

Transportation Notes: Federal Government Proposes Air Passenger Protection Regulations

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The Canadian Transportation Agency (CTA) is seeking public review and comment on proposed *Air Passenger Protection Regulations*.

The proposed regulations will establish a carrier's minimum obligations toward passengers travelling on flights to, from and within Canada. The obligations include standards of communication, passenger entitlements, and compensation for delay, denied boarding, and lost or damaged baggage. The regulations also provide for penalties for non-compliance.

Application

The proposed regulations would apply to all flights to, from, or within Canada, including connecting flights.

Similar regulations exist in the European Union (EU) and the United States (US). The proposed Canadian regulations differ in that they will apply to international carriers flying into the jurisdiction (something that neither the EU nor US regulations include).

Communication with passengers

The proposed regulations require carriers to communicate clearly with passengers regarding rights and recourses.

The requirements for clear communication include:

- Providing information on key terms and conditions of carriage on all digital platforms and itinerary-related documents (such as boarding passes) that the carrier or a third-party selling tickets on behalf of a carrier issues.
- For flights to and from Canada, providing written notices in key locations in the airport stating that a passenger is entitled to certain standards of treatment and compensation under the regulations and directing passengers to the CTA's website.
- In the case of a cancellation, delay or a denial of boarding, informing affected passengers of: (a) the reason for the delay, cancellation or denial of boarding; (b) the compensation to which the passenger may be entitled; (c) the standard of treatment, if any, owed to the passenger by the carrier; and (d) the recourses available against the carrier.

Obligations in the case of delay, cancellation, or denied boarding

The proposed regulations entitle passengers to:

- Be rebooked in the case of delay or cancellation,
- Food and beverages in reasonable quantities, and
- Accommodation in certain circumstances.

A carrier's obligations under the pro-posed regulations would vary depending on the level of control the carrier has over the situation that resulted in delay, cancellation, or denied boarding.

The proposed regulations would require that for all delays and cancellations, the carrier would be required to complete the passenger's itinerary or provide a refund and compensation for delay if the offered rebooking does not meet the passenger's travel needs.

Specifically, the regulations provide that the carrier would have to rebook the passenger after a delay of three hours or more or after a cancellation.

The passenger would be entitled to be rebooked on the next available flight. In some instances, the carrier might be required to rebook the passenger on a new flight with a competing carrier.

The proposed regulations also establish minimum standards of treatment for all delays and cancellations that are either within the carrier's control or required for safety purposes, and where the passenger has been informed of the delay less than 12 hours prior to departure.

In the case of a delay of at least two hours, carriers would be required to provide access to a means of communication, food and drink in reasonable quantities, and access to lavatories if feasible. If a delay is expected to extend over-night, the carrier would also be required to provide free accommodations and free transportation if needed.

Tarmac Delays

When a flight is delayed for more than three hours on the tarmac, the carrier would be required to ensure:

- That passengers have access to working lavatories
- That there is proper ventilation, heating, or cooling of the aircraft
- That passengers can communicate with people outside the aircraft
- That food and drink are supplied in reasonable quantities

If there is a delay on the tarmac of more than three hours in Canada, the carrier must allow passengers to disembark and provide the opportunity for persons with disabilities to disembark first if feasible.

However, carriers would not be required to allow passengers to disembark when take-off is likely to occur in less than 45 minutes or if there are circumstances beyond their control relating to "safety and security or to air traffic or customs control".

Compensation for delay, denied boarding, and lost or damaged baggage

The proposed regulations provide for compensation for flight delays and cancellations that are within a carrier's control and are not safety related.

Large carriers (those that transported one million passengers or more during each of the two preceding calendar years) would be required to pay the following amounts:

- three to six hours: CAN\$400
- six to nine hours: CAN\$700
- nine or more hours: CAN\$1,000

Small carriers (any carrier that is not considered a large carrier) would be required to pay the following amounts:

- three to six hours: CAN\$125
- six to nine hours: CAN\$250
- nine or more hours: CAN\$500

Compensation would also be available if a passenger is denied boarding for a reason within the carrier's control and not required for safety, such as over-booking, in the following amounts:

- less than six hours: CAN\$900
- six to nine hours: CAN\$1,800
- nine or more hours: CAN\$2,400

The *Montreal Convention* currently governs liability for lost or damaged baggage on international flights between member states. It sets the maximum liability for damages for lost or damaged baggage at 1,131 special drawing rights (approximately CAD\$2,100).

The proposed regulations would extend the application of this regime to domestic travel and require the carrier to reimburse baggage fees.

Miscellaneous

The proposed regulations also deal with seating arrangements for children under 14 years of age, close to accompanying adults, advertising prices, and the establishment of policies regarding the transportation of musical instruments.

Penalties for non-compliance

The proposed regulations provide for administrative monetary penalties when a carrier or individual contravenes the requirements. The maximum penalty is CAD\$5,000 for individuals and CAD\$25,000 for corporations, depending on which provisions were breached.

Comment

Canadians will have two months to comment on the proposed regulations. The regulations will likely come into force in the summer of 2019.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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