



February 20, 2019

Canadian Transportation Agency
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**Comments of Consumer Reports
To the Canadian Transportation Agency on
“Proposed Air Passenger Protection Regulations”
[Announced on December 22, 2018]**

Introduction

Consumer Reports (CR)¹ submits the following comments to the Canadian Transportation Agency (“CTA”) in the above-referenced matter, announced on December 22, 2018. These proposed regulations will greatly aid airline passengers flying to, from, and within Canada, on Canadian-based commercial air carriers as well as on commercial air carriers based in the United States and other countries. We support all of these proposed regulations,² which address concerns on seven key issues:

- clear communication
- delayed or cancelled flights
- denied boarding
- tarmac delays over three hours
- the seating of children under the age of 14
- lost or damaged baggage
- the transportation of musical instruments

¹ Consumer Reports is an expert, independent, non-profit organization in the United States, whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. Consumer Reports works for pro-consumer policies in the areas of travel, financial services and marketplace practices, antitrust and competition policy, privacy and data security, food and product safety, telecommunications and technology, and other consumer issues, in Washington, DC, in the states, and in the marketplace. Consumer Reports is the world’s largest independent product-testing organization, using its dozens of labs, auto test center, and survey research department to rate thousands of products and services annually. Founded in 1936, Consumer Reports has over 6 million members and publishes its magazine, website, and other publications.

² Canadian Transportation Agency; “Proposed Air Passenger Protection Regulations Highlights,” modified December 13, 2018; otc-cta.gc.ca/eng/proposed-air-passenger-protection-regulations-highlights.

We also offer some additional recommendations, as discussed below.

Background

As detailed in the Background section of the Proposed Air Passenger Protection Regulations Highlights page on its website, the CTA has been examining these issues since 2016, and in 2018 solicited comments from the traveling public, consumer rights organizations, and airlines. Comments were culled from in-person and call-in sessions, airport surveys, stakeholder meetings, and written submissions. In addition, the CTA held public sessions at eight locations throughout Canada. The results are clear: The “key themes” reported in the “What We Heard” document reflect general consensus among travelers and consumer advocates for the seven regulatory proposals put forth by the CTA. We applaud the CTA for undertaking this thorough solicitation of opinions from the passengers whom the airlines serve.

In our advocacy in the United States, we have called for a consistent, uniform, comprehensive, clearly written set of passenger rights for U.S. airlines, including the following, many of which are also embodied in the CTA proposals:

- clear and consistent guidelines for compensation for flight delays of varying lengths (rebooking, refunds, meals and lodging when necessary, etc.);
- clear and consistent guidelines for compensation for flight cancellations (rebooking, refunds, meals and lodging, etc.);
- clear and consistent guidelines for compensation for *voluntary* relinquishment of a ticketed seat due to overbooking or giving priority to other passengers; and a clear prohibition on *involuntary* relinquishment of a ticketed seat due to overbooking or giving priority to other passengers;
- clear guidelines for involuntary denied boarding and forced removal for safety and security reasons;
- complete airfare transparency, including for all taxes and surcharges, and for all possible ancillary fees, equally available in all booking channels, both online and offline, whether offered through the airlines themselves or offered through third parties;
- enforcement of minimum seat standards to ensure reasonable passenger comfort; address health concerns, including the risk of deep vein thrombosis; and promote safety, including adequate space for effective evacuation.³

Making these protections actual legal requirements will help address the current situation in which consumers are largely dependent on airline Contracts of Carriage to determine what

³ See, e.g., testimony of William J. McGee, Aviation Consultant, Consumers Union, May 2, 2017, advocacy.consumerreports.org/wp-content/uploads/2017/05/Consumers-Union-McGee-05-02-2017-House-airline-hearing.pdf (hereafter “May 2017 CR testimony”).

their rights are. These contracts are lengthy, and essentially one-sided, giving all rights and flexibility to the airlines, with precious few rights to their passengers; and they are subject to change whenever it suits the airline.⁴ These same lengthy, one-sided agreements that no consumer can reasonably expect to understand also determine passenger rights in Canada. For example, Air Canada’s General Conditions of Carriage and Tariffs for domestic flights runs to 88 printed pages, and the same document for international flights runs to 117 pages.⁵

Support for Specific Proposals

1. Communication

CR strongly supports this proposal, which would require that passengers be informed of their rights “in a timely, clear, and accessible way.” Further, we commend the CTA for proposing to ensure that passengers would have the right to receive information via the methods they choose, such as by email or text messaging. We also note that the four situations highlighted in this section are addressed separately in these Proposed Air Passenger Protection Regulations:

- delayed or cancelled flights
- denied boarding
- lost or damaged baggage
- the seating of children under the age of 14

We agree that it is critical that this passenger rights information be conveyed in “simple, clear, and concise language” via all travel documents and ticket resellers.

We further respectfully suggest that the CTA consider requiring key passenger rights information to be displayed in airports. A similar regulation has existed in the European Union for many years, and large, colorful, easily understood posters are prominently displayed in airports throughout Europe that explain to passengers their rights, and provide contact

⁴ See American Bar Association, “The Obligations of Airlines and the Rights of Passengers,” Alexander Anolik, June 29, 2017, www.americanbar.org/groups/gpsolo/publications/gp_solo/2013/may_june/the_obligations_airlines_and_rights_passengers/ (“This overwhelming document, full of legalese and every imaginable limitation of liability, is a textbook contract of adhesion.”); USA Today, “Contracts of Carriage: Deciphering Murky Airline Rules,” Bill McGee, July 12 2017; www.usatoday.com/story/travel/columnist/mcgee/2017/07/12/airline-contract-carriage/469916001 (quoting Thomas Dickerson, retired New York Justice and author of *Travel Law*: “Contracts of carriage, like insurance policies, are written by lawyers to be read by lawyers and to protect the airline. They are not written to inform consumers. DOT should require plain English versions for consumers.”)

⁵ Air Canada; “General Conditions of Carriage and Tariffs,” retrieved February 18, 2019; www.aircanada.com/us/en/aco/home/legal/conditions-carriage-tariffs.html.

information on filing complaints.⁶ CR has supported proposals for providing similar posters in U.S. airports.⁷

2. *Delayed or Cancelled Flights*

A central pillar of passenger rights is compensation for delayed or cancelled flights that can cause significant inconvenience, and sometimes significant resulting harms, to passengers. The CTA's proposed protections are completely in keeping with the Flight Compensation Regulation 261 protections in place in the European Union since 2005.⁸ CR repeatedly has cited these EU rules as a fitting blueprint for similar regulations in the United States.⁹

The CTA proposal also addresses the issue of "interline" agreements¹⁰ that would require passengers to be accommodated on other airlines when there are flight delays or cancellations:

"In the event of a flight disruption outside of the airline's control, a large airline would be required to rebook using the services of another (competing) airline, if their own next available flight would not depart within 48 hours."

We agree that this is an excellent proposal. We respectfully recommend that it be extended beyond just "large airlines" to include all scheduled passenger airlines of any size, with the airline with the flight disruption compensating the accommodating airline for the face value of the ticket. In the United States, major airlines have eliminated such interline agreements, also known as "Rule 240" agreements, with smaller carriers in recent years, as part of apparent efforts to weaken the customer appeal of low-cost airlines.¹¹ Requiring carriers to maintain interline agreements, as they once did in the United States, would better address this major inconvenience for passengers.

3. *Denied Boarding*

CR has been vocal in its support for compensation to passengers who have been denied boarding. Furthermore, we agree that such compensation should be in the form of cash payments; and we recommend that this be made explicit in the regulation, to prevent airlines from steering passengers into accepting credit for a future flight instead.

⁶ European Union; "Air Passenger Rights," retrieved February 18, 2019; ec.europa.eu/transport/sites/transport/files/media/publications/doc/aff_apr_a4_en.pdf.

⁷ U.S. Department of Transportation; "Report of the Advisory Committee on Aviation Consumer Protection," February 28, 2014; cms.dot.gov/sites/dot.gov/files/docs/resources/individuals/aviation-consumer-protection/286116/acacp-second-report-secretary-28feb2014.pdf.

⁸ European Union; "Air Passenger Rights," updated January 24, 2019; europa.eu/youreurope/citizens/travel/passenger-rights/air/index_en.htm.

⁹ E.g., May 2017 CR testimony.

¹⁰ USA Today, "What Is an Airline Interline Agreement?," February 19, 2019, <https://traveltips.usatoday.com/airline-interline-agreement-63912.html>

¹¹ See Congressional Research Service, "Airline Passenger Rights: The Federal Role in Aviation Consumer Protection," August 17, 2016, at 5, <https://fas.org/sgp/crs/misc/R43078.pdf>; Smarter Travel, "Goodbye, Travel Protections: Why 'Rule 240' Is Headed for Oblivion," Ed Perkins, August 8, 2008, www.smartertravel.com/goodbye-travel-protections-why-rule-240-is-headed-for-oblivion/.

In the United States, CR testified on this issue at a congressional hearing in the wake of the infamous “dragging incident” of Dr. David Dao, a passenger onboard United Express Flight 3411 in April 2017.¹² In advocating for compensating a ticketed passenger for being denied boarding, we suggested there be no limits on such compensation: “The needed change is that all denied boardings should truly be voluntary. The airline should pay whatever compensation is necessary to convince a passenger to willingly give up the seat.”

We fully agree with the CTA that safety and security must remain of paramount priority. But we also agree that that is a separate issue from flight seating sales management. And for a number of reasons, airlines are not economically vulnerable to passenger overbookings as they were in past eras, when consumers could routinely book multiple flights without penalty.¹³ With greater airline industry concentration and reduced competition, advanced state-of-the-art reservation and yield management systems¹⁴ that result in record-high average passenger loads (historically 50-60 percent, now in the low 80s, often approaching 100 percent on international flights),¹⁵ and penalties for “no-show” passengers. Consequently, if airlines overbook, they should reasonably bear the risk of having more ticketed passengers than available seats, not the ticketed passengers. The CTA’s proposal for Minimum Levels of Compensation are fair and just: \$900 CAD for delays of 0-6 hours; \$1,800 CAD for 6-9 hours; and \$2,400 CAD for more than 9 hours.

4. Tarmac Delays Over Three Hours

Consumers in the United States have for nearly ten years had the benefit of a similar U.S. Department of Transportation rule,¹⁶ adopted in December 2009, that has worked quite effectively in ensuring that passengers are treated humanely in tarmac delays, and in incentivizing the airlines to reduce the number of delays. As Secretary of Transportation Raymond LaHood stated at the time, “Airline passengers have rights, and these new rules will require airlines to live up to their obligation to treat their customers fairly.” CR supported this DOT rule, as well as its extension two years later to international flights, as well as charter carriers and foreign airlines.¹⁷

¹² May 2017 CR hearing; press release, “Consumers Union Calls on Congress to Crack Down on Airlines in Wake of United Debacle,” May 2, 2017, [advocacy.consumerreports.org/press_release/consumers-union-calls-on-congress-to-crack-down-on-airlines-in-wake-of-united-debacle](https://www.consumerreports.org/press_release/consumers-union-calls-on-congress-to-crack-down-on-airlines-in-wake-of-united-debacle).

¹³ See, e.g., Journal of Air Law and Commerce, “Overbooking of Airline Reservations in View of Nader v. Allegheny Airlines Inc.: The Opening of Pandora’s Box, Stanley Lee Tice,” 43:1 (1977), <https://scholar.smu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2165&context=jalc>.

¹⁴ Travel Technology & Solutions, “Yield Management in the Airline Industry,” March 4, 2015, www.tts.com/blog/yield-management-in-the-airline-industry/.

¹⁵ International Air Transport Association, “Economic Performance of the Airline Industry,” December 12, 2018, www.iata.org/publications/economics/Reports/Industry-Econ-Performance/IATA-Economic-Performance-of-the-Industry-end-year-2018-report.pdf.

¹⁶ U.S. Department of Transportation, “New DOT Consumer Rule Limits Airline Tarmac Delays, Provides Other Passenger Protections,” December 21, 2009, <https://www.transportation.gov/briefing-room/new-dot-consumer-rule-limits-airline-tarmac-delays-provides-other-passenger>.

¹⁷ U.S. Department of Transportation, “Enhancing Airline Passenger Protections,” April 25, 2011, www.federalregister.gov/documents/2011/04/25/2011-9736/enhancing-airline-passenger-protections; ConsumerReports.org; “CU Presses for Air Travel Improvements,” December 15, 2010; [advocacy.consumerreports.org/press_release/cu-presses-for-air-travel-improvements/](https://www.consumerreports.org/press_release/cu-presses-for-air-travel-improvements/).

As CTA's proposal similarly states, the goal is simply to ensure that passengers during extended tarmac delays are "properly treated." Unfortunately, airlines worldwide have not always adhered to minimum standards for maintaining working lavatories; proper ventilation, heating, and cooling; food and drink; and passenger access to free communication with those outside the aircraft. This proposal would require all of those basic protections.

Even once regulations are in place, however, it is important to maintain oversight. This was underscored last month by media reports about a United Airlines flight from Newark to Hong Kong that diverted to Goose Bay, Newfoundland where passengers were then stuck onboard in frigid cold, with diminishing supplies of food, for more than 14 hours.¹⁸

Passengers concerns about getting to their destinations when flights have been delayed for several hours are reasonably addressed in the proposal:

"As well, after a 3 hour tarmac delay at a Canadian airport, airlines would be required to return to the gate so that passengers can disembark. However, a plane would be permitted to stay on the tarmac for up to 45 additional minutes, if it is likely that it will take off within that period. This allowance for a short extension is intended to ensure that the plane can take off if there is a reasonable prospect of this occurring – so that passengers reach their final destination and do not suffer further inconvenience caused by a flight cancellation."

This strikes a sensible balance for both passengers who will want to disembark and passengers who will hope to continue their journeys as quickly as possible.

5. The Seating of Children Under the Age of 14

This is a fundamental safety and security issue that overrides any interest of a commercial airline in increasing sources of additional revenue or in enhancing its own administrative convenience. Children must be seated with their parent, family member, or adult companion. The CTA proposal, as currently worded, would provide an important but bare minimum baseline:

Airlines would have to facilitate, at no extra cost and at the earliest opportunity, the seating of children under 14 years of age in close proximity to their parent, guardian or tutor. The proximity would depend on the age of the child:

- * Under the age of 5: in a seat adjacent to their parent, guardian or tutor.*
- * Aged 5 to 11: in the same row and separated by no more than one seat from their parent, guardian or tutor.*
- * Aged 12 or 13: separated by no more than one row from the parent, guardian or tutor.*

¹⁸ CNN, "Passengers Stuck on United Flight in Frigid Cold for More Than 14 Hours," January 21, 2019, www.cnn.com/2019/01/20/us/united-flight-canada-grounded/index.html.

We urge you to further strengthen it, to even better ensure that children are safe and feel secure.

The need for effective family seating rules is highlighted by a U.S. Federal Bureau of Investigation (FBI) report last year, the released a report that found sexual assaults onboard commercial airline flights in the United States had increased by an “alarming rate” of 66% between 2014 and 2017. The FBI report specifically noted that “typically” victims are women and unaccompanied minors, sometimes as young as 8 years old.¹⁹

CR has supported such a stronger rule in the United States: ensuring that families with children aged 13 or younger travel together at no additional cost. Legislation introduced in Congress to require this, the Families Flying Together Act of 2015,²⁰ resulted in enactment of a law directing DOT to consider such a rule, and to establish it as deemed appropriate.²¹ And Britain’s Civil Aviation Authority launched its own review of airline family seating policies in 2018.²²

This is not just a matter of comfort, convenience, and economics; it is a fundamental safety and security issue for the most vulnerable passengers. This is one area that should be off-limits to the airlines as a source of additional profits.²³

For similar security and safety reasons, we are also pleased that the CTA proposal contains specific wording pertaining to unaccompanied minors:

“airlines would also be required to establish a policy for unaccompanied minors, and prohibit minors under the age of five from travelling without their parent or an accompanying person who is at least 16 years old.”

¹⁹ Federal Bureau of Investigation, “Sexual Assault Aboard Aircraft: Raising Awareness About a Serious Federal Crime,” April 26, 2018, www.fbi.gov/news/stories/raising-awareness-about-sexual-assault-aboard-aircraft-042618.

²⁰ H.R. 3334, the Families Flying Together Act of 2015, <https://www.congress.gov/bill/114th-congress/house-bill/3334/text>; press release, “Davis, Nadler Introduce Legislation to Help Keep Families Seated Together on Flights,” July 30, 2015, rodneydavis.house.gov/news/documentsingle.aspx?DocumentID=398762.

²¹ Pub. L. 114-190, sec. 2309, <https://www.congress.gov/114/plaws/publ190/PLAW-114publ190.pdf>. Unfortunately, DOT has not taken action to conduct the required review. CR filed a Freedom of Information Act request with DOT in September 2018 requesting the status of the implementation of this law; as of this date DOT has not responded to our request.

²² UK Civil Aviation Authority, “Civil Aviation Authority Launches Review of Airlines’ Allocated Seating Policies,” February 2, 2018, www.caa.co.uk/News/Civil-Aviation-Authority-launches-review-of-airlines--allocated-seating-policies/. An initial survey of 4,000 passengers had found that barely half the respondents reported that their airline informed them before they booked their flight that they would need to pay extra to ensure their group could sit together.

²³ A leading industry marketing firm recently estimated that worldwide, the airlines had collected \$92.9 billion USD in add-on “optional” fees and other ancillary revenue in 2018. IdeaWorksCompany, “Airline Ancillary Revenue Projected to Be \$92.9 Billion Worldwide in 2018,” November 27, 2018, www.ideaworkscompany.com/november-27-2018-press-release.

6. *Lost or Damaged Baggage*

CR agrees with this proposal that the Montreal Convention treaty provisions for lost and damaged bags that apply on international flights should be extended to domestic flights within Canada as well. This will bring uniformity to all domestic carriers, with the limit of \$2,100 CAD per passenger.²⁴ Recent media reports also suggest that passengers aren't always properly informed of these rights by the airlines, as indicated by the CBC report in December alleging that Air Canada "lied" to a passenger about compensation.²⁵

We also support the proposal that airlines should reimburse passengers for any paid baggage fees when the baggage is lost or damaged. In fact, we respectfully suggest that this proposal be expanded to include bags that are delayed being returned to passengers by the airlines. We have advocated this position with respect to U.S. airlines.²⁶ We note that the fees airlines are now imposing for checking a bag can be quite considerable. On Air Canada, for example, the fee for the first checked bag in economy class is \$31.50 to \$34.50 USD on domestic flights; \$30.00 to \$31.50 USD on flights between Canada and the United States; and \$30.00 to \$35.40 USD on flights between Canada and Mexico or the Caribbean.²⁷

7. *The Transportation of Musical Instruments*

CR has not publicly advocated for a rule on this issue in the past. However, ConsumerReports.org has published several articles about an infamous incident in 2009 in which United Airlines damaged musician David Carroll's instrument, prompting him to publish a song entitled "United Breaks Guitars." The most recent CR article was published in 2017.²⁸

We recognize the need for this proposed regulation, which specifically would require airline tariffs to provide the specific terms and conditions of carriage for musical instruments, including transparency of fees for such transportation, an issue that we have long supported in general for all airline ancillary fees. We recognize that such instruments are often economically valuable, but also are critical for the livelihood of some passengers.

Conclusion

Consumer Reports is pleased that the Canadian Transportation Agency has proposed these Passenger Protection Regulations for the Canadian airline market. As noted, we have long

²⁴ Canadian Transportation Agency, "Fly Smart," modified July 10, 2015, otc-cta.gc.ca/eng/publication/lost-damaged-and-delayed-baggage.

²⁵ CBC, "Air Canada Accused of 'Lying' to Customers to Avoid Paying Up to \$2,100 for Lost Luggage," December 9, 2018, www.cbc.ca/news/business/air-canada-under-fire-for-lost-luggage-and-misleading-on-compensation-limits-1.4933798.

²⁶ ConsumerReports.org, "Refunding Baggage Fees for Delayed Checked Bags," November 30, 2016, advocacy.consumerreports.org/wp-content/uploads/2016/12/DOT-BagFeeRefunds-CU-comments-11-30-16-FINAL.pdf.

²⁷ AirCanada.com, "Fees Related to Baggage and Optional Services," updated March 28, 2017, www.aircanada.com/us/en/aco/home/legal/products-and-services.html. The fees are higher when a passenger checks more than one bag, or if the bag is larger or weighs more.

²⁸ "United Airlines Video Shows How Consumers Can Push Back," Consumer Reports, Lauren Lyons Cole, April 11, 2017, www.consumerreports.org/airline-travel/united-airlines-video-shows-how-consumers-can-push-back/.

advocated for similar protections for the U.S. market. For the foregoing reasons, we support all of these proposals, along with the additional recommendations discussed above.

Thank you for allowing us to comment.

Respectfully submitted,



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