

February 19, 2019

Caitlin Hurcomb, Manager, Regulatory Affairs
Canadian Transportation Agency
15 rue Eddy,
Gatineau, QC K1A 0N9

Re: Representation to the Canada Gazette, Part 1, Volume 152, Number 51: Air Passenger Protection Regulations

Dear Ms. Hurcomb,

The Association of Canadian Travel Agencies (ACTA), which represents approximately 1,200 travel agencies and more than 12,000 travel agents across the country, is pleased to continue our active participation in the consultation on Air Passenger Protection Regulations (APPR).

Noted in our Brief submitted on August 28, 2018, ACTA represents and defends the interests of retail travel professionals and, by extension, those of travel consumers. Our members, Canadian retail travel agencies, act as intermediary between buyers and sellers of travel products and services. Consumer-centric relationships that are based on loyalty and trust are the cornerstone of our industry. As travel agents, we have a responsibility to represent both our customers and suppliers in a non-biased way in order to add value to our clients' travel experience.

ACTA recognizes that for the vast majority of air travel, customers are satisfied with their travel experience. It is also understood that there are many stakeholders involved in the air travel experience of a passenger and delays can be caused due to many issues at an airport including air traffic control, security, customs etc. ACTA's goal in the development of the APPR is a balanced approach whereby travelers receive a consistent and quality customer service experience, and that when issues do arise, that **the responsibility and resolution is fair and equitable for all involved stakeholders.**

It is clear that the CTA's objective of the proposal is to create new APPR that:

1. Are world-leading and feature robust, simple, clear and consistent passenger rights;
2. Reflect operational realities of carriers and allow for carrier innovation, where appropriate; and
3. Align with international agreements, and apply best practices from lessons learned from other jurisdictions, where appropriate.

Overall, ACTA is *somewhat* satisfied with the **proposed** APPR. Some key concerns raised by ACTA members and listed in our August 2018 Brief have been highlighted for further consideration by the CTA. There are two other key concerns that has since stemmed from the now proposed APPR: the research conducted and the implementation date of these regulations. Now that compensation amounts have been proposed, a **thorough cost analysis** with the airlines should be conducted to ensure that levies imposed are financially sound and do not negatively impact the health of Canadian airlines and the travel industry. It is important to keep in mind that a healthy travel industry is good for all stakeholders, including the consumer. Second, a July 2019 implementation date seems unreasonable. Now that the proposed compensation model has been tabled, a proper cost-benefit analysis needs to be conducted and a reasonable time to implement the regulations, in particular where technical and jurisdictional alignment is required.

Standards of Treatment

Proposed Regulation: Where the passenger has been informed of the delay fewer than 12 hours before departure time: After a delay at departure reaches **two hours**, air carriers would, among other things¹, be required to provide access to a means of communication, and food and drink in reasonable quantities taking into account the length of the delay, time of day and the location of the delay.

ACTA Recommendation: CTA's mandate is 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*". Based on the proposed regulation, it would appear that the standard of treatment for passengers in an airport, where there is greater access to amenities, is higher than those passengers involved in a tarmac delay. While ACTA's recommendation in our August 2018 submission stated the passenger has the right to assistance beginning after a **three hour delay**, it is more important to be clear and **consistent** with the time points and information relayed to passengers.

ACTA respects the CTA's decision that food and drink are in reasonable quantities taking into account the length of the delay, time of day and the location of the delay. ACTA agrees that given the numerous differences with airport facilities, details for amounts of meal vouchers would be better to be included in a policy or directive than prescribed in regulations.

Completion of Itinerary, Rebooking and Refund

Proposed Regulation: For delays and cancellations within a carrier's control, if the next available flight would depart **nine hours** or more after the original scheduled departure time, there would be an obligation for large carriers to rebook the passenger on another (competing) carrier. If the offered rebooking does not meet the passenger's travel needs, the passenger would be entitled to a refund. The passenger would, in addition to a refund, also be entitled to a lump sum payment reflecting the applicable minimum compensation for delays of at least three hours but less than six hours.

ACTA Recommendation: While ACTA recommended that the passenger be given minimum standards of treatment, the option to be rebooked on the next available flight or a full refund if the delay no longer satisfies the passenger's travel plans, ACTA supported the EC's recommendation that they have the right to re-routing via another air carrier or another mode of transport where the operating air carrier cannot transport the passenger on its own services and in time to arrive at the final destination within **12 hours** of the schedule arrival time.² In addition, the passenger should be compensated for this disruption. Compensation could be in the form of cash, travel vouchers, frequent flyer points, upgrades or complimentary tickets. If the objective of the CTA was to align with international agreements, changing the nine hour window to 12 hour would achieve this goal.

¹ Other things refer to the standards of treatment if a delay is expected to extend overnight, and access to lavatories during any delay of 30 minutes or more.

² Page 21 of the European Commission Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air, reports on the recommended criteria for re-routing on another air carrier or another mode of transport, and after a delay of 12 hours.

Minimum Levels of Compensation

Proposed Regulation: Under the legislation, compensation for inconvenience would be required for delays and cancellations in situations within the carrier's control that are not required for safety. More specifically, where a passenger is informed of a delay or cancellation 14 or fewer days before departure, the amount payable by the carrier to the passenger is based on the length of the delay upon arrival at the passenger's destination.

Large carriers would be subject to the following compensation requirements:

- 3 or more hours, but less than 6 hours: CAN \$400
- 6 or more hours, but less than 9 hours: CAN \$700
- 9 or more hours: CAN \$1,000

Small carriers would be subject to the following compensation requirements:

- 3 or more hours, but less than 6 hours: CAN \$125
- 6 or more hours, but less than 9 hours: CAN \$250
- 9 or more hours: CAN \$500

Compensation must first be offered in cash or equivalent, but passengers could choose to accept other forms of compensation, which must be of greater value and cannot expire.

ACTA Recommendation: Now that compensation amounts have been proposed, ACTA strongly recommends that a thorough cost analysis with the air carriers be conducted to ensure that levies imposed are financially sound and do not negatively impact the health of the Canadian travel industry. It is important to keep in mind that a healthy airline industry is good for the consumer as well.

Denied Boarding

Proposed Regulation: In respect to compensation: If the denial of boarding is within the carrier's control and not required for safety, carriers would have to pay compensation within a specific time to the passenger based on delay at arrival, as follows:

- Less than 6 hours: CAN \$900
- 6 or more hours, but less than 9 hours: CAN \$1,800
- 9 or more hours: CAN \$2,400

These regulations would also prohibit carrier from subjecting passengers already on the aircraft to denial of boarding.

ACTA Recommendation: ACTA supports CTA's proposed regulation that that compensation is provided to a passenger that has been denied boarding when it is within the carrier's control (for reasons including, crew carriage, clearing a waitlist for elite frequent fliers or a downgrade of aircraft with less seats). ACTA reviewed the compensation levels of the various regimes in Europe, the United States, and what the CTA prescribed in recent rulings, and thus was satisfied with the levels previously established by the CTA.

Domestically:

- \$200 - 0-2 hours delay
- \$400 - 2-6 hours delay
- \$800 - 6 hours delay or more

Internationally:

- \$400 - 0-4 hours delay
- \$800 - over 4 hours delay

Once again, if the objective of the CTA was to align with international agreements, and reflect the operational realities of carriers, the minimum amount being proposed is at the higher end of the scale then previously established.

Tarmac Delays

Proposed Regulation: In addition to the standards of treatment outlined in the proposed regulations, the carrier would have to provide an opportunity for disembarkation after **three hours** and to give the opportunity for persons with disabilities to disembark first, where operationally feasible. Air carriers would be allowed discretion to stay on the tarmac for one additional 45-minute window, should takeoff be imminent and the air carrier is able to continue to provide standards of treatment.

ACTA Recommendation: Further to our August 28, 2018 submission, ACTA fully supports all that has been proposed.

Lost or Damaged Baggage

Proposed Regulation: The Montreal Convention, which sets the **maximum** liability for damages for baggage lost, damaged or delay during **international travel**, would be extended to domestic travel, and include the reimbursement of any baggage fees paid by the passenger.

ACTA Recommendation: ACTA supports the proposed regulation of extending the Montreal Convention rules to domestic travel. ACTA questions, however, that the proposed regulation does not address the CTA's mandate in "*prescribing the **minimum** compensation for lost or damaged baggage that the carrier is required to pay*". It is ACTA's recommendation that more research on typical costs would need to be conducted should the government still be looking to set **minimum** levels of compensation for lost or damaged baggage.

Air Services Price Advertising

Proposed Regulation: The regulatory requirements with respect to air services price advertising (ASPAR) be moved from the Air Transportation Regulations (ATR) to the APPR to reflect their consumer focus.

ACTA Recommendation: ACTA supports the proposed regulation of moving the air services price advertising requirements to the APPR however, once the ASPAR is under the oversight of the CTA, ACTA recommends further regulatory changes. ACTA believes that the ASPAR should be extended to charter airlines and tour operator packages. Some tour operators weight more pricing into taxes and fees, making the base prices artificially low and difficult for consumers to make accurate comparisons. Consumers deserve to be able to travel with confidence in their travel suppliers and with disclosure of full information for intelligent decision-making. While tour operators continue to include their fees and charges in the "tax column", governments should determine what 'taxes' really are and prohibit companies to mislabel other fees and surcharges as taxes if they are not. This is false advertising. ACTA believes that vacation packages containing an air component should not be exempt from the regulations.

Additional Feedback and Points to Consider for Regulations

i) Availability of Insurance

Issue: Consumers are not necessarily aware of the importance of purchasing private insurance including trip cancellation coverage and out-of-province health insurance with the exception of bookings made through a licensed travel agency in the regulated provinces of Ontario and Quebec. In an August 2017 meeting with the Minister of Transport, the subject of insurance was discussed. The concern raised by the Minister was that during certain unfavourable situations, travelers contact his Ministry for assistance when it is not the government's responsibility. In these situations, it is possible that the customer would have been protected under a private insurance policy.

Recommendation: As the requirement in some provinces is that all travel agents must advise the customer about the availability of trip cancellation insurance and out-of-province health insurance if applicable, so should this same requirement be made of **all** providers of air services for the travelling public. Many of the major Canadian carriers currently do offer travel insurance for online bookings so this requirement should not be a burden to implement on the part of the airline. For example, the airline should provide some general statement about the value of purchasing private travel health insurance and a statement of where it is available ie: contact your travel agent or insurance broker for more information, and at some point during the online booking and before the final sale of the trip, a check box would be included that prompts the consumer to acknowledge they were advised of the availability trip cancellation and out of province travel health insurance, where it is available to purchase and the option to decline. Overall, ACTA strongly encourages the CTA, Transport Canada and other departments within the federal government take an active role in promoting that consumers ensure they are properly insured and aware of the risks of travelling within proper insurance coverage.

ii) Name Changes

Issue: In the case of a mistake made in a passenger's name, it can be very costly for the passenger to correct. For example, in one case a travel agent misspelled a middle name Marlaire when it should have been Marlene. So, a two letter correction change from "ai" to "e" at the airport resulted in an additional \$1,200.00 billed to the client. This issue occurs more often within an air carrier's strategic alliance or where multiple carriers are involved.

Recommendation: While this issue does not necessarily fall within the situations stated in the legislation and to which, proposed regulations have been drafted, ACTA does feel strong that measures need to be put in place to allow situations of human error without the very costly expense to the passenger and would welcome any assistance from the CTA to address this concern. In the European Commission's proposal for amending Regulation (EC) No 261/2004³, it addressed that passengers are sometimes penalized for spelling errors in their names by the application of punitive administrative fees. The recommendation is to allow reasonable corrections of booking errors, free of charge, provided they do not imply a change of times, date or itinerary or passenger.

ACTA supports the recommendation proposed by the EU. In addition, to assist in helping to avoid these errors, ACTA recommends the following two measures:

³ Page 12, point (8) of the European Commission Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air.

a) Allowing the travel agency to void and reissue the ticket in a 24-hour period versus the “same day” (or 11:59 pm of the same day), and

b) The middle name in the Passenger Name Record (PNR) “name field” should not have to be included. The name field in the PNR does have a limited number of character spaces which can be problematic for many people with long names. Some airlines do not require it while other do. There needs to be consistency with the airlines and if a name correction fee must be charged, it should not be an exorbitant amount.

iii) Recourse

Issue: While the CTA has stated that roughly 6,000 complaints were filed with this Agency last year, up from 800 in previous years, there are many air passengers that are not aware that a complaint can be lodged with the CTA. Passengers should continue to try and resolve their complaint directly with the air carrier first but with no established minimums based on the type of complaint, a passenger may be left with an unsatisfactory outcome and no knowledge of other resources available to them.

Recommendation: Once the APPR are in place, a customer needs to know that they have Rights, what these Rights are and where to find more information on the Rights. In ACTA’s August 2018 submission to the CTA, a list of applications and locations were provided where information must be made available. Recommendations were also made to ensure that the language used to communicate is simple, clear and concise. ACTA also recommends that the process for a passenger to file a claim be easy and efficient. When the new APPR are implemented, ACTA recommends that the CTA launches a dedicated awareness campaign directed to the industry as well as the travelling public. ACTA would be pleased to work with the CTA to educate the retail travel industry, who in turn can assist in informing their customers.

iv) Improved Passenger Experience at Airports

Issue: There are many stakeholders involved in the travel experience of a passenger at an airport. ACTA member agencies speak to the frustration their customers experience such as long wait times going through security, but also in the backlog in customs and immigration halls or waits due to air traffic control matters.

Recommendation: ACTA believes that the goal should be to ensure that standards and efficiencies are put in place to improve the overall passenger experience. This may require additional government funding such as applying the full amount of the Air Travellers Security Charge (ATSC) back into the CATSA program. All stakeholders should take an active and collaborative role in improving the airport experience of a passenger. ACTA believes the government has a role to play in ensuring that stakeholders cooperate and are held accountable for their role in certain circumstances as described throughout this submission.

v) Jurisdictional Conflict

Issue: Section 86.11 (1) (b) (i) states “The Agency shall, after consulting with the Minister, make regulations in relation to flights to, from and within Canada, including connecting flights, respecting the carrier’s obligations in the case of flight delay, flight cancellation or denial of boarding, including 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.” Considering there are other jurisdictions (such as Europe and now in the province of Quebec) with a Passenger Bill of Rights regime, application of the Canadian Passengers Bill of Rights should not conflict and allow the possibility of double compensation. Within the

heading of “Minimum levels of compensation” of the proposed regulations, it states that, “Passengers would be able to seek compensation from any of the carriers involved in transportation on the ticket. Carriers would then be able to seek restitution from one another.”

Recommendation: ACTA believes that more clarity needs to be provided within the regulations to address multiple jurisdictions’ polices and processes. For example, based on the current proposed regulations, a claim to a Canadian air carrier could be filed under the Canadian regime and six months later, the same claim to a Canadian air carrier could be filed under the European regime if the incident happened in Europe. Again, it is important that the regulations are clear so that these situations do not occur.

SUMMARY OF RECOMMENDATIONS

1. Standards of Treatment:

a) that there is clarity and consistency with the time points and the information relayed to passengers, whether the delay occurs in the airport or on the tarmac.

2. Completion of Itinerary, Rebooking and Refund

a) that to better align with international agreements, for the option to be rebooked on the next available flight or a full refund if the delay no longer satisfies the passenger’s travel plans, passengers have the right to re-routing via another air carrier or another mode of transport where the operating air carrier cannot transport the passenger on its own services and in time to arrive at the final destination within **12 hours** of the schedule arrival time, not 9 hours.

3. Minimum Levels of Compensation

a) that knowing the proposed compensation amounts, a thorough cost analysis with the air carriers be conducted to ensure that levies imposed are financially sound and do not negatively impact the health of the Canadian travel industry

4. Denied Boarding

a) that if the objective of the CTA was to align with international agreements, and reflect the operational realities of carriers, the previous levels established by the CTA should be maintained.

5. Lost or Damaged Baggage

a) that the proposed regulation does not address the CTA’s mandate in “*prescribing the **minimum** compensation for lost or damaged baggage that the carrier is required to pay*”. It is ACTA’s recommendation that more research on typical costs would need to be conducted should the government still be looking to set **minimum** levels of compensation for lost or damaged baggage.

6. Air Services Price Advertising

a) that the ASPAR should be extended to charter airlines and tour operator packages.

7. Availability of Insurance

a) that all providers of air services for the travelling public should advise customers of the availability of trip cancellation insurance and out-of-province health insurance.

8. Name Changes

a) that measures need to be put in place to allow corrections to name changes so that a customer is not charged an exorbitant amount.

9. Recourse

a) that when the new APPR are implemented, the CTA launches a dedicated awareness campaign directed to the industry as well as the travelling public. ACTA would be pleased to work with the CTA to educate the retail travel industry, who in turn can assist in informing their customers.

10. Improved Passenger Experience at Airports

a) that the full amount of the Air Travellers Security Charge (ATSC) be applied back into the CATSA program;

b) that the government ensures that stakeholders cooperate and are held accountable for their role in certain circumstances, considering there are many stakeholders involved in the travel experience of a passenger at an airport.

11. Jurisdictional Conflict

a) that more clarity needs to be provided within the regulations to address multiple jurisdictions' polices and processes and prevent the possibility of double compensation.

In conclusion, ACTA appreciates the opportunity to provide input to the Canadian Transportation Agency on the draft Air Passenger Protection Regulations. Should you have any questions or concerns to the points our organization has made, please contact Wendy Paradis, ACTA President at wparadis@acta.ca / 905-282-9294 ext. 121 or Heather Craig-Peddie, ACTA Vice President Advocacy and Member Relations at hcraig-peddie@acta.ca / 905-282-9294 ext. 122.

Respectfully submitted,



Wendy Paradis, President, ACTA