Canadian Transportation Agency

Office des transports du Canada

What We Heard – New Airline Requirements

Canadian Transportation Agency

Canada

Table of Contents

Introduction 3

General Themes 4

Issue 1: When the refund requirements should apply 5

Issue 2: Refund coverage 7

Issue 3: How a refund should be issued 8

Issue 4: When a refund should be provided 10

Issue 5: Flexibility for certain airlines or certain situations 12

Issue 6: Other situations that could be considered outside of the airline's control 14

Issue 7: EU and US frameworks 15

Next Steps 16

This document and other Canadian Transportation Agency publications are available on our website at otc-cta.gc.ca.

© Her Majesty the Queen in Right of Canada, as represented by the Canadian Transportation Agency, 2021

Catalogue No. TT4-64/2021E-PDF
ISBN 978-0-660-39497-8

Alternate formats are available. *Une version française est disponible.*

Introduction

The COVID-19 pandemic and subsequent collapse of global air travel have revealed a gap in Canada's air passenger protection framework that affects passengers whose flights are delayed or cancelled due to situations outside the airline's control.

The Minister of Transport issued a direction giving the Canadian Transportation Agency (CTA) the authority to establish an obligation for airlines to provide a refund when there is a flight cancellation, or a lengthy delay, for reasons outside of the airline's control and the airline cannot complete the passenger's itinerary within a reasonable time.

From December 21, 2020 to March 1, 2021, the CTA held a consultation with the public, consumer organizations and industry stakeholders on the development of the new requirements. The CTA provided a consultation paper that invited input on:

- when a refund should be required;
- what the refund should cover;
- how and when a refund should be issued to the passenger;
- whether exceptions or modified requirements should apply in certain circumstances;
- whether specific pandemic-related situations could be considered outside of the airline's control; and,
- what elements of the EU and/or US refund requirements the CTA should consider.

Through this consultation, the CTA received a total of 119 written submissions – 100 submissions from members of the public, 15 submissions from airlines and other industry representatives, and 4 submissions from consumer organizations.

This report summarizes input the CTA received during the consultation.

General Themes

Public and consumer organization views

Consumer organizations and members of the public welcomed the new refund requirements. Many consumer organizations:

- recognized the impacts of the COVID-19 pandemic on airlines, but argued that passengers should not bear the financial burden or be penalized when their flight is disrupted and they are unable to complete their itinerary at no fault of their own;
- suggested prompt implementation of the new refund requirement will contribute to consumer confidence in the airline industry and help recovery following the COVID-19 pandemic; and
- supported harmonizing with other jurisdictions.

Air industry views

Airlines and air industry representatives voiced concerns about the new refund requirements, particularly in the context of the COVID-19 pandemic. Many industry stakeholders:

- said they believe the current focus should be on supporting air industry recovery as the pandemic has resulted in unprecedented losses for airlines, and that new financial requirements will further strain the industry;
- argued that isolated, extraordinary events, such as the pandemic, should be addressed on a case-by-case basis instead of through regulation; and
- recommended against basing the new requirements on the EU regime, suggesting that it is too restrictive.

Issue 1: When the refund requirements should apply

The CTA asked stakeholders and the public for feedback on whether the new refund requirements should apply to cancellations only or both cancellations and lengthy delays. We asked what should be considered a lengthy delay and a reasonable time for an airline to complete a passengers travel before requiring them to offer a refund.

Public views

Members of the public generally agreed that passengers should be entitled to a refund for both cancellations and lengthy delays. While the CTA received little input from the public on what a reasonable time for an airline to complete a passenger's itinerary would be, the responses varied from five hours to one year.

Consumer organization views

Consumer organizations agreed that passengers should be entitled to a refund for both lengthy delays and cancellations.

Some consumer organizations argued that the new refund requirements should apply for all cancellations and delays of three or more hours, matching the current requirements for flight disruptions within the airline's control.

Others argued that passengers should be entitled to a refund if they do not depart within 48 hours after their original departure time. They stated that that this would allow airlines to recover their schedules after an event outside their control and rebook passengers.

Currently, when there is a disruption outside their control, the airline must rebook within 48 hours of the end of the event that caused the delay. One organization emphasized that this is problematic when a delay does not have a foreseeable end. The organization suggested that the reasonable time to complete the passenger's itinerary be measured from the original departure time instead.

Air industry views

Most air industry stakeholders suggested that a delay should be considered lengthy once it reaches 24 or 25 hours. A few suggested shorter timeframes, such as 5-6 hours, or that the definition of a lengthy delay should depend on the flight distance. Generally, there was an emphasis on airlines being given sufficient time to recover following a disruption before requiring that a refund be provided.

Most air industry stakeholders submitted that, in normal situations, it would be "reasonable" to allow airlines 72 hours from the end of the disruptive event to complete the passenger's itinerary, before requiring a refund. A number of them argued that more time or a more flexible approach should be applied in large-scale disruptions such as the one caused by the COVID-19 pandemic.

Smaller airlines and the air industry organizations that represent them suggested that the "reasonable time" to complete a passenger's itinerary before having to provide a refund should be flexible, and depend on factors such as flight frequency on the route. For routes with a low frequency of flights, some small airlines stated that they should be granted more time to reasonably complete a passenger's itinerary, given there will be fewer rebooking options. In addition, they argued that many small and northern airlines are unable to add more flights to routes, as smaller airlines have fewer aircraft available to them than larger airlines to substitute on routes that experience flight disruptions.

One air industry representative suggested that airlines should not be required to provide a refund for a lengthy delay due to a flight disruption outside of an airline's control, as the passenger would ultimately reach their destination.

Issue 2: Refund coverage

Stakeholders and the public were asked for their views on what a refund should cover. For example:

- The unused portion of the passenger's ticket;
- Any additional services the passenger purchased, but did not use (e.g., baggage fees); and/or
- The full cost of the passenger's ticket, if their trip no longer serves a purpose because of the flight disruption.

Public views

The majority of the public who responded to this question proposed that a refund in these cases should cover the full cost of the ticket and any unused extra services. However, some individuals suggested that airlines should be allowed to keep a nominal fee to cover administrative costs, while others indicated that no refund or a partial refund should be acceptable in situations outside of the airline's control, as passengers should purchase refundable tickets or travel insurance.

Consumer organization views

Consumer organizations generally agreed that refunds should cover the unused portion of the ticket and any unused services, such as seat selection and extra baggage allowance. A number of organizations suggested that if the passenger is in the middle of a multi-leg trip and the travel no longer serves its purpose because of the disruptions, the passenger should be able to obtain a full refund, including for the parts of the trip already completed.

Most consumer organizations also suggested that passengers should be eligible for this refund no matter what type of ticket they purchased (including non-refundable fares) and regardless of whether they bought directly from the airline or through another party, like a travel agent.

Air industry views

Generally, airlines stated that the refund should cover the unused portion of the ticket as well as any unused services.

One airline suggested that a passenger should receive a refund for the full cost of a ticket if they can prove that their trip no longer serves a purpose as a result of the flight disruption.

Issue 3: How a refund should be issued

Stakeholders and the public were asked how airlines should be required to refund passengers. For example:

- Using the same method used to buy the ticket;
- In monetary form; or
- Passenger's choice of money or other forms offered by the airline (such as vouchers or rebates).

Public views

The public generally agreed that refunds should be issued using the method of payment that was used to buy the ticket. They suggested that the refund should be offered in the original method of payment first and that if airlines are allowed to also offer the refund in credits or vouchers, these should never expire and should be worth more than the ticket value.

Consumer organization views

Consumer organizations generally agreed that refunds should be made using the original form of payment. Some organizations suggested that it would be acceptable for airlines to offer refunds in the form of vouchers or other services, so long as the passenger is given the opportunity to choose between these options.

Some organizations voiced concern about allowing airlines to offer refunds in the form of vouchers or other services. They argued that these non-monetary forms of refunds are often misleading, and provide inadequate protection and limited options to passengers. If vouchers or other services are allowed, they recommended the following conditions in order to protect passengers:

- Passengers should be given the choice between the original form of payment and vouchers;
- Passengers should be provided with the details of the voucher in writing before make their choice;
- Passengers should make their choice in writing;
- Passengers should be able to convert their voucher to cash;
- The value of the voucher should be greater than the cash refund; and
- The voucher should never expire.

Air industry views

Most airlines and air industry organizations agreed that refunds should be processed using the method of payment that was used to purchase the tickets. They indicated this would be the simplest way to ensure that customers receive their refund and that it would help prevent fraud (for example, other people trying to claim the refund).

Most airlines also agreed that they should be allowed to provide vouchers or travel credits to passengers, and that passengers should be free to choose between a monetary refund or a refund in the form of a voucher. Airlines suggested that by offering vouchers, they could give passengers an option that may be more appealing than a monetary refund. Airlines stated that this would help them to retain the passenger's business, while at the same time sparing them from potential cash flow strains and severe financial harm in the event of another industry-wide disruption.

Other considerations that airlines raised when providing feedback on refund methods include:

- Some of the taxes that passengers pay may be non-refundable;
- Some privacy laws may prevent airlines from proactively contacting passengers about a refund, meaning passengers would have to contact an airline first before receiving a refund; and
- There may be complications providing refunds when tickets were purchased through a travel agent or third party. The airlines claimed that they may not have the necessary passenger information to process the refund and that they could receive a refund claim from both the agent and the passenger.

Issue 4: When a refund should be provided

The CTA asked for feedback on deadlines for an airline to issue the refund to a passenger.

Public views

Members of the public suggested a range of different time limits for airlines to issue a refund to passengers. These included requiring refunds immediately, two weeks after the flight disruption, and up to 12 months after the disruption.

Consumer organization views

Consumer organizations generally agreed that refunds should be provided within seven days, which is the requirement already in place in the EU. However, some suggested more time could be allowed for refunds that are not simply being returned to a credit card (for example, a refund made in the form of a cheque, gift certificate, or frequent flyer points). Suggested deadlines for these types of refunds were generally 14 to 20 days.

Some organizations suggested that airlines should be given no more than 30 days to issue a refund; they stated would be enough time for the airlines to make required arrangements and coordinate with passengers.

Air industry views

Airlines and air industry organizations responses to this question varied. For air travel under normal circumstances, suggestions for the refund deadline generally ranged from 30 to 90 days.

One air industry organization suggested that passengers should be able to receive a refund within seven business days after the flight disruption, in keeping with the EU regulations. However, the organization added that seven business days may not be sufficient in the event of mass cancellations (for example, pandemic-related cancellations).

Many airlines also submitted that airlines should be given more time to issue refunds in the event of a large-scale disruption (similar to the current pandemic) – for example, up to 12 months. Others stated that the refund deadline should be flexible, depending on the circumstances.

Issue 5: Flexibility for certain airlines or certain situations

Stakeholders and the public were asked if the new refund requirements should be flexible for certain types of airlines, or for certain situations. For example:

- Based on airline size (smaller airlines may be, for example, less able to recover quickly after an event outside their control);
- If an airline provides essential services (for example, to remote, regional or northern communities);
- If the event is large scale (as opposed to an isolated event like a collision with wildlife);
- If the event could threaten an airline's financial viability (for example, one that results in operations being shut down for several months).

Public views

There were few responses from the public to this question. One individual suggested that flexibility could be given to smaller, northern airlines, which may not be able to meet the same requirements as large airlines, considering their resource limitations.

Consumer organization views

Of the three organizations that provided responses to this question, most suggested that the regulations should be applied equally to all airlines, to avoid confusion.

One organization argued that different refund standards based on airline size or financial situation could place a burden on passengers, who are also facing economic strain. They argued that passengers should not be responsible for sustaining airlines.

However, some organizations indicated that it may be reasonable to provide certain flexibility for small or remote airlines, considering they have unique operational conditions and may provide essential services to remote communities.

Air industry views

The air industry was split on the question of providing flexibility to airlines based on their size or type of operation.

Larger airlines and some organizations that represent them stated that the regulations should not provide flexibility to airlines based on their size, or if the airline provides essential services. They explained that uneven treatment of airlines would cause confusion for both airlines and passengers and affect fair competition between airlines.

A number of smaller airlines, including some that fly to northern and remote locations stated that the regulations should have less stringent requirements for smaller airlines, which generally have fewer aircraft and fewer resources available to them in the event of a disruption. They suggested that if the regulations do not reflect this reality, some smaller airlines that provide essential services may no longer be able to operate.

Generally, the airlines and air industry organizations agreed that the requirements in the regulations should be flexible depending on the circumstances and the duration of the disruption. Airlines felt that requirements should be more flexible (less stringent) in the event of a large scale or industry-wide disruption, such as the COVID-19 pandemic, compared with a disruption affecting a single flight. They suggested that not providing airlines with greater flexibility during large-scale events could threaten the financial viability of the air industry and could lead to fewer passengers receiving refunds, as the airlines would not have the financial means to provide refunds.

Issue 6: Other situations that could be considered outside of the airline's control

The *Air Passenger Protection Regulations* includes a non-exhaustive list of situations outside of an airline's control. The list includes situations such as war or political instability, illegal acts or sabotage, meteorological conditions or natural disasters that make the safe operation of the aircraft impossible, and an order or instruction from an official of a state or law enforcement agency.

Events during the COVID-19 pandemic have shown that some disruptions during a pandemic are outside of airlines' control (such as those caused by government travel restrictions), while others may be within airlines' control (such as airlines' business decisions to consolidate flights). The CTA asked if there are any specific pandemic-related situations that should be considered either within or outside airlines' control.

Public views

We did not receive many responses to this question from the public. One individual suggested that pandemic-related situations should be considered outside of the airline's control, but that, regardless, passengers should be entitled to a refund.

Consumer organization views

Many consumer organizations suggested that the list of situations outside of the airline's control should not be expanded to include pandemic-related situations, as this could lead to confusion.

One organization suggested that the list should include government orders and advisories, employee quarantine or self-isolation, employee refusal to work, and additional hygiene or passenger health screening processes.

Air industry views

Airlines argued that, generally, any cancellation during the pandemic (including travel restrictions based on nationality or place of residence) is outside their control. They claimed that this is because:

- Lack of demand due to as passengers are not willing or unable to travel during a pandemic;
- Reliance on other airlines who may not be able to maintain their flight schedules due to lack of demand and travel restrictions; and,
- Lack of crew and maintenance workers due to sickness or government health directives.

Issue 7: EU and US frameworks

Stakeholders and the public were asked if the CTA should consider elements from the EU and US frameworks when developing the new refund regulations.

Public views

We received few responses to this question from the public. However, a few people agreed that refund requirements in Canada should be similar to those found in the US and the EU, as passengers should have the same rights no matter where they travel.

Consumer organization views

Consumer organizations generally agreed that Canada should harmonize the new refund requirements with other jurisdictions, such as the EU and the US.

Air industry views

Most airlines and air industry organizations agreed that Canada should not consider the EU regulations in developing the new refund requirements. They suggested that it would limit the flexibility of the requirements, as they believe the EU regulations are too restrictive.

Some airlines claimed that there is no regulatory framework in the US requiring refunds for situations outside of the airline's control.

One airline suggested that Canada should adopt the US approach of not defining what constitutes a "cancellation" or "significant schedule change", which allows airlines to develop their own reasonable interpretations of those terms in applying their refund policies. The airline argued that this would be a balanced approach that is fair to passengers and does not impose an undue financial burden on airlines.

Next Steps

The CTA appreciates the participation of the public, consumer organizations and the air industry throughout the consultation process. Draft regulations were prepared, taking into account the input received. These draft regulations have been published in Part I of the *Canada Gazette* for public review and comment.

Once the regulations are in place, the CTA will issue guidance and tools for passengers and airlines, to help ensure that the new refund requirements are implemented smoothly and that passengers are aware of their rights.