



NACC
National Airlines
Council of Canada



January 29, 2021

Mr. Scott Streiner
Chair and CEO
Canadian Transportation Agency
15 Eddy Street, 17th Floor
Gatineau, Quebec J8X 4B3
Via Email: Scott.Streiner@otc-cta.gc.ca

Dear Mr. Streiner:

RE: Temporary Exemptions from Certain Air Passenger Protection Regulations Provisions

We are writing to follow-up on our letter dated September 21, 2020, in which we were seeking temporary exemptions from certain provisions of the *Air Passenger Protection Regulations (APPR)*. Specifically, we reiterate and reinforce our request for temporary exemptions from provisions that require carriers to offer alternative travel arrangements that include flights on other air carriers and the requirements to provide compensation for inconvenience to passengers who were informed of a flight delay or a flight cancellation within carrier's control less than 14 days prior to their original scheduled departure. The initial request for this relief was filed by one of our members over 5 months ago. We respectfully request that the Agency prioritize the issuance of its decision on this matter.

Regretfully, since this original letter, the health of our vital industry has deteriorated. Our members continue to face volatile demand and ongoing instability, much of it as a direct result of government restrictions on travel. The Government of Canada announcement on December 30, 2020 requiring all travelers to provide proof of a negative COVID-19 molecular test in order to enter Canada, effective January 7, 2021 is the latest example of the barriers our members are facing when seeking to maintain even a modicum of operations during the pandemic. This major policy change, announced with no warning or consultation, gave our members 7 calendar days to comply with an order that caused significant disruption of both passenger travel and airline operations. This unexpected policy change gravely and negatively affected all airline bookings, drastically reducing demand, and causing mass flight cancellations. Minister Hajdu recently announced that over 50,000 bookings had been cancelled due to this new measure which was intended to dis-incentivize and discourage travel. The Government of Canada has informed NACC that to date, out of 1,000 flights since the latest Government of Canada measure was implemented; 4,000 customers have been refused transportation leaving them effectively stranded. All NACC carriers have had to further reduce their network capacity and workforces. On January 27, 2021 Air Transat announced the near complete suspension of all flights until Spring 2021.

This Order, along with the current 14-day post arrival quarantine requirement is in essence a de facto travel ban. The Prime Minister himself has requested all Canadians to cancel travel plans and to stay home. At the time of writing, the government of Canada had just announced that it is introducing immediate new measures, effective February 3, 2021 to drastically reduce air travel and our members have agreed to the federal government's request to suspend all service to the Caribbean and Mexico effective January 31, 2021 until April 30, 2021. These developments along with the lack of harmonization of the various pan-Canadian measures, including new restrictions just announced by the Government of Manitoba, has significantly disrupted what would be considered normal airline operations.

In addition to Canadian and provincial travel restrictions, other factors contribute substantially to the industry's volatility. IATA estimates that over 190 different countries have imposed some type of travel restriction, none of which are harmonized and often conflict with ICAO guidelines. The recent new variants of COVID have increased



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this regulatory patchwork, which changes on a minute-by-minute basis. As such, carriers departing Canada for these destinations often need to make decisions on cancellations within the 14-day period before the scheduled departure.

Our members sincerely regret the impact cancellations outside of their control have on our passengers' travel plans. To put it simply, the Government of Canada and other governments cannot pursue policies that are clearly intended to stop people from traveling and then penalize carriers for having to cancel flights when the policies accomplish the governments' goals. Airlines need protection from exposure to compensation from either the Agency or the lower courts. As such, we respectfully request the following:

- An order from the Agency that the exemptions granted by Determination No. A-2020-42 be renewed from their original date of expiry on June 30, **until December 31, 2021**, and in particular, an extension of the exemption from:
 - the requirements of subparagraphs 17(1)(a)(i) and 18(1)(a)(i) of the APPR that carriers offer alternative travel arrangements that include flights on other air carriers, other than those with which they have a commercial agreement; and
 - the requirements to provide compensation for inconvenience to passengers who were informed of a flight delay or a flight cancellation within carrier's control less than 14 days before their original scheduled departure, so that the requirement applies only if passengers were informed less than 72 hours before their original scheduled departure. Even though cancellations due to COVID-19 should be considered fully outside carrier's control, such a reduction in the notification timeline will provide regulatory relief and certainty regarding compensation obligations, and align with passenger expectations; and
- An expansion of the exemption from the obligation, under paragraphs 17(1)(a)(ii), 17(1)(a)(iii), and 18(1)(a)(ii) of the APPR to provide a confirmed reservation on a flight operated by a carrier with which the carrier does not have any commercial agreement, so that this exemption also applies to the obligation, under paragraphs 17(1)(a)(i) and 18(1)(a)(i) of the APPR to provide a confirmed reservation on a flight operated by a carrier with which the original carrier has a commercial agreement.

We continue to navigate these unpredictable fluctuations, with no precedent or historic trends to serve as a guide. Carriers cannot sustain the operation of flights if demand does not justify it, or if demand subsequently evaporates within days of departure as a result of the effects of the ongoing pandemic and government decisions which are entirely outside of the carrier's control.

We would welcome the Agency's rapid support on this given the breadth of the ongoing crisis, and provide this follow-up submission identifying emerging and ongoing concerns, as applicable, regarding the effects of COVID-19 on our member airlines.

Yours truly,

Mike McNaney
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National Airlines Council of Canada

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