, and USCBP.
 - While carriers have commercial agreements with all of these entities, some are monopoly service providers (airports) or government agencies that prevent the inclusion of binding service level agreements, and in some cases such agreements are regulatory requirements. Thus, while an agreement is in place, carriers exercise no control over the operations of these entities. It is unreasonable to expect carriers to shoulder responsibility for disruptions caused by these parties – shared accountability is needed.

Accordingly, changes are required to the proposed list of exceptional circumstances – clarity is essential in this regard. If not clarified, weather and unscheduled maintenance activities will be compensable events, and decision-making of carriers could be negatively impacted. The inclusion of these events as being compensable would amount to an increase of approximately 40% more events being compensable than they are today. This amounts to a significant increase in cost incurred by carriers, which will ultimately impact the cost of travel, and negatively impact the availability of service to smaller markets.

In addition to the above noted issues, WestJet supports the comprehensive proposed list of exceptional circumstances provided to the Agency in a submission by NACC in response to the Consultation.

2. AIRLINES' RESPONSIBILITIES REGARDING CLAIMS FOR COMPENSATION

The Consultation Paper outlines three proposed changes under this section, each of which are addressed in turn:

1. **The Proposed Regulations would specify that if an airline refuses a compensation claim, it must give the passenger a detailed explanation, including documentary evidence that the circumstances were exceptional, and reference the applicable terms and conditions of the passenger's ticket, including fare rules. The Agency must consider the following issues:**
 - Strict Liability Regime: The Proposed Regulations would impose a reverse onus on carriers, effectively establishing a strict liability regime where carriers are guilty of all events, unless they can establish a narrow scope of exceptional circumstances.
 - It is very clear the policy objective is to put significant financial risk on carriers on a strict liability basis.
 - There are already mechanisms in the CTA Dispute Adjudication Rules where a party may request another party to respond to written questions or produce documents that are in their possession or control and that relate to the matter in dispute.
 - The proposed regulations contemplate payment of compensation unless extraordinary circumstances are met, and the reverse onus imposed on carriers would require documented evidence that a situation was not its fault. This will be impossible to meet in certain circumstances, including those caused by government agencies. Consider, for example, if a Canada Customs Hall was restricted in capacity, and resulted in a flight not being able to disembark resulting in downline delays and missed connections for passengers and crew (as happened frequently in Toronto Pearson in Spring 2022 due to CBSA staffing shortages), it would be very hard for an air carrier to prove this, particularly when they may have only been given verbal instructions. Air Carriers do not hold information or data from external third parties, and would not have the ability to submit proof for incidents like this. Thus, not only are situations like this caused by government agencies, the Agency would then expect a carrier to provide documented evidence that does not exist.
 - Litigious Environment: The proposed evidentiary requirements of carriers will create a litigious environment similar to EC261, and a corresponding claims industry dedicated to increasing complaints as there is no risk to a passenger in bringing a claim – all risk to disprove resides with the carrier. This is occurring today in Canada with an increase in companies seeking to profit off regulations intended to benefit passengers. The unintended consequences of this will lead to additional complaints due to more uncertainty and dissatisfaction with an opaque set of rules, and expectations of a no-risk and “fully insured” travel regime.
 - Increase in Costs: Requiring a “detailed explanation” and “documentary evidence” on an individual claim basis will drive significant costs for air carriers.
 - Consider, for example, a mechanical issue that causes a flight disruption. In

these instances, which are very technical in nature, the standard of what is required to be provided to the Agency must be clarified to ensure alignment amongst all air carriers. If a particular part was required to be replaced, the technical documentation would not aide a guest in understanding why that resulted in a disruption to them. Similarly, it could prove difficult if not impossible to get information around certain third parties such as air traffic control instructions which are delivered verbally between a controller and a pilot. Despite these obvious challenges, the Proposed Regulations would impose a reverse onus on carriers to prove their case; failing to meet this onus would mean carriers are financially responsible.

- Exempt Categories: Carriers should not be required to share certain categories of information, including technical records, maintenance logs, security sensitive materials, commercially sensitive information or other intellectual property of third parties. The Proposed Regulations must be clear in this regard.

2. In addition, the APPR would require airlines to explain to their passengers how to make a claim for compensation, in a prominent area on their websites.

- Westjet supports this proposed change, and suggests that a link to an APPR page be included on its home page. However, it should be acceptable to provide further details on a secondary page, which would be linked from the home page.

3. The APPR would also specify that when people travel together, one adult can make a claim for compensation on behalf of the group. In this way, a single claim could cover everyone in a group.

- The APPR's contemplate compensation owing to individual passengers, not groups. This proposal would allow for one individual in a group of friends, a business group, or a tour group to claim for others travelling with them.
 - If carriers are required to do this, the APPR must exclude subsequent legal issues that may arise. Consider, for example, a guest that does not provide consent or authorization for another individual to claim a compensation entitlement on their behalf - this should not be the responsibility of a carrier to resolve.
- The Agency must consider privacy related issues on this proposal. Privacy laws are complex and further information is needed on how this proposal is to be operationalized so carriers and the Agency can determine what legal issues arise.

3. REBOOKING AND REFUNDS

The proposed changes to the APPR rebooking requirements must consider the following:

- It is not realistic to expect that a rebooking is available within a 9-hour period as currently required in the APPR's.

- There are many situations where air carriers can only operate flights once daily, or less than once daily, particularly in smaller regional markets. Requiring air carriers to rebook on any carrier (which may not be possible) within 9 hours risks air carriers removing service from smaller communities where they are unable to fulfill these obligations.
 - Consider, for example, Brandon, Manitoba, where Westjet is the only commercial airline providing 1x daily service. No other rebooking options exist within 9 hours, and delay times can be exacerbated.
 - On certain routes, the proposed amendments to passenger compensation and standards of treatment for extended delays could be in the order of 100x the average profit per flight. This is not sustainable, and it is a foreseeable outcome of the proposed regulations that airlines will reduce or eliminate service to smaller communities.
 - A disproportionate impact will occur on service to smaller communities as they will not have the same frequency for flight re-accommodations, ultimately leading to higher compensation payouts in these markets and reducing the viability for limited offering services. This will undermine regional connectivity as air carriers will consolidate service to markets that reduce risk exposure.
 - 47% of the routes served by Westjet **are not able to be reaccommodated within 9 hours.**
- While Westjet has no issue with providing refunds to guests when a disruption occurs under the current APPR requirements, an obligation to rebook on any carrier in a period of time less than 24 hours is unreasonable given the high volume of routes which cannot be reaccommodated in 9 hours on our own aircraft.
 - The Consultation Paper states that “the period of time for an airline to provide a refund be reduced.” Previous amendments to the APPR introduced on September 8, 2022, imposed a new refund requirement and corresponding timelines for carriers on all flight disruptions.
 - The current refund timelines in the APPR are the result of a lengthy public consultation process that occurred in 2021.
 - In certain circumstances, like widespread weather events that impact thousands of flights, the current 30-day time period is still too short, and fails to reflect these significant flight disruptions where more resources are required to process refunds. As we’ve previously advised the Agency, carriers cannot scale up the number of on-staff agents based on events we cannot foresee.
 - We are unclear why the Agency would seek to further shorten these time periods given the recent historical considerations already given to this issue.

4. ASSISTANCE

The Consultation Paper proposes that carriers will be required to provide passengers with assistance for all flight disruptions.

- It must be recognized that even in exceptional circumstances, it will not always be possible to provide standards of treatment – for example if all hotels in the area are sold

out, or if food is not available.

- Changing the obligations to provide passengers with standards of treatment in exceptional circumstances will (i) drive significantly increased costs to air carriers and ultimately to consumers, which will in some cases be caused by other entities, and (ii) significantly increase the number of complaints in situations where food or accommodations are not available due to the timing or severity of the issue causing the disruption.
 - This again makes air carriers the sole entity responsible for all entities in the travel sector, including government agencies.
 - If accommodations are required, they should be provided for a very limited period of time (no longer than 24 hours).
 - Similarly, if a passenger chooses to seek their own accommodations, it is suggested that a maximum dollar amount be provided in the regulations that a passenger is entitled to claim up to.
 - In all instances, accommodations must not exceed a fixed cap prescribed by regulation. Absent this, carriers will be faced with an unknown, unlimited and unmanageable risk.
- The Agency must consider other avenues which a passenger can seek support for reimbursement for longer term events. Most credit cards include travel disruption insurance, and passengers can purchase travel insurance for significant (uncontrollable) disruptions – passengers must be encouraged to continue to utilize these. Consider, for example, a volcanic eruption in 2010 which cancelled 100,000 flights, impacted more than 10 million passengers, and cost the industry an estimated 1.5 – 2.5 billion Euros.¹² Uncontrollable events like this would be financially devastating to air carriers when they are unable to operate for reasons entirely outside of their control, yet are expected to be financially responsible for indefinite periods and unlimited amounts. A similar example occurred in Canada during the significant winter snowstorms in December, 2022. Expecting carriers to be financially responsible for hotels and other standards of treatment during a peak holiday period for situations wholly outside their control, for unlimited amounts and an indefinite period is unreasonable, and risks consequential financial damage to our industry.

5. COMMUNICATIONS

The proposed changes to the APPR's communication requirements must consider the following:

- The current APPR requirement to provide updates every 30 minutes or when new information is available has caused significant confusion to passengers.
 - During a disruption, the reasons can change regularly which results in confusion to guests. It is also not always known exactly what the reason is at the immediate moment and can require time to investigate.
 - There should be less reliance on the reason and more on ensuring that guests are provided with re-accommodation options or updated and accurate times for

¹² <https://www.theguardian.com/world/2010/apr/27/iceland-volcano-cost-business-europe>

boarding, departure, and arrival.

- As noted in the Consultation Paper, third party travel agencies do not share passenger contact information with carriers.
- Any additional requirement that necessitates technological changes (along with associated costs) should have a delayed implementation of 6-12 months in order to allow for such technological changes to be completed.
- Air carriers can provide information on their websites related to new departure times, posted delays, or cancellations, but it may not be possible to display the reason for a disruption, nor to update it regularly as this is all manual effort. Should the reason for a disruption be required to be posted on a carriers' website, it should be required to be in place 72 hours after the disruption. This allows air carriers to complete a thorough investigation and ensure that information posted is accurate. If there is an obligation to provide information of a disruption via text message or email, there should be no reason to provide an audible announcement, unless on request, particularly if a flight is delayed to a point that there would be no gate agent present.
- The Consultation Paper states that "Airlines must tell passengers....about the specific entitlements they have at that moment." The listed entitlements include standards of treatment (meals, hotels), and "the passengers right to compensation."
 - The Proposed Regulations must be clear that carriers need time to determine the root cause of certain events, and will not be able to determine compensation eligibility in the moment. Rather, carriers are required to post information of how a passenger may make a complaint to an airline or the Agency, and have 30 days following a complaint to make this determination of compensability. The requirement to make this determination cannot occur "at that moment".

6. CHAIN REACTIONS (KNOCK-ON EFFECTS)

The Consultation Paper proposes that only two flights in a row can claim the same exceptional circumstance as the reason they have been delayed or cancelled. This would limit the exemption to pay compensation for inconvenience to only: (i) the flight that actually experiences the exceptional circumstance, and (ii) the next flight scheduled to use that plane (or flight crew). No further flights could claim the original exceptional circumstance as the cause of a disruption.

We have included examples and visuals of how knock-on effects from external events impact multiple flights.

- 1) On July 30, 2023, a flight crew scheduled to operate flight 201 YYT-YEG had their regulated crew rest disrupted from an external and uncontrollable event at their crew hotel. Crew Rest requirements are regulated by Transport Canada and the *Canadian Aviation Regulations*. Prior to the external event at the hotel, the crew had arrived on schedule in YYT and had been provided ample rest to operate flight 201 on schedule. As a result of the disrupted crew rest, flight 201 YYT-YEG had to be delayed



This image above represents a line of flying by one aircraft, and each pink bar is a separate operated flight. The yellow bars show the scheduled time for each flight, and the pink bar is the actual time that it was flown, with the start of the bar indicating departure time and the end of the bar indicating arrival time. As can be seen in the example above, the first flight 201 YYT-YEG was delayed by a total of 259 minutes, and four further legs were also impacted with delays. The total arrival delay on the last leg (338 YQQ-YEG) was 277 minutes.

- 2) On December 19, 2022, Vancouver International airport forecasted weather that was poor, however the actual weather turned out to be worse and as a result, the airport was significantly constrained. On this day there were four major ground turn backs (inability to depart after pushing back from the gate) which resulted in cancellations as the aircraft were unable to make it to the runway to depart. There were two major arrival delays where after arriving, the aircraft had to wait multiple hours to get into a gate. Further, there were numerous diversions due to airport capacity being reached. This resulted in multiple aircraft and crews being in a different base than where they were planned to be, resulting in days of recovery.



The image above provides a snapshot of 9 aircraft primarily impacted with significant disruptions associated to the weather event in YVR and secondary impacts from weather in other

locations. The knock-on effects can be clearly seen from an event like this, and how it extends for numerous flights, and impacts multiple aircraft.

We have the following concerns with the proposed changes to the knock-on effect provisions:

- This proposal does not reflect the realities of how an airline is built to operate or run a schedule.
- In order to provide passengers with the most affordable airfares, airlines build their aircraft to have a high utilization – that is – the number of hours which an aircraft will operate. The average utilization of an air carrier is approximately 9 – 11 hours per aircraft, and when considering that the average stage length of a flight in Canada is approximately 2 hours, an average aircraft will operate an average of 6 flights per day.
- When considering regional air carriers with shorter flights, that would increase to 9+ flights per day which means that this measure would have unintended, but significantly more unjust consequences to regional operators. If a single flight is delayed by 3 hours due to an exceptional circumstance, all additional legs operated on that aircraft will be delayed and this will compound as the day carries on. There is limited to no time to return downline flights to on-time.
- Significant events such as a winter storms occur at a single hub, and can shift across a network - this can unfortunately carry on for days before there is full recovery and will affect all carriers equally, leading to limited seat availability.
- The Agency must balance the rights of passengers and the difficulties faced by a carrier in order to avoid setting an unduly high bar that would disproportionately affect air carriers.
 - For example, the Agency must consider meteorological conditions and weather to an area or region, the geographic location and remoteness of the departure airport and the arrival airport, unscheduled maintenance issues, airport operations, a carrier’s ability to find replacement crew or aircraft, specific routing requirements or aircraft limitations, etc.
 - Consideration should also be taken when analyzing the reasonableness of a response to a delay, for instance, it is much more difficult to obtain a replacement aircraft or crew in international or remote locations.
- The complexities are compounded by the fact that one aircraft may be scheduled to make multiple trips in one day, hence the necessity for the originally drafted knock-on provisions.
- As a result, Westjet recommends that instead limiting to one additional flight, this measure should be considered over a time duration of 48 hours from the first disruption. This approach would ensure regulatory alignment with the current APPR 48-hour re-accommodation requirement.

7. REFUNDS FOR CHANGES TO GOVERNMENT TRAVEL ADVISORIES

The Consultation Paper proposes to give passengers the right to a refund with no charge or penalty when they cancel their ticket because of a Government of Canada travel advisory, if certain conditions are met.

Westjet suggests this provision should only apply when a travel recommendation is to “avoid all travel” (and not just “avoid non-essential travel”) and a passenger requests a refund within 7 days of the travel advisory. While Westjet supports the issuance of a refund as the result of a changing government travel advisory, it must be balanced with a passenger’s diligence to do so, and must occur as far in advance as possible.