



Canadian
Transportation
Agency

Office
des transports
du Canada

CONSULTATION PAPER ON AIR PASSENGER PROTECTION REGULATIONS



Canada 

Table of contents

Introduction	1
1: Airline's Obligation to Communicate Clearly	3
2: Flight Delay, Cancellation or Denial of Boarding	5
3: Tarmac Delay.....	15
4: Lost or Damaged Baggage.....	17
5: Seating of Children Under the Age of 14 Years.....	18
6: Transportation of Musical Instruments.....	19
7: Scope of the New Regulations.....	20
8: Application of the New Regulations when Different Airlines are involved	21
9: Tariff Availability and Filing	23
10: Transportation of Unaccompanied Minors	24
11: Air Services Price Advertising.....	25
12: Other topics to include in a tariff	26
13: Complaints and Enforcement	27
Your Input	29

Introduction

The *Transportation Modernization Act*, which came into force on May 23, 2018, amends the *Canada Transportation Act* (Act) to give the Canadian Transportation Agency (CTA) the authority to make regulations defining airlines' minimum obligations to passengers with respect to:

- the communication of passengers' rights and recourse options,
- flight delays and cancellations,
- denied boarding including bumping,
- tarmac delays of three hours or more,
- lost or damaged baggage,
- the seating of children under the age of 14 years, and,
- the development of terms and conditions of carriage on the transportation of musical instruments.

The CTA is Canada's longest-standing independent, expert tribunal and regulator. One of its core mandates is consumer protection for air passengers.

The Act requires that each airline set out its terms and conditions of carriage in a legal document called a tariff. Until the recent amendments, airlines prepared their own individual tariffs, and the CTA's role was limited to ensuring that airlines had tariffs, applied their tariffs and that their tariffs' terms were reasonable.

The new air passenger protection regulations will ensure clearer, more consistent passenger rights by establishing minimum standards of treatment, and in some situations minimum levels of compensation that all airlines must provide. The regulations will also include updated provisions regarding tariffs and air price advertising.¹

Once the regulations come into force, airlines will have new obligations towards passengers, including the obligation to make information on any recourse available against the carrier as specified in the regulations, readily available in a language that is simple, clear, and concise.

¹ In addition to developing these new regulations, the CTA is updating other regulations as part of the Regulatory Modernization Initiative that it launched in 2016. This includes integrating a number of existing regulations and codes into a comprehensive, modern accessible transportation regulation, and updating regulations related to air charter and licensing activities and to rail transportation.

We want to hear from the travelling public, airline industry, consumer rights associations and other interested Canadians as we develop these regulations.

This paper provides a framework for these consultations. It poses specific questions and, where relevant, also offers examples and contextual information on:

- decisions made by the CTA with respect to airlines' individual tariffs, before the recent amendments to the Act;
- provisions of the [Montreal Convention²](#), which is an international treaty that establishes the maximum damages payable by airlines in the case of personal injury or death, passenger delay, and lost, damaged or delayed baggage, when these events happen during international air travel; and,
- rules made by the European Union (EU) and United States of America (US) to protect air passengers.

These consultations provide the opportunity for Canadians and stakeholders to shape the regulations.

Consultations will be conducted over a period of about three months. The regulations will be prepared when the consultations have been completed and all input has been considered, and will be subject to approval by both the CTA and Cabinet.

You can provide us your input through [online questionnaires and surveys](#), [written submissions](#), or one of our eight [in-person consultation hearings](#). We look forward to hearing from you.

² *Convention for the Unification of Certain Rules for International Carriage by Air* (Montreal Convention)

1: Airline's Obligation to Communicate Clearly

Legal provision

The CTA is mandated to make regulations:

"respecting the carrier's obligation to make terms and conditions of carriage and information regarding any recourse available against the carrier, as specified in the regulations, readily available to passengers in language that is simple, clear and concise".

This element of the regulations will help ensure that passengers are aware of their rights and of what their options are if they believe that airlines aren't respecting those rights.

Examples of previous CTA decisions

In a [2001 decision](#) involving Air Canada, the CTA determined that the airline's tariff must describe the rights and obligations of both the airline and passengers in a clear way that avoids ambiguity, uncertain meaning, and reasonable doubt. In a [2010 decision](#) dealing with Delta Air Lines, the CTA recognized that tariffs should be written in a way that allows consumers to fully understand their rights, without having to review other documents such as international treaties.

EU and US rules

The EU and US have requirements to notify passengers of their rights in specific circumstances. For example, the EU [requires](#) that airlines provide information concerning passenger rights in the event of flight cancellation, delay, or denied boarding at check in at the airport desk, on airport kiosks, and on line in a manner clearly visible and in as many relevant languages as possible. The airline must also provide written notice to passengers directly affected by a flight cancellation, delay, or denied boarding of the rules for compensation and assistance. US rules require that airlines provide passengers information, for example, on denied boarding compensation obligations, customer service plans, tarmac delay contingency plans and other matters.

Questions

1. What is the key information that air passengers should receive on the airline's terms and conditions of carriage and the recourse available to them?

The key information like Ticketing, Reservation, Check-in & Boarding, Refusal & Limitation of Carriage, Baggage, Schedule, delay, cancellation of flight, Liability for damage, Refunds, etc., should be included in an airline's terms and conditions of carriage.

2. How should this information be communicated?

For example, should it:

- be posted in physical locations such as airports? **Not suggested.**
 - appear on airline websites or apps? **Yes**
 - be included in in-flight entertainment systems or magazines? **Not suggested**
 - be included with documents issued by the airline, such as e-tickets, itineraries, and/or boarding passes? **Boarding passes not suggested.**
3. What criteria, if any, should be established to help ensure that the language used to communicate passenger rights is simple, clear, and concise?
4. Should the regulations give specific direction on the format or length of information documents summarizing passenger rights and recourse? **Not necessary.**

2: Flight Delay, Cancellation or Denial of Boarding

Legal provision

The CTA is mandated to make regulations:

"respecting the carrier's obligations in the case of flight delay, flight cancellation or denial of boarding, including

- i. the minimum standards of treatment of passengers that the carrier is required to meet and the minimum compensation the carrier is required to pay for inconvenience when the delay, cancellation or denial of boarding is within the carrier's control,*
- ii. the minimum standards of treatment of passengers that the carrier is required to meet when the delay, cancellation or denial of boarding is within the carrier's control, but is required for safety purposes, including in situations of mechanical malfunctions,*
- iii. the carrier's obligation to ensure that passengers complete their itinerary when the delay, cancellation or denial of boarding is due to situations outside the carrier's control, such as natural phenomena and security events, and*
- iv. the carrier's obligation to provide timely information and assistance to passengers".*

2.1. Flight Delay or Cancellation

Flight delays and cancellations can occur for many reasons, including weather, air traffic congestion, security issues, flight connections, and the airline's commercial decisions.

In this context, flight delays are understood to include all delays, whether passengers are in the terminal, on board the aircraft, or somewhere else.

Examples of previous CTA decisions

In a [2012 decision](#) involving Air Transat, the CTA ordered that passengers, not the airline, be allowed to choose between cash or a travel voucher when being compensated for flight cancellations as well as denied boarding due to overbooking. The CTA also found that the airline must refund and return a passenger to their point of origin at no additional cost if their flight was cancelled (or delayed) and the continuation of the passenger's travel no longer serves a purpose. [Air Canada](#) and [WestJet](#) were also subject to similar CTA decisions.

EU and US rules

The EU has established a detailed set of requirements for airlines in situations of flight delays or cancellations. These requirements include providing passengers with information, refreshments, accommodation, reimbursement, re-routing, and [compensation](#) in the amounts of:

- a. EUR 250 for all flights of 1,500 kilometres or less;
- b. EUR 400 for all intra-Community flights of more than 1,500 kilometres, and for all other flights between 1,500 and 3,500 kilometres;
- c. EUR 600 for all flights not falling under (a) or (b).

In the US, there are no requirements for what an airline must do for delayed passengers, and airlines are not required to compensate passengers on domestic flights that have been delayed or cancelled.

Questions

GENERAL

1. The legislation distinguishes between flight disruptions that are:
 - **within the airline's control** (in which case compensation levels are applicable);
 - **within the airline's control but required for safety reasons**, including disruptions due to mechanical malfunctions; and,

- **outside the airline's control**, such as disruptions due to natural phenomena and security events.

Should any criteria be added to further differentiate between the three categories (e.g., where mechanical malfunctions raise safety issues and where they do not)? If so, which criteria?

Should the airline be required to declare the reason for the flight disruption when the disruption occurs? **Yes, it should.**

CANCELLATIONS OR DELAYS THAT ARE WITHIN THE AIRLINE'S CONTROL AND NOT REQUIRED FOR SAFETY PURPOSES

Compensation Levels

1. Should the level of compensation established by the air passenger protection regulations be the same for any cancellation and for any delay that is within the airline's control and not required for safety reasons? **Should be different.**

If not, what criteria should be used to set compensation levels? For example, should the length of the delay (time) or the length of the flight (distance) be used, as is done in the EU? **It depends on the length of the delay.**

2. If the length of the delay is a factor in setting compensation levels, what are the appropriate starting and end points for calculating the delay?

For example, should the expected time of arrival at the final destination as indicated on the boarding pass, reservation or ticket versus the actual time of arrival at the final destination be used to calculate the delay? **The time difference between the original and rescheduled flight departure time.**

3. Taking into account any criteria you propose for setting compensation, what would be the appropriate levels of compensation for flight cancellations and delays that are within the airline's control and not required for safety reasons?

4. Should cash be the only form of compensation payable to passengers or should airlines be allowed to offer passengers other forms of compensation? For example:

- travel vouchers valued at more than the cash value option **suggest paying travel vouchers instead of cash and the value should be as same as cash.**
- frequent flyer points
- upgrades **not suggested**
- complimentary tickets **not suggested**

Should airlines be exempted from having to provide compensation if they provide ample advance notice of a flight cancellation or delay? If so, what minimum advance notice should be required for such an exemption? **Yes, the advance**

notice should be required for an exemption, such as three months before flight departure.

Standard of passenger treatment

1. When and how should an airline be required to notify passengers that their flight is delayed or cancelled? **ASAP published on airport FIDS, airline's website/mobile app, text message.**
2. Should airlines be required to ensure that affected passengers are re-booked on another available flight in a reasonable time frame? **Yes, it's required.**

If so, what would constitute a reasonable period of time, and should this obligation apply even if it means that the airline has to book passengers on flights with other airlines?

3. What other measures or types of assistance should passengers receive when their flight is delayed or cancelled? For example:
 - o Meals **Depends on the length of delay time**
 - o refreshments **Yes**
 - o accommodations **Depends on the length of delay time**
 - o opportunities to communicate with friends, family, and colleagues **Yes**
 - o status updates **Yes**
 - o ability to obtain a refund or return to the point of origin if continued travel no longer serves a purpose **Ticket refund without charge is preferred.**
4. Should the standard of treatment vary depending on the length of the delay experienced by the passenger? If so, how?

CANCELLATIONS OR DELAYS THAT ARE WITHIN THE AIRLINE'S CONTROL BUT REQUIRED FOR SAFETY PURPOSES

Standard of passenger treatment

1. In what ways, if at all, should the required standard of treatment for passengers be different in a situation where the cancellation or delay is within the airline's control but necessary for safety purposes, as compared with a situation where the cancellation or delay is within the airline's control and not required for safety reasons? **The required standard of treatment for passengers would be making no difference, but no compensation shall be applied.**
2. Should there be any other requirements to assist passengers and to provide status updates to passengers? **No**

CANCELLATIONS OR DELAYS THAT ARE OUTSIDE THE AIRLINE'S CONTROL

Completion of travel

1. In situations of delay or cancellation due to circumstances outside the airline's control (e.g., natural phenomena and security events), what specifically should the airline be required to do to ensure passengers complete their itinerary?

Should airlines be required to ensure that affected passengers are re-booked on another available flight in a reasonable time frame? **No, airlines should not be required. Tickets refund without charge would be suggested.**

If so, what would constitute a reasonable period of time, and should this obligation apply even if it means that the airline has to book passengers on flights with other airlines?

2. Should there be any other requirements to assist passengers and to provide status updates to passengers? **No**

2.2. Denied Boarding

Denied boarding may occur for a variety of reasons, including bumping due to overbooking or operational changes such as the substitution of an aircraft.

Examples of previous CTA decisions

In a [2013 decision](#) involving WestJet, the CTA determined that an airline's tariff must address the issue of overbooking and that compensation to be paid in the case of overbooking must not be limited to a flat sum, but must also cover expenses incurred by a passenger as a result of the overbooking.

The same year, in decisions involving Air Canada, the CTA ordered that the compensation paid by the airline for denied boarding be increased to the following levels:

For [domestic](#) travel:

Length of delay	Compensation
0 - 2 hours	CAN\$200
2 - 6 hours	CAN\$400
6 hours or more	CAN\$800

For [international](#) travel:

Length of delay	Compensation
0 - 4 hours	CAN\$400
Over 4 hours	CAN\$800

EU and US rules

In the EU, passengers who are denied boarding against their will (other than where the denied boarding is on the grounds of health, safety or security or inadequate travel documentation) are entitled to reimbursement or re-routing, as well as compensation in the same amounts as for a cancelled or delayed flight, which were outlined in the preceding section of this paper. Passengers are also entitled to meals and refreshments, hotel accommodation when and as necessary, and access to communications.

In the US, in situations of denied boarding due to overbooking, compensation is provided as follows:

Domestic:

Length of delay	Compensation
More than 1 and less than 2 hours arrival delay	200% of one-way fare, up to max USD\$675
2 hours or more arrival delay	400% of one-way fare, up to max USD\$1,350

International:

Length of delay	Compensation
More than 1 and less than 4 hours arrival delay	200% of one-way fare, up to max USD\$675
4 hours or more arrival delay	400% of one-way fare, up to max USD\$1,350

Questions

GENERAL

The legislation distinguishes between standards of treatment for denied boarding situations that are:

- **within the airline's control** (in which case compensation levels are applicable);
- **within the airline's control but required for safety reasons**, including disruptions due to mechanical malfunctions; and,
- **outside the airline's control**, such as disruptions due to natural phenomena and security events.

Should any criteria be added to further differentiate between the three categories (e.g., where mechanical malfunctions raise safety issues and where they do not)? If so, which criteria?

Should the airline be required to declare the reason for the denied boarding when it occurs? **Yes, it should.**

DENIED BOARDING WITHIN THE AIRLINE'S CONTROL AND NOT REQUIRED FOR SAFETY PURPOSES

Compensation Levels

Everyone would likely agree that when there are more passengers with confirmed reservations than seats on an aircraft for reasons within the control of an airline – such as overbooking – the airline should look for volunteers who are prepared to take a later flight before considering the option of requiring someone to switch flights against their will.

Arguably, the best way to make sure volunteers are found in such circumstances is to set sufficiently high minimum compensation levels for passengers who are denied boarding against their wishes. If the levels are high enough, this will create strong incentives for airlines to use methods (such as auctions) to find volunteers whose plans are flexible and who would be willing to switch flights for mutually agreed upon compensation.

1. What do you think the minimum levels of compensation should be in situations when passengers are denied boarding against their wishes?
2. What criteria could be used to set compensation levels? For example, should the length of the delay (time) or the length of the flight (distance) be used, as is done in the EU? **It depends on the length of the delay.**
3. If the length of the delay is a factor for setting compensation levels, what are the appropriate starting and end points for calculating the delay (for example, the expected time of arrival at the final destination indicated on the boarding pass, reservation or ticket versus the passenger's actual arrival time at the final destination)? **The time difference between the original and rescheduled flight departure time.**
4. Should cash be the only form of compensation payable to passengers or should airlines be allowed to offer passengers other forms of compensation? For example:
 - travel vouchers valued at more than the cash value option **Travel vouchers are suggested.**
 - frequent flyer points
 - upgrades **Not suggested.**
 - complimentary tickets **Not suggested.**
5. If no one volunteers, how should an airline determine who will be involuntarily denied boarding? Examples of how an airline might do this include:
 - a. choosing the last person(s) to check in for the flight **Maybe**
 - b. choosing passengers who have not pre-selected their seats **Not suggested.**

- c. choosing non-connecting passengers **Not suggested**
- d. making a random selection **Not suggested**
- e. exempting unaccompanied minors and/or families travelling with children
Yes

Standard of passenger treatment

If denied boarding occurs due to reasons within the airline's control, the passenger is entitled to a minimum standard of treatment from the airline. This may include re-booking on another available flight and/or the provision of meals and refreshments.

1. In what ways, if at all, should the required standard of treatment for passengers be different in a situation where the denied boarding is within the airline's control but necessary for safety purposes (for example, an unavoidable change of aircraft that has fewer seats), as compared with a situation where the denied boarding is within the airline's control and not required for safety reasons (for example, overbooking)? **Should be no difference.**
2. When and how should an airline be required to notify a passenger that they will not be boarded on the flight? **Upon passengers checking-in.**
3. Should airlines be required to ensure that affected passengers are re-booked on another available flight in a reasonable time frame? **Yes, it should.**

If so, what would constitute a reasonable period of time, and should this obligation apply even if it means that the airline has to book passengers on flights with other airlines?

4. What other measures or types of assistance should passengers receive when they have been denied boarding? For example:
 - a. Meals **Depends on the length of delay time**
 - b. refreshments **Yes**
 - c. accommodations **Depends on the length of delay time**
 - d. opportunities to communicate with friends, family, and colleagues **Yes**
 - e. status updates **Yes**
 - f. ability to obtain a refund or return to the point of origin if continued travel no longer serves a purpose **Tickets refund without charge is preferred.**
5. In what ways should the standard of treatment vary depending on the length of the delay experienced by the passenger?
6. Should there be any other requirements to assist passengers and to provide status updates to passengers?

DENIED BOARDING THAT IS OUTSIDE THE AIRLINE'S CONTROL

Completion of travel

1. In situations of denied boarding due to circumstances outside the airline's control (e.g., natural phenomena and security events), what specifically should the airline be required to do to ensure that passengers complete their itinerary?

Should airlines be required to ensure that affected passengers are re-booked on another available flight in a reasonable time frame? **No, airlines should not be required. Tickets refund without charge would be suggested.**

If so, what would constitute a reasonable period of time, and should this obligation apply even if it means that the airline has to book passengers on flights with other airlines?

2. Should there be any other requirements to assist passengers and to provide status updates to passengers? **No**

3: Tarmac Delay

Legal provision

The CTA is mandated to make regulations *"respecting the carrier's obligations in the case of tarmac delays over three hours, including the obligation to provide timely information and assistance to passengers, as well as the minimum standards of treatment of passengers that the carrier is required to meet"*.

Examples of previous CTA decisions

Between August and November 2017, the CTA inquired into the matter of the tarmac delays of Air Transat Flight Nos. 157 and 507, which occurred in Ottawa on July 31, 2017. In [Decision No. A-2017-194](#), in addition to findings that the carrier did not properly apply its tariff related to disembarkation and to the distribution of drinks and snacks, the CTA found that it was unreasonable for pilots to have such wide discretion to decide whether or not to allow passengers to disembark, no matter how lengthy the tarmac delay. Based on these findings, the CTA ordered Air Transat to amend its international tariffs to incorporate the terms and conditions of its Contingency Plan for Lengthy Tarmac Delays at US Airports, which create a positive obligation for the air carrier to deplane passengers if a tarmac delay reaches four hours – unless there are safety, security, or air traffic control issues that prevent it - and require that during the delay, the air carrier provide passengers with updates every 30 minutes, working lavatories, and needed medical assistance.

EU and US rules

The EU's passenger protection regime does not currently include any obligations related to tarmac delays. However, proposed regulatory amendments could require that passengers receive drinking water and access to washrooms after one hour, and that adequate heating and cooling be provided in the passenger cabin. In addition, passengers could be allowed to disembark after a delay of five hours.

The US rules require airlines to adopt and adhere to tarmac delay contingency plans. In addition, airlines must not permit an international flight to remain on the tarmac at a U.S. airport for more than four hours, or a domestic flight more than three hours, without allowing passengers to deplane, subject to safety and security issues, or direction from air traffic control. During a tarmac delay, passengers must be given an update on the situation every 30 minutes, including reasons for the delay if known, and be notified of the opportunity to deplane from an aircraft that is at the gate or another disembarkation area. Finally, the airline must provide adequate food and water, ensure that lavatories are working, and, if necessary, provide medical attention during long tarmac delays.

Questions

1. What is the appropriate starting point for calculating a tarmac delay (e.g., the time at which the door of the aircraft closes, the time at which the aircraft pulls away from the gate, or the time at which the aircraft lands at an airport)?
2. How frequently should passengers be updated throughout a tarmac delay? **Every 30 mins**

What types of information should the airline be required to share? **Flight status and estimate flight departure time**

3. What should be the minimum standard of treatment for passengers who wait on the tarmac for over three hours?

For example:

- a. disembarkation
- b. water **Yes**
- c. food **Yes**
- d. functioning lavatories **Yes**
- e. medical attention **If necessary**
- f. proper ventilation
- g. heating and cooling **Yes**
- h. ability to communicate with people outside the aircraft

Should certain airline obligations only kick in after a lengthier delay (e.g., four or five hours)?

4: Lost or Damaged Baggage

Legal provision

The CTA is mandated to make regulations "*prescribing the minimum compensation for lost or damaged baggage that the carrier is required to pay*".

Examples of previous CTA decisions

In a [2010 decision](#) involving WestJet, the CTA found that an airline's limit of liability for baggage on domestic travel was unreasonable, and directed the airline to reflect in their tariff the higher limit set out in the Montreal Convention. The CTA has also issued a number of decisions dealing with the proper application of the baggage-related sections of airlines' tariffs. For example, in a [2017 decision](#), the CTA found that British Airways did not properly apply its tariff and ordered the airline to compensate the passenger for the value of the loss of his baggage in the amount of CAN\$2,053.84.

Montreal Convention provisions

The Montreal Convention sets the maximum liability for damages for lost, damaged or delayed baggage at 1,131 Special Drawing Rights (approximately CAN\$2,100) on international travel; there is no minimum compensation level.

EU and US rules

The EU and US, like Canada, have ratified the Montreal Convention for international air travel. The EU passenger protection regime establishes the same baggage liability parameters for domestic air travel. The US domestic regime prohibits airlines from setting a maximum compensation limit below \$3,500 US per passenger. Neither jurisdiction sets minimum compensation levels.

Questions

1. What should be the minimum compensation that airlines are required to pay when baggage is lost or damaged?

Options might include:

- a. a refund of baggage fees **should be excess baggage fee only**
 - b. payments reflective of the financial loss suffered by the passenger, perhaps up to a certain maximum **Certain maximum should be required.**
2. What criteria should be used to determine if a bag has been lost or damaged?
 3. What evidence should a claimant have to submit to receive compensation for lost or damaged baggage? **Baggage tag or baggage receipt**

5: Seating of Children Under the Age of 14 Years

Legal provision

The CTA is mandated to make regulations *"respecting the carrier's obligation to facilitate the assignment of seats to children under the age of 14 years in close proximity to a parent, guardian or tutor at no additional cost and to make the carrier's terms and conditions and practices in this respect readily available to passengers"*.

Examples of previous CTA decisions

In a [2014 decision](#), the CTA ordered Air Canada, WestJet, Porter, Jazz, Air Transat and Sunwing to set out policies in their tariffs with respect to the seating of children, and to make reasonable efforts to ensure that children are seated with an accompanying parent or guardian.

Questions

1. How should "close proximity" be defined in the air passenger protection regulations (e.g., adjacent seat, same row, or within three rows)? **Within three rows**

Should the maximum acceptable seating distance between the child and a parent or guardian depend on the child's age?

2. How should an airline "facilitate" the assignment of seating? **Not guarantee**

What measures should an airline take to ensure that children are seated in close proximity to a parent or guardian? **Passengers who take children can preselect seats while making reservation.**

3. What steps should an airline be required to take to ensure that its terms and conditions and practices with respect to the seating of children are made readily available to passengers?

Should there be any specific obligations in this regard at the time a flight is booked for a child under the age of 14 and/or at the time of check in?

6: Transportation of Musical Instruments

Legal provision

The CTA is mandated to make regulations "*requiring the carrier to establish terms and conditions of carriage with regard to the transportation of musical instruments*".

Question:

1. What specific elements should an airline be required to address in its tariff provisions regarding the transportation of musical instruments?

For example:

- a. carry-on and checked baggage requirements for small and large instruments **Yes**
- b. cabin storage options **Yes**
- c. additional fees **Yes**
- d. requirements in circumstances of aircraft substitution that has space constraints for the instrument **Yes**

7: Scope of the New Regulations

Legal provision

The law states that the air passenger protection regulations that the CTA will make with respect to the issues in the previous six sections should be *"in relation to flights to, from and within Canada, including connecting flights"*.

This new mandate could be informed by a long-standing provision of the Act, which states that the CTA's air-related regulations *"may be conditional or unconditional or qualified or unqualified and may be general or restricted to a specific area, person or thing or group or class of person or things."* In plain language, this means that specific requirements established in the air passenger protection regulations could apply to some rather than all airlines.

EU and US rules

Some passenger protection requirements in the EU and US are differentiated by airline type or apply only to certain classes of airlines. For example, the obligation in the US to have a tarmac delay contingency plan only exists if an airline is *"a certificated carrier, a commuter carrier, or a foreign air carrier operating to, from or within the United States, conducting scheduled passenger service or public charter service with at least one aircraft having a designed seating capacity of 30 or more seats."*

Question

1. Should any of the obligations set out in the air passenger protection regulations be modified for certain types of airlines; for example, small airlines operating small aircraft?

If so, which obligations, which types of airlines, and why?

8: Application of the New Regulations when Different Airlines are Involved

Increasingly, airlines partner cooperate through arrangements like code sharing, interlining and joint ventures.³ These arrangements allow one airline to sell an itinerary that includes flights with multiple airlines. These arrangements raise questions as to which airline – the marketing airline, the operating airline, or some combination of the two – should have obligations towards passengers if there are issues with flights.

LEGAL PROVISION

The law mandates the CTA to make regulations outlining airline obligations with respect to specific issues *"in relation to flights to, from and within Canada, including connecting flights"*.

Examples of previous CTA decisions

In a [2013 decision](#), the CTA indicated that for code shares, the marketing airline's terms and conditions apply, while for interline tickets, each airline's terms and conditions apply to their respective sections of the itinerary.

EU and US rules

In the EU, when there is more than one airline involved in providing the air service, it is the operating airline that is responsible for fulfilling any obligations with respect to the consumer protection regulations. In the US, the requirements vary. For example, in the case of tarmac delays, if there is a partnership between an airline or multiple airlines, the marketing and the operating airlines are responsible in an enforcement context for complying with the tarmac delay contingency plan, including deplaning passengers on international flights. In the case of lost and damaged baggage, it is the marketing airline that must address any issues.

³ A **code share** refers to an arrangement where a licensed air carrier provides services by selling transportation in its name on flights operated by another carrier.

Interline travel is transportation using two or more carriers operating under their own terms and conditions. For convenience of the passenger and the participating carriers, all segments of the interline travel appear on the same ticket and the fare for the journey is paid to the ticketing carrier and later distributed between the carriers providing the transportation.

Joint ventures are formal arrangements between two or more air carriers providing air services.

Questions

1. When a single itinerary includes flights with multiple airlines, in which of the following areas should the marketing airline be responsible (regardless of whether an issue arises on one of its flights or on flights operated by one of its partner airlines)?
 - a. Airline's obligation to communicate clearly **Yes**
 - b. Flight delays and cancellations **Yes**
 - c. Denied boarding **No**
 - d. Tarmac delays **No**
 - e. Lost or damaged baggage **No**
 - f. Seating of children under the age of 14 years **Yes**
 - g. Transportation of musical instruments **No**

In which areas should the operating airline be responsible? **a b c d e f g**

2. Should the answer to the previous question change for different sorts of cooperation arrangements (e.g., code sharing, interlining, and joint ventures)? **Yes, the answer might be different according to bilateral agreement.**
3. Should the air passenger protection regulations require that marketing airlines explain to passengers which airline is responsible for which issues when selling an itinerary that includes flights with several airlines? **Yes**

9: Tariff Availability and Filing

In addition to setting compensation levels and standards of treatment for the various situations listed in sections 1 to 6 of this paper, the new air passenger protection regulations will include updated obligations around tariffs.

Tariffs are documents that set out the airline's fares, rates, charges and terms and conditions of carriage. The requirements set out in the new regulations will be deemed to form part of an airline's tariff, to the extent that the tariff does not provide better terms and conditions.

Currently, an airline's tariff must be publicly available for inspection anywhere an airline sells its transportation services or receives goods for transportation, including its business office. In addition, international airlines have to file their tariffs with the CTA and keep the tariffs on file up-to-date with respect to prices (fares, rates or charges). The CTA processes about 1,500 terms and conditions filings and 27,000 fare filings per year. In a rapidly changing world characterized by transitions in multiple areas away from paper and towards e-business, these traditional approaches to tariffs may need updating.

EU and US rules

The EU has no specific tariff filing requirements. However, the EU requires airlines to communicate to the general public the conditions applicable to any fare and air rate offered or published in any form, including on the internet. In the US, airlines are not required to file their domestic passenger fares and rules with the US Department of Transportation. Airlines are, however, required for international travel to file tariffs containing some "general rules" such as conditions of carriage, baggage allowances and liability. The US also has website posting requirements.

Questions

1. For passengers, what measures, if any, would make it easier to access and understand an airline's tariff, beyond the terms and conditions already covered under issue 1?

Are there electronic options that would help ensure the transparency and clarity of an airline's obligations towards their customers? If so, what are the electronic options for satisfying this requirement?

2. Should the filing requirements for international airlines be retained? **If possible, it's suggested not to retain the filing requirements for international airlines as it's time-consuming in filing process.**

If so, are there electronic filing options that would simplify the filing process without compromising the timeliness or completeness of filings?

10: Transportation of Unaccompanied Minors

Under the current *Air Transportation Regulations*, airlines are required to include policies about the transportation of children in their tariffs, including their policies on unaccompanied minors, if applicable. The regulations do not say what the policies on unaccompanied minors should cover. Some airlines allow children of different ages to travel unaccompanied or allow older children to accompany younger children.

International Standards

Canada is a signatory to the Convention on International Civil Aviation (Convention), which is managed and administered by the International Civil Aviation Organization. The Convention sets out international standards for air travel, including rules of airspace and safety standards.

New standards have been incorporated into the Convention regarding the transportation of unaccompanied minors. These standards specify that aircraft operators must establish a program for the transportation of unaccompanied minors travelling under their supervision and they cannot allow minors under the age of five to travel without an accompanying person.

To support the standards, the term "accompanying person" is defined as: "An adult travelling with a minor. This person will not necessarily be the parent or legal guardian of the minor". A "minor" is defined as "(...) a person who has not attained the age of majority as determined under the law applicable to the person". The age to be considered an "adult" varies in Canada, internationally and in airline practices.

Under the Convention, Canada must ensure that regulations for international flights to and from Canada align with the new international standards.

Questions

1. The age to be considered an "adult" varies in Canada, internationally and in airline practices. What should be the age of an "adult" for the purpose of applying the definition of an "accompanying person"? **16 years in general**
2. Should similar standards apply on domestic flights? If so, are there specific factors that the CTA should consider? If not, please provide a justification.

11: Air Services Price Advertising

In 2012, regulatory requirements with respect to air price advertising were introduced to help consumers easily determine the total price of advertised air services and the components of the total price, and encourage fair competition among advertisers of air services. These requirements will be incorporated into the new air passenger protection regulations.

The current rules state that air price advertising directed at the public must include the total price, inclusive of all taxes, fees and charges that a consumer must pay to obtain the air service. It must also include any optional services that are being offered and at what price they are available (e.g., seat selection, seat upgrades, baggage fees).

The regulations apply to any person who advertises air prices for travel within or originating in Canada that is directed to the Canadian public. They do not apply to air cargo services, charter services negotiated with a private business or fares available through corporate travel offices (and not available to the general public) or displayed through a global distribution service, package travel services, services originating outside Canada, and loyalty reward programs.

These exclusions from the regulations may prevent consumers from obtaining consistent information across all travel options, potentially affecting fair competition in the market. Further, with the emergence of new approaches to airline tickets sales -- for example, the use of online auctions to sell seats -- the current requirements may impose constraints on some innovative pricing strategies that could be to the benefit of both consumers and airlines.

Questions

1. Are any changes in the regulations needed to help consumers easily determine the total price of advertised air services – including the separate components of the total price – and the total price of any optional services that an airline may offer as part of a passenger's itinerary?
2. Should the application of the air price advertising requirements be extended to other air travel services (e.g., charter airlines and tour operator packages)?
3. Should the rules be changed to accommodate innovative sales approaches like auctions/price bidding?

If so, what safeguards, if any, are needed to ensure price transparency?

12: Other topics to include in a tariff

The information that must be included in an airline's tariff goes beyond the topics addressed above. The current *Air Transportation Regulations* require that an airline's tariff include terms and conditions stating the airline's policies on certain matters. As well, the CTA has the authority under the Act to establish what information should be contained in a tariff.

Currently, an airline's tariff must include its policies on an array of issues such as ticket reservation requirements, check-in and boarding requirements, limitations of liability, and refunds. Passengers can file a complaint with the CTA if the airline's policies are not specified in the tariff, or if they believe that the tariff is unclear, unreasonable or unduly discriminatory.

Recognizing that the new regulations will set out airlines' minimum obligations with respect to some matters, it may be useful for airlines to include other items in their tariffs in order to provide greater clarity for passengers.

Questions

1. Are there other topics that airlines should be required to address in their tariffs? Some possibilities could include:
 - treatment of passengers delayed on board an aircraft before the specific requirements for a tarmac delay of more than three hours kicks in
 - baggage acceptance policies, including allowances and charges
 - ancillary services policies, including seat selection fees
 - carrier-operated frequent flyer programs
 - transportation of animals

13: Complaints and Enforcement

Complaints

When the new air passenger protection regulations come into effect, airlines will be required to follow the new obligations. Passengers who believe that the airline has not followed its obligations could first raise the issue with the airline, and will have the option of filing a complaint with the CTA. If the CTA finds that the airline has not followed its obligations, it will be able to take corrective measures (for example, ordering the airline to reimburse expenses incurred by the passenger or that the level of compensation prescribed in the regulations be paid).

Enforcement

As well, an enforcement officer will have the option to issue administrative monetary penalties (AMPs) against an airline for non-compliance with the new air passenger protection regulations. AMPs are fines imposed by an enforcement officer when they find that an airline has violated certain obligations that have been designated by the CTA. Compared with other enforcement processes, AMPs are a relatively efficient way of dealing with situations of non-compliance. For example, an enforcement officer can currently impose AMPs on an airline for failure to:

- make its tariff publicly available for inspection anywhere it sells its transportation services or receives goods for transportation, including its business office;
- publish its terms and conditions of carriage on any Internet site used for selling its domestic service;
- include in its tariff the airline's policy with respect to matters prescribed by regulations.

An enforcement officer can also impose AMPs if the CTA finds that an airline applies a fare, rate, charge or term or condition of carriage that is not set out in its tariff or if it finds that an airline applies or advertises a term or conditions that is suspended or disallowed by the CTA.

LEGAL PROVISION

The CTA can, by regulation, designate any provision of the Act or any regulation made under the Act as subject to AMPs.

EU and US rules

The US can issue fines for certain air passenger rules, including those dealing with tarmac delays. The EU rules do not prescribe monetary penalties in relation to its air travel regulations.

Questions

1. What type of guidance would be helpful for passengers on how to make a complaint to the CTA relating to the new air passenger protection regulations?
2. Should all of the new obligations established by the air passenger protection regulations also be enforceable through AMPs? If not, please provide a justification.

Your Input

Please submit your feedback by August 28, 2018 at consultations@otc-cta.gc.ca.

If you wish to submit a video due to accessibility issues, please send an email to consultations@otc-cta.gc.ca with the subject line "Video". We will contact you to coordinate your submission.

All submissions will be considered public documents and will be posted on the CTA's website in the official language in which they were submitted, along with the name of the individual or organization that submitted them. We encourage you to respond to some or all of the questions posed in this document, and we look forward to receiving your suggestions.

Consultations with stakeholders and the public on the new air passenger protection regulations are one component of the CTA's broader [Regulatory Modernization Initiative](#) that was launched in May 2016.