



Canadian
Transportation
Agency

Office
des transports
du Canada

**Consultation Paper:
Proposed changes to
clarify, simplify
and strengthen
the *Air Passenger
Protection Regulations***



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Introduction

On June 22, 2023, the *Budget Implementation Act, 2023* (BIA) received Royal Assent and came into force. It modifies the *Canada Transportation Act* to clarify, simplify and strengthen the Canadian air passenger protection regime. It requires airlines to provide compensation for inconvenience to passengers when there is a flight disruption, unless there are exceptional circumstances. It also puts the burden on airlines to prove the situation is an exceptional circumstance.

The purpose of this document is to consult Canadians on the proposed changes to the *Air Passenger Protection Regulations* (APPR) arising from this legislation. It also includes regulatory proposals to address implementation issues that have been noted since the APPR came into force in 2019.

Overview

The APPR (2019)

The APPR came into force in 2019 with the objective of providing clear, consistent air passenger rights by imposing minimum requirements on airlines in the following areas:

- Flight disruptions, namely delays, cancellations, and denied boarding (bumping);
- Compensation for passengers affected by flight disruptions;
- Standards of treatment ("assistance") for passengers affected by flight disruptions (for example, food and accommodation);
- Lost or damaged baggage;
- Tarmac delays;
- Clear communications and advertising;
- Assignment of seats to children under 14 in proximity to a parent or guardian;
- and
- Transportation of musical instruments.

These obligations apply to all flights to, from, and within Canada, including connecting flights. In some instances, they apply differently to small airlines to take into account their unique operating circumstances. For example, small airlines have more time to make new flight arrangements for passengers affected by disruptions, and they pay lower amounts of compensation for inconvenience.

An airline's obligations in the case of flight disruption depend on how much control it has over the situation, which can fall into one of the three following categories:

- Situations within the airline's control;
- Situations within the airline's control, but required for safety; and
- Situations outside the airline's control.

It has been noted, through implementing the regulations and processing air passenger complaints, that the three disruption categories are not clear, especially those "required for safety" and "situations outside the airline's control". This lack of clarity leaves significant room for differing interpretations, which results in passengers often lacking the information they need to determine whether they are entitled to compensation. For these same reasons, the APPR have proved difficult to enforce.

In 2022, refund requirements were adjusted to fill a gap revealed by the COVID-19 pandemic: airlines did not have to provide refunds for flight cancellations or lengthy delays that prevented them from completing the passenger's trip within a reasonable time, if the cause was a situation outside their control. Now, after 48 hours, the airlines must provide the passenger their choice of a refund or rebooking if they have been affected by a cancellation or delay.

Other issues with the rebooking and refund protections, as well as with the communications requirements, have also been noted. This includes cases of passengers being stranded for days in other countries and not receiving information about the assistance and protections they are entitled to receive in a timely and proactive manner.

Changes to the *Canada Transportation Act* (2023)

On June 22, 2023, the *Canada Transportation Act* was modified to clarify, simplify and strengthen the Canadian air passenger protection regime. These amendments eliminated the three flight disruption categories and require airlines to provide compensation for inconvenience to passengers when there is a flight disruption, unless there are exceptional circumstances. It also puts the burden on airlines to prove the situation is an exceptional circumstance.

The CTA must amend the APPR to identify these exceptional circumstances.

The CTA is also proposing amendments to other APPR provisions, including the standards of treatment ("assistance") and communication requirements. Overall, the proposed changes would require airlines to provide passengers with:

- compensation for:
 - every flight disruption that results in the passenger arriving at their destination more than three hours after their scheduled arrival or,
 - delays at departure of over three hours which result in the passenger deciding not to travel

except in exceptional circumstances (which the APPR will identify);

- the right to choose between rebooking or a refund in every disruption, after a certain period of time;
- food and drink, and other assistance, during every flight disruption that occurs on short notice and delays the flight's departure by two or more hours, depending on the situation;
- proactive, timely information about disruptions and about passengers' right to compensation, refund/rebooking, and assistance;
- a limit on the number of flights in a row that can be claimed as exceptional if such a disruption on one flight causes a chain reaction of delays or cancellations (also called "knock-on effects"); and
- a new refund right for passengers who cancel their ticket because the Government of Canada advises of new, high risks to travelling to certain countries.

Proposed regulatory changes

The CTA is looking for your feedback on the proposals below. It particularly would like to hear your views about:

- whether the proposed changes to the APPR will clarify, simplify and strengthen passenger protection;

- whether there are other ways to modify the regulations to achieve the objectives of the legislation; and
- the impact of these proposals on industry.

In addition, for some proposed changes, specific questions have been posed for which it would also be valuable to hear your responses. These questions are not intended to be exhaustive and all comments are welcome.

1. Identifying the exceptional circumstances

Current APPR:

The APPR provides for compensation and assistance to be given to passengers only when the disruption is “within airline control”. It also includes a non-exhaustive list of situations that are considered outside airline control (e.g., labour disruptions, weather). If the disruption falls within the "required for safety" category, the airline must provide rebooking or a refund and assistance, but not compensation. If the disruption falls within the "outside the airline's control" category, the airline must only provide rebooking or a refund.

Proposed changes:

The APPR will not have disruption categories. Passengers will be entitled to compensation for inconvenience for all flight disruptions unless there are exceptional circumstances. As is currently the case, the compensation regime will continue to apply only when passengers are informed of the delay or cancellation 14 days or less before the departure time.

The following criteria for events to be considered exceptional are being considered:

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

For greater clarity, a list of exceptional circumstances, as well as a list of those circumstances that would not be considered exceptional, would be added in the

regulations. Below are non-exhaustive lists of those potential circumstances which are under consideration. For comparison, the current APPR list of situations outside an airline's control or required for safety has also been included.

Current APPR	Proposed changes
<p>Events outside the airline's control include:</p> <ul style="list-style-type: none"> • Safety and security situations <ul style="list-style-type: none"> ○ War and political instability ○ Illegal acts or sabotage, including severely disruptive cyber-attacks ○ Manufacturing defects that affect safety ○ An official NOTAM (warnings to pilots of potential hazards on the flight route or at relevant locations) ○ Instructions from state, law enforcement agency, or airport security officials (such as a government order grounding flights) ○ Accidents involving the aircraft (like collisions with a bird or drone) • Medical emergencies that require a flight diversion • Weather or natural disasters that make it impossible to safely operate the flight, such as: <ul style="list-style-type: none"> ○ Actual or forecasted blizzards, heavy winds, lightning, hurricanes • Other <ul style="list-style-type: none"> ○ Instructions from air traffic control ○ Airport operational issues 	<p>Exceptional circumstances could include:</p> <ul style="list-style-type: none"> • Security risks such as war, political instability, illegal acts, sabotage, and terrorism • Weather or other atmospheric conditions, or natural disasters, that make it impossible to safely operate the flight • Airport operational issues for which the airline is not responsible • Hidden manufacturing defects that come to light and affect flight safety • Health risks or medical emergencies on route that require a flight diversion or discovered shortly before flight departure that make it impossible to safely operate the flight • Air traffic management restrictions, airspace closures, and airport closures • An official NOTAM • Orders or instructions from state, law enforcement agency, or airport security officials • Labour disruptions at the airline or by essential air service providers like airport managers, air navigation personnel, or ground handlers <p>Circumstances that would not be considered exceptional:</p> <ul style="list-style-type: none"> • Flight crew or cabin crew unavailability

Current APPR	Proposed changes
<ul style="list-style-type: none"> ○ Strikes or other labour disruptions at the airline, airport, or other provider of essential air services <p>Required for safety:</p> <ul style="list-style-type: none"> ● Mechanical malfunctions the airline could not foresee or prevent through regular maintenance ● Decisions the airline makes based on its Safety Management System ● Safety-related decisions pilots make at their discretion 	<ul style="list-style-type: none"> ● Staff shortages at the airline ● Technical problems that are an inherent part of normal airline operations ● Any situation the airline knew about, or should have known about, when it sold the ticket to the passenger ● Any action, or failure to act, by the airline or others with which the airline has a contractual relationship

Questions:

- What are your views on the proposed criteria for exceptional circumstances?
- Are there circumstances that should be added or removed from either list?

2. Airlines' responsibilities regarding claims for compensation

Current APPR:

Airlines do not have to pay compensation for inconvenience for flight delays and cancellations outside their control or required for safety. But if the delay or cancellation was within their control, airlines must pay compensation for any delay or cancellation that makes the passenger 3 or more hours late to their final destination. Compensation is due for delays and cancellations that occur 14 days or less before the passenger's original departure time.

Airlines must, after they receive a passenger complaint, either provide the appropriate compensation, or an explanation as to why compensation is not payable. If a passenger chooses to subsequently file a complaint with the CTA, it is up to the passenger to prove that they are eligible to be compensated. In most cases, passengers have to rely on information they received from the airline. While the CTA does expect the airline to

substantiate a claim that a disruption is outside their control or required for safety, the passenger must provide the evidence to make their own case.

Proposed changes:

The BIA's amendments to the *Canada Transportation Act* shift the burden of proof from passengers to airlines. The APPR would specify that if an airline refuses a compensation claim, it must give the passenger a detailed explanation, including documentary evidence that the circumstances were exceptional, and reference the applicable terms and conditions of the passenger's ticket, including fare rules.

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

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

3. Rebooking and refunds

Current APPR:

If a flight disruption is outside the airline's control, it has 48 hours to try to rebook passengers, and only after that can a passenger request a refund instead. For flight disruptions within their control, even if required for safety, the airline has a shorter time limit for rebooking passengers and passengers can more quickly choose the refund option. The time limits and details depend on whether the airline is large or small, as set out in [Annex A](#).

This combination of provisions and requirements is complex, and has had unintended consequences for passengers. For example, some passengers on small airlines have felt "stranded" at their destination or connection points because of the long rebooking time, which can in some circumstances stretch into days.

Proposed changes:

It is proposed that passengers would have a right to choose a refund, under the APPR, if their flight has been disrupted and they cannot complete their trip within a reasonable time (for example, if the offered rebooking was so delayed from the original departure time that the trip would no longer serve the passenger's original purpose).

Specifically, it is proposed that:

- If passengers' flights are cancelled or they are denied boarding, they can request a refund immediately.
- For flight delays, passengers could choose a refund once the delay reaches 3 hours at departure.
- During all such disruptions, the airline must provide information in a proactive and timely way (see Proposal 5, Communication). This information must include the passengers' right to rebooking or a refund and how to claim these.
- The period of time for an airline to provide a refund be reduced.

New provisions are proposed, that will give passengers of small airlines better rebooking options. These new provisions are set out below, along with relevant, current APPR provisions for comparison.

Current APPR	Proposed changes
<p>Rebooking:</p> <ul style="list-style-type: none">• Large airlines must rebook the passenger on their own or a partner airline's next available flight within 9 hours. If that's not possible, they must book with another airline leaving from that airport• Small airlines must rebook the passenger on their own or a partner airline's flight. At no point do they have to rebook the passenger on another airline	<p>Rebooking</p> <ul style="list-style-type: none">• Large airlines - no change to 9 hour requirement• Small airlines must rebook the passenger on their own or a partner airline's next available flight within 24 hours. If that's not possible, they must book with another airline leaving from that airport• Clarification that as soon as airlines know they cannot offer a flight on their own or a partner airline within the relevant 9/24 hour timeframe, airlines

Current APPR	Proposed changes
	should promptly rebook the passenger on another airline
<p>Rebooking – after 48 hours:</p> <ul style="list-style-type: none"> • After 48 hours, large airlines must rebook the passenger on any airline leaving from a nearby airport, if there is one. They must get the passenger to the other airport at no charge 	<p>Rebooking – after 48 hours:</p> <ul style="list-style-type: none"> • The 48-hour nearby airport provision would apply to large and small airlines

4. Assistance

Current APPR:

Airlines do not have to provide any standard of treatment ("assistance") to passengers if a disruption is outside their control. For disruptions within their control, even if required for safety, airlines must give passengers assistance. Specifically, they must provide:

- food and drink in reasonable quantities (which may depend on the length of the delay, the time of day and the location of the airport, etc.);
- access to a means of communication; and
- hotel or other comparable accommodation (that is reasonable in relation to the airport location) if the passenger must wait overnight.

Some airlines at times have taken steps to ensure their passengers receive assistance even when a situation was outside of their control. However, there have been situations when passengers have found themselves in transit (or at a location remote from their final destination) without access to food, accommodation, or a means of communication after their flight was cancelled or delayed and the airlines deemed that situation outside their control.

Proposed changes:

The APPR would require airlines to give passengers assistance for all flight disruptions after a defined delay at departure, including in exceptional circumstances. Specifically, it is proposed that:

- Airlines would have to offer passengers assistance starting 2 hours after the scheduled departure time unless passengers have been advised of the delay at least 12 hours before the departure time.
 - When a disruption occurs, airlines would have to inform passengers, in a proactive and timely manner, of their right to assistance and how to obtain it. (Note: As with the current APPR, these elements of assistance may depend on the length of the delay, the time of day and the location of the airport, etc.).
 - When disruptions are caused by exceptional circumstances, an airline would be responsible to provide passengers with some assistance for a certain period of time.
-

5. Communications

Current APPR:

In all disruption situations, an airline must explain the reason for the disruption in plain language. It must tell passengers about the assistance, compensation, and remedies they are entitled to, including filing a complaint with the CTA. Airlines must also relay any new information about a disruption as soon as possible; during delays, this means every 30 minutes until a new departure time is confirmed or the passenger has been rebooked. Airlines must ensure their communications are accessible to persons with disabilities, for example by providing visual instead of audible announcements on request.

Despite these protections, passengers complain that they do not always receive complete or timely information. This was particularly observed in situations where passengers purchased their ticket through third parties (such as travel agents, tour operators, online sellers, etc.). Also, assistance (e.g. food, accommodation) is not always offered proactively to passengers who have to make a request to obtain it.

Implementation of communications provisions has also shown that audible announcements that are general in nature are not necessarily the most effective way to communicate key information to passengers.

Proposed changes:

The APPR would clarify, simplify and strengthen existing requirements around what information airlines need to communicate to passengers and how they must communicate it. It is proposed that:

- Airlines confirm/ask for passengers' preferred means of communication, such as their cell number or email, at check-in (check-in desk, kiosk, online check-in), so that passengers can receive detailed information without delay in the event of a flight disruption.
- Airlines would have to provide disruption information in a proactive and timely manner on their websites and other digital platforms, and to passengers using each passenger's preferred means of communication. This information would also have to be provided through on-site audible announcements when passengers are at the gate.
- Airlines must tell passengers, via their preferred means of communication, about the specific entitlements they have at that moment, and how to claim them. This includes:
 - the specific food, drink, and (when applicable) overnight accommodation entitlements the passenger has;
 - the passenger's right to rebooking or a refund; and
 - the passenger's right to compensation.
- Airlines' disruption announcements and information in their preferred means of communication must tell passengers about the recourse they have, including their right to make a complaint to the CTA.

Questions:

- Is there any better or more efficient way that information (including the communications requirements included in section 2 - "Compensation" of this document) can be shared with passengers other than as proposed?
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6. Chain reactions (knock-on effects)

Current APPR:

The APPR recognize that sometimes a disruption on one flight leads to a disruption on the next flight that was meant to use the same plane (or flight crew). If a disruption is caused by a situation outside the airline's control or required for safety, the subsequent flights affected can claim that same situation as the reason for their disruption. In these situations, the airline does not owe the passengers any compensation or assistance.

The current APPR do not put any limit on the number of flights that can claim the original disruption was the reason why they were delayed or cancelled. This creates a lack of clarity for both passengers and airlines regarding how long a prior disruption can still be considered to have an impact.

Proposed change:

Under the APPR, passengers would be entitled to compensation for all flight disruptions unless there are exceptional circumstances. It is proposed that only two flights in a row can claim the same exceptional circumstance as the reason they have been delayed or cancelled. This would limit the exemption to pay compensation for inconvenience to only:

- The flight that actually experiences the exceptional circumstance; and
- The next flight scheduled to use that plane (or flight crew).

No further flights could claim the original exceptional circumstance as the cause of a disruption.

7. Refunds for changes to Government Travel Advisories

Current APPR:

Passengers do not have any right under the APPR to a refund if they cancel their ticket based on Government of Canada travel advisories. Advisories give Canadians information and advice about situations that could affect their safety when they travel outside Canada. They set risk levels such as "Exercise a high degree of caution", "Avoid non-essential travel", or "Avoid all travel".

Proposed change:

It is proposed to give passengers the right to a refund, under the APPR, with no charge or penalty when they cancel their ticket because of a Government of Canada travel advisory, if:

- The advisory is for the passenger's destination country or a connecting country,
- The advisory risk level has risen since the passenger bought their ticket, and
- The new recommendation is either "avoid non-essential travel" or "avoid all travel."

Your feedback and how to submit it

You have until **August 10, 2023** to submit your [comments online](#).

Your submission should be under 25 pages. If it is longer than 5 pages, please include a summary. Wherever possible, you should explain the rationale and evidence for your answers or comments.

If you have any questions, please contact Consultations-aeriennes.Air-Consultations@otc-cta.gc.ca.

How the CTA uses your views

Your feedback becomes a public document. The CTA will post it on its website in the official language you used to write it, along with your name. Please do not put any personal or confidential information in free-form text boxes or attachments you submit.

All feedback about the proposed updates to the APPR will be considered.

Thank you for your contribution.

Annex A: Rebooking and refunds in APPR 2019

As explained in Section 3 of this paper, the current APPR's rebooking and refund requirements depend on how much control an airline has over the disruption and whether the airline is large or small. An airline is large if it transported at least two million passengers during each of the past two calendar years. This includes all passengers carried throughout the airline's entire network. Otherwise, the airline is a small airline.

Further details are below.

Situations within the airline's control or required for safety

Airlines must always ensure that a passenger whose flight has been disrupted completes their trip. The aim must be to get the passenger to the destination indicated on their original ticket as soon as possible.

Large airlines

Large airlines must book the passenger on the next available flight that is operated by them or a partner airline. The new flight:

- must take any reasonable route out of the same airport to the passenger's destination indicated on their original ticket; and
- must depart within 9 hours of the departure time indicated on the passenger's original ticket.

If the airline cannot rebook the passenger onto a flight that departs within 9 hours, it must book the passenger, as soon as possible, on a flight operated by any airline. The new flight must also take a reasonable route and:

- must depart within 48 hours of the departure time indicated on the passenger's original ticket.

If the airline cannot rebook the passenger onto a flight that departs within 48 hours, it must book the passenger as soon as possible, on a flight operated by any airline, from a

nearby airport. It must also transport the passenger to that airport, free of charge. The new flight must take any reasonable route to the passenger's destination.

Small airlines

Small airlines must book the passenger on the next available flight operated by them or a partner airline. The flight must take any reasonable route from the same airport to the passenger's destination indicated on their original ticket. Small airlines do not have to book the passenger with an airline with which they do not have a commercial agreement.

Situations outside the airline's control

If a flight is cancelled or once a flight delay has reached 3 hours, the airline must provide the passenger with a confirmed reservation on the next available flight operated by them or a partner airline. The flight must depart within 48 hours after the departure time indicated on the passenger's original ticket.

If the airline cannot rebook the passenger onto a flight that departs within 48 hours, the airline must, at the passenger's choice:

- Provide a refund; or
- Make alternate travel arrangements for the passenger, free of charge. The details of the new flight depend on the size of the airline, as follows.

Large airlines

Large airlines must book the passenger on a flight operated by any airline. The new flight must take any reasonable route from the same airport or from a nearby airport to the passenger's destination indicated on their original ticket. The large airline must transport the passenger to the nearby airport, free of charge.

Small airlines

Small airlines must book the passenger on the next available flight operated by them or a partner airline. The flight must take any reasonable route from the same airport to the passenger's destination indicated on their original ticket.

If the passenger chooses a refund and is no longer at their point of origin

If a passenger who chooses a refund is no longer at their point of origin (for example, is at a connecting point), and the travel no longer serves a purpose because of the delay or cancellation, then the airline (large or small) must return the passenger to that point of origin, free of charge, and refund the passenger's entire ticket.

Form of refund

Airlines must provide the refund to the person who originally purchased the ticket, using that person's original payment method (for example, a return on the person's credit card). The airline may offer the refund in another form (for example, travel vouchers), but only if:

- it does not expire;
- the airline informs the person in writing of the value of the ticket and their right to receive a refund in that amount by the original payment method; and
- the person confirms in writing that they have been informed of their right to a refund by the original method of payment and instead have chosen the other form of refund.

The airline must provide the refund within 30 days, regardless of the refund format (for example, cash, credit, travel voucher, etc.).