

**FEDERAL COURT OF APPEAL**

BETWEEN:

**AIR PASSENGER RIGHTS**

Applicant

- and -

**THE ATTORNEY GENERAL OF CANADA**

Respondent

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**MOTION RECORD OF THE MOVING PARTY,  
CANADIAN TRANSPORTATION AGENCY  
(MOTION TO INTERVENE)  
(Rules 109 and 369 of the *Federal Courts Rules*)**

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**NOTICE OF MOTION  
(MOTION TO INTERVENE)**

**Pursuant to Rules 109 and 369 of the *Federal Court Rules***

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TAKE NOTICE THAT the Canadian Transportation Agency (the "Agency") will make a motion to the Court in writing under Rules 109 and 369 of the *Federal Court Rules*, SOR/98-106 ("Rules").

**THIS MOTION IS FOR:**

- a) an Order granting the Agency leave to intervene pursuant to Rule 109 of the Federal Courts Rules, and amending the style of cause to reflect the same;
- b) an Order permitting the Agency to file a Memorandum of Fact and Law of no more than 15 pages and affidavit at any time the Court considers appropriate, such as: the filing of an affidavit within 15 days after the Respondent's affidavit(s) and exhibit(s) are filed; and the filing of a Memorandum of Fact and Law within 15 days after the Respondent's Record is filed;
- c) an Order that the Agency be served with all materials filed by the parties;
- d) an Order that the Agency be consulted on hearing dates and be provided the right to make oral submissions before the Court; and

e) such further and other relief as this Court may deem just.

**THE GROUNDS FOR THIS MOTION ARE:**

1. Rules 109 and 369 of the *Federal Court Rules*.
2. Under paragraph 109(2)(b) of the *Federal Court Rules*, a notice of motion must "describe how the proposed intervener wishes to participate in the proceeding and how that participation will assist the determination of a factual or legal issue related to the proceeding".
3. The Agency requests leave to intervene in this proceeding to provide a memorandum of fact and law of no more than 10 pages, accompanied by a brief affidavit, and to make oral submissions on the content of its memorandum at the hearing of the judicial review application.
4. The memorandum, affidavit and oral submissions would be limited to the following:
  - The Agency would describe the scope of its mandate with respect to air transportation, including the regulatory and adjudicative functions assigned to it under the CTA and associated regulations. Specifically, the Agency would explain the scope of its regulatory mandate with respect to air carrier tariffs in domestic and international carriage. The Agency would also explain its mandate with respect to air travel complaints, namely that its jurisdiction is to determine whether (a) a carrier has applied its tariff provisions, including the provisions of the *Air Passenger Protection Regulations*, SOR/2019-150, which are deemed by law to form part of a carrier's tariff, or (b) whether a tariff provision is unreasonable or unjustly discriminatory and should be amended.
  - The Agency would provide a small sample of the various informational, resource and guidance tools it has issued with respect to the air transportation mode. The explanations provided by the Agency in respect of this material would address its purpose in the overall exercise of the Agency's mandate.

5. This participation will assist in the determination of a legal issue related to the proceeding. The Agency seeks to intervene to explain its specialized regulatory and adjudicative mandate with respect to air transportation under Part II of the *Canada Transportation Act*, SC 1996, c 10 ("CTA"). As part of this explanation, the Agency will address the publication of resource, informational and guidance material intended for the public and stakeholders and this material's place in the exercise of the Agency's overall mandate. As an intervener, the Agency would not defend the substance of the impugned Publications or address whether the allegations of bias made by Air Passenger Rights ("APR") are well founded.
6. The Agency respectfully submits that the Court may be assisted in its evaluation of the nature and significance of these Publications if provided with contextual information about the Agency's air transportation mandate and its practice of publishing resource, informational and guidance material. The Agency submits that it is best placed to speak to these issues and has an interest in the outcome of the proceeding because the Court's decision may broadly impact the Agency's practices in this area.
7. The Agency has brought this motion at an early stage of the proceeding. The Agency is familiar with the proceeding as it has previously acted as a Respondent until removed by Justice Gleason's Order and Reasons dated June 4, 2021. The Agency has acted in a timely fashion following Justice Gleason's indication in the Order and Reasons that the Agency may bring a motion for leave to intervene. Accordingly, the Agency submits that its participation will neither delay the proceeding nor prejudice the parties.
8. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be presented in support of this motion:

- a) The affidavit of Meredith Desnoyers, affirmed July 14<sup>th</sup>, 2021;
- b) Written Representations of the Moving Party, Canadian Transportation Agency; and

- c) Such further and other evidence as counsel may advise and this Honourable Court may permit.

Dated at Gatineau, in the Province of Quebec, this 15<sup>th</sup> day of July, 2021.



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**FEDERAL COURT OF APPEAL**

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**AFFIDAVIT OF MEREDITH DESNOYERS  
AFFIRMED ON THE 14<sup>TH</sup> DAY OF JULY, 2021**

**(Motion for Leave to Intervene)**

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I, Meredith Desnoyers, of the City of Ottawa, in the Province of Ontario, AFFIRM THAT:

1. I am a paralegal officer with the Canadian Transportation Agency ("Agency"), located at 15 Rue Eddy, Gatineau, Quebec, J8X 4B3. As such, I have personal knowledge of the matters set out herein except where stated to be based on information and belief, in which case I believe such information to be true.
2. Attached and marked as Exhibit "A" is a copy of the Agency's Interline Baggage Rules for Canada: Interpretation Note, which I accessed on the Agency's website on July 14, 2021 at the following website address: <https://otc-cta.gc.ca/eng/publication/interline-baggage-rules-canada-interpretation-note>.
3. Attached and marked as Exhibit "B" is a copy of the Agency's Notice to Industry: Applications for Exemptions from Section 59 of the Canada Transportation Act, which I accessed on the Agency's website on July 14, 2021 at the following website address: <https://otc-cta.gc.ca/eng/publication/notice-industry-applications-exemptions-section-59-canada-transportation-act-sc-1996-c>.



4. Attached and marked as Exhibit "C" is a copy of the Agency's Guide to Canadian Ownership and Control in Fact for Air Transportation", which I accessed on the Agency's website on July 14, 2021 at the following website address: [https://otc-cta.gc.ca/sites/default/files/new\\_guide\\_to\\_canadian\\_ownership\\_requirement\\_and\\_control\\_in\\_fact.pdf](https://otc-cta.gc.ca/sites/default/files/new_guide_to_canadian_ownership_requirement_and_control_in_fact.pdf).
5. Attached and marked as Exhibit "D" is a copy of the Agency's Sample Tariff — containing rules applicable to scheduled services for the transportation of passengers and their baggage between points in Canada and points inside and outside Canada, which I accessed on the Agency's website on July 14, 2021 at the following address: [Sample tariff — containing rules applicable to scheduled services for the transportation of passengers and their baggage between points in Canada and points inside and outside Canada | Canadian Transportation Agency \(otc-cta.gc.ca\)](#).
6. Attached and marked as Exhibit "E" is a copy of the Agency's Flight Delays and Cancellations: A Guide, which I accessed on the Agency's website on July 14, 2021 at the following address: [Flight Delays and Cancellations: A Guide | Canadian Transportation Agency \(otc-cta.gc.ca\)](#).
7. Attached and marked as Exhibit "F" is a copy of the Agency's Accessible Travel in the Context of Covid-19, which I accessed on the Agency's website on July 14, 2021 at the following address: [Accessible travel in the context of COVID-19 | Canadian Transportation Agency \(otc-cta.gc.ca\)](#).
8. I swear this affidavit in support of the Agency's motion for leave to intervene, to file a memorandum of fact and law, an affidavit and to present oral submissions when a hearing is set, and for no other improper purpose.

AFFIRMED BEFORE me )  
 at the City of Ottawa, )  
 in the Province of Ontario )  
 this 14<sup>th</sup> of July, 2021 )

  
 \_\_\_\_\_ )  
 Elysia Van Zeyl (LSUC #53499H)

  
 \_\_\_\_\_  
 MEREDITH DESNOYERS

Exhibit A of the Affidavit of Meredith Desnoyers  
affirmed on July 14, 2021

A handwritten signature in blue ink, reading "Elysia Van Zeyl". The signature is written in a cursive style with a large initial "E".

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Elysia Van Zeyl (LSUC #53499H)



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# Interline Baggage Rules for Canada: Interpretation Note

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*Effective for tickets issued on or after April 1, 2015.*

## Disclaimer

The Canadian Transportation Agency (Agency) is the economic regulator of Canada's federal transportation network. It publishes Interpretation Notes to provide information and guidance on provisions of the *Canada Transportation Act* (CTA) and associated regulations that it administers. Should there be any discrepancy between the content of this Interpretation Note and the Act and associated regulations, the latter prevail.

This Interpretation Note provides guidance to air carriers and their agents relating to interline baggage rules application. Unless the context otherwise dictates, the term "carrier" is meant to encompass licensees and non-licensees involved in interline itineraries issued on a single ticket whose origin or ultimate ticketed destination is a point in Canada.

**Please note that the implementation date for the Agency's Interline Baggage Rules for Canada has been extended to April 1, 2015.**

## Purpose

On April 15, 2014, the Canadian Transportation Agency (Agency) issued Decision No. 144-A-2014 which specifies the rules that air carriers should be applying, effective for tickets issued on or after April 1, 2015, when participating in an interline itinerary issued on a single ticket whose origin or ultimate destination is a point in Canada. These rules call for:

- a single set of baggage rules being applied to the entire itinerary; and,
- the disclosure of these baggage rules to the passenger.

Furthermore, air carriers must file their policies with respect to interline baggage in their tariffs.

The Agency's Decision is consistent with the United States Department of Transportation's (U.S. DOT) baggage rules requirements, thereby providing for a harmonized North American approach to how baggage rules should be applied.

To support its Decision, the Agency issued this Interpretation Note (IN) - *Interline Baggage Rules for Canada* to clarify to air carriers and ticket sellers, and inform the travelling public how baggage rules should be applied (for both checked and unchecked baggage).

More specifically, this IN lays out an approach for interline and code-share baggage rules that, if accurately reflected in carriers' tariffs and applied by carriers and ticket sellers, the Agency finds to be clear, just and reasonable, and which does not impose upon passengers an undue prejudice or disadvantage consistent with the requirements of the *Air Transportation Regulations* (ATR).

This IN also addresses how air carriers and ticket sellers should disclose the applicable baggage rules to passengers by air carriers and ticket sellers. The aim is to ensure that the policies of carriers are clearly stated and are readily available to passengers so that they are made aware of the baggage rules that apply to their itinerary.

## 1. Context

Baggage rules <sup>1</sup> establish an air carrier's policies pertaining to the transportation of a passenger's bags, including, but not limited to the following:

- The maximum weight and dimensions of passenger bags, if applicable, both checked and unchecked;
- The number of checked and unchecked passenger bags that can be transported and the applicable charges;
- Excess and oversized baggage charges;
- Charges related to check in, collection and delivery of checked baggage;
- Acceptance and charges related to special items, e.g. surf boards, pets, bicycles, etc;
- Baggage provisions related to prohibited items, including embargoes;
- Terms or conditions that would alter or impact the baggage allowances and charges applicable to passengers (e.g. frequent flyer status, early check-in, pre-purchasing baggage allowances with a particular credit card);and,
- Other rules governing treatment of baggage at stopover points, including passengers subject to special baggage allowances or charges, etc.

For several decades, carriers' baggage allowances were either assessed on a piece or weight basis. Travel to, from or within North America was based on the piece system (i.e., two pieces of luggage, free of charge, per passenger). Travel between other parts of the world was governed by a system based on weight. Such policies were highly harmonized among carriers and from a passenger's perspective, unless complex itineraries were involved, they seldom resulted in incompatibility of baggage rules for passengers travelling on multiple air carriers or via different countries.

However, over time, this simplified, standard approach evolved due to new industry practices, including à la carte pricing, carrier desire to maximize revenue from baggage, and regulatory change. Carriers abandoned the simplified standard approach and began to apply their own rules to their own flight segments for trips involving multiple air carriers. This resulted in confusion as to which carrier's rules were applicable because passengers were subjected to differing and unexpected baggage allowances and charges while en-route on an interline itinerary.

To address this situation, different methodologies to determine the applicable baggage rules when travelling on multiple air carrier itineraries have emerged. The following section briefly describes two key approaches currently used by industry.

## 1.1 IATA baggage rules

The International Air Transport Association (IATA), the trade association for the world's air carriers representing some 240 carriers, has defined basic worldwide baggage standards including how carriers could apply baggage rules to a passenger's interline itinerary.

Recognizing the industry requirement for a more flexible approach to baggage allowances and fees application, on April 1, 2011, IATA Rule (IATA Resolution 302, Appendix 7.1) came into force providing a new methodology to determine which carrier's baggage rules would apply to an interline itinerary, including code-sharing arrangements. This new methodology created the Most Significant Carrier (MSC) concept.

IATA's approach uses a geographical-based selection process to determine which carrier(s) would be the MSC (see Appendix 7.1 for further details how an MSC is chosen).

Baggage rules of the MSC are applicable from the point of "baggage check-in" until the next stopover, or the next point of baggage collection. Each time baggage is re-checked by the passenger, the MSC is once again defined and its baggage rules are applied. The baggage rules of the new MSC may be the same or different than the previous MSC. There is potential for several different MSCs to be included in a passenger's interline itinerary if it involves multiple flights and stops.

As a result, passengers may encounter different and changing baggage rules throughout their itinerary. The more complex the itinerary, the more likely this will occur. This concern is exacerbated by the fact that IATA has not set rules regarding the disclosure of the applicable rules to the passengers, leaving passengers potentially exposed to differing and unexpected baggage rules in the course of a given itinerary.

## 1.2 U.S. DOT baggage rules

In January 2012, the U.S. DOT Rule 399.87 came into effect ([Appendix 7.3](#)). Under this Rule, all carriers selling transportation to passengers where the "ultimate ticketed origin or destination" is a point in the United States must apply the same baggage policy and fees throughout a passenger's itinerary, regardless of stopovers, when it is on the same ticket.

The U.S. DOT requirements stipulate that it is the first marketing carrier on the first flight segment of an interline itinerary that has the right to establish the baggage rules to apply for the entire interline itinerary. One set of baggage rules applies irrespective of stopovers or other carrier flights listed on the single ticket. More specifically, the first marketing carrier has the right to choose to apply its baggage rules or the rules of the MSC (as determined by the application of IATA Resolution 302, modified to be applicable in the U.S. context).

All carriers must reflect their baggage rules in their tariffs filed with the U.S. DOT.

### 1.3 Agency's practices

Prior to implementing its *Interline Baggage Rules for Canada*, the Agency had not issued an all-encompassing approach. Baggage rules for air travel to or from Canada were established by individual carriers by stipulating their baggage rules in their tariffs for application to their own traffic, even when part of an itinerary involved multiple air carriers. This approach was sufficient under the circumstances as essentially all carriers had similar tariff provisions which reflected a generous free baggage allowance based on the piece system that had existed at that time.

The Agency did however express a clear view with respect to baggage rules in code-sharing arrangements, whereby one air carrier (the marketing carrier) sells transportation in its name (and under its own two letter designator code) on flights operated by the partner air carrier (operating carrier). The Agency has always required the marketing carrier to apply its tariff (encompassing its baggage rules) to its own traffic in a code-sharing arrangement. Upon complaint, the Agency enforces the baggage rules of the marketing carrier in the code-sharing arrangement as reflected in its tariff.

Considering the emergence of both the IATA and U.S. DOT approaches to baggage rule application, to inform its considerations, the Agency sought views on the best approach to interline baggage rules for Canada via an industry workshop and an on-line public consultation. The consultations revealed significant consensus that the Agency should not develop a new approach but rather align with either IATA's Resolution 302 or the U.S. DOT's new regulations. In addition, a large majority expressed support for a harmonized North American approach (i.e., an approach consistent with U.S. DOT Rule 399.87).

## 2. Agency's authority

As the Canadian economic regulator of the air transport industry, pursuant to the ATR, the Agency is responsible for determining whether the international tariffs of air carriers are clear [ATR paragraph 122(a)], just and reasonable [ATR subsection 111(1)], and whether traffic has been subject to undue or unreasonable disadvantage or prejudice [ATR paragraph 111(2)(c)]. Furthermore, the Agency can on

complaint or on its own motion cancel, suspend or substitute an international tariff or portion of an international tariff. The Agency can also direct an air carrier offering an international service to take corrective measures and pay compensation to the passenger if the air carrier fails to apply its tariff.

### **3. Principles of Agency's interline baggage rules for Canada**

Based on the results of its consultations, the Agency's approach to interline baggage rules is guided by two fundamental principles:

#### **a) A seamless and transparent baggage regime for passengers**

- Passengers should have a seamless travel experience throughout their interline itinerary issued on a single ticket.
- Passengers should be informed of which carrier's baggage rules apply to their interline itinerary.

#### **b) A harmonized and practical regime for industry**

- The Canadian approach should avoid imposing unique requirements that conflict with other jurisdictions and particularly within the North American context.
- The Canadian approach should take into account the operational challenges faced by industry and not impose unnecessary burdens.

## **4. Agency's approach to interline baggage rules for Canada**

### **4.1 Scope of the approach – affected traffic**

#### **4.1.1 International interline itineraries**

Air carriers should, for interline transportation where the origin or ultimate ticketed destination is a point in Canada and where such transportation has been issued on a single ticket, apply a single set of baggage rules throughout a passenger's interline itinerary, regardless of stopovers. This includes domestic legs of an international itinerary, when transportation has been issued on a single ticket.

More specifically, the carrier whose designator code is identified on the first flight segment of the passenger's interline ticket <sup>2</sup> (i.e., the selecting carrier) can select to apply for the entire interline itinerary by all participating carriers, either:

- the selecting carrier's own baggage rules; or,
- the rules of the "Most Significant Carrier" (MSC), pursuant to the methodology of IATA Resolution 302, as conditioned by the Agency.

To enable the implementation of this approach, carriers are encouraged to use any automated baggage rules systems (e.g. databases, global distribution systems(GDS), Web pages, etc.) that enable them to publish their free baggage provisions, excess and special items, embargoes, and carry-on allowance and fees in all sales and distribution channels.

On April 16 2014, the Agency placed a Reservation against IATA Resolution 302 (see Appendix 7.2.1). The aim of this Reservation is to allow the selecting carrier to use the MSC methodology to determine which carrier's baggage rules apply to an international interline itinerary to or from Canada, while reinforcing the role of tariffs. This Reservation is also fully consistent with the Reservation filed by the U.S. DOT and thus promotes a harmonized North American approach. Appendix 7.2.1 provides further details on how IATA Resolution 302, as modified by the Agency, applies.

Resolution 302 is not binding on IATA or non-IATA carriers and has no legal standing in Canada. If carriers otherwise agree to amend or establish another approach to determine the applicable baggage rules as an alternative to Resolution 302, such an approach must also comply with the ATR and be expressed in tariffs filed with the Agency at least 45 days before they come into effect. An alternative approach should also respect the two fundamental principles of the Agency's approach.

#### **4.1.2 Domestic interline itineraries**

The Agency recognizes that the domestic marketplace may not generally utilize an automated baggage rules system (e.g. databases, GDS, Web pages, etc.) which would enable the Agency approach to be implemented in a manner similar to international transportation. Furthermore, the IATA's MSC concept is inapplicable to the domestic context.

Nevertheless, for interline transportation occurring wholly within Canada (not part of a multi-segment (or leg) international itinerary) and where such transportation has been issued on a single ticket, the Agency also expects air carriers to apply a single set of baggage rules throughout a passenger's interline itinerary, regardless of stopovers. The Agency is of the opinion that applying this approach to domestic interline itineraries would be beneficial to consumers.

Furthermore, the Agency expects the domestic carrier whose designator code is identified on the first flight segment of the passenger's interline ticket (i.e., the selecting carrier) to select and apply its own baggage rules to the entire interline itinerary. All downline carriers are expected to also apply those rules to their respective services.

Domestic carriers contemplating applying the Agency approach to domestic interline travel are encouraged to develop and use automated baggage rules systems.

#### **4.1.3 Applicable to both domestic and international interline itineraries**

Once the baggage rules have been chosen by the selecting carrier for either an international or domestic interline itinerary, carriers should:

- apply the rules to the passenger's entire interline itinerary issued on a single ticket; and,
- disclose the rules to the passenger on any summary page at the end of an online purchase and on e-tickets.

### **4.2 Applicable baggage rules**

The Agency's *Interline Baggage Rules for Canada* apply to a carrier's baggage rules related to checked and unchecked (carry-on) items.



## 4.3 Tariffs

Canada's regulatory regime requires that carriers have tariffs and that those tariffs reflect their policies. Tariffs establish the contractual rights and responsibilities of passengers and the carrier. Consistent with the requirements of the ATR (subsections 110(1), (4) and (5)), any carrier offering international transportation to or from Canada, including those carriers who are participating in interline travel (whether they hold a license to operate to and from Canada or not), must have a tariff and apply it. Furthermore, that tariff must clearly state the carrier's policy in respect of specific matters [per ATR paragraph 122.(c)], including baggage. Carriers must file their tariffs with the Agency that set out their baggage rules at least 45 days in advance.

To align with the Agency's approach, carriers involved in interline arrangements must reflect in their tariffs how they will:

- select the baggage rules applicable to an interline itinerary;
- apply the baggage rules selected by another carrier participating in an interline itinerary; and,
- disclose the applicable baggage rules to a passenger on any summary page at the end of an online purchase and on e-tickets. (refer to Part 3 of this IN).

The tariffs of carriers involved in interline arrangements (either as a selecting or down line carrier) should address the following four areas:

### i. Carrier's own baggage rules

- Establish the carrier's own baggage rules with respect to such matters as free baggage allowances, limits on weight, size, number of bags allowed, conditions associated with the treatment of special items (e.g., pets, bicycles, skis, surf boards, embargoes), how baggage rules are applied at stopover points and any charges associated with the carriage of baggage;
- all carriers will already have their own baggage rule in their tariff currently filed with the Agency, however each carrier will need to assess the adequacy of their own baggage provisions in the context of this IN and its interline services; and,

### ii. Baggage rule determination by selecting carrier

- Include a statement that the selecting carrier will choose either to:
  - i. the selecting carrier's own baggage rules; or,
  - ii. the rules of the "Most Significant Carrier" (MSC), pursuant to the methodology of IATA Resolution 302, as conditioned by the Agency; and,

### iii. Participation as a down line carrier in an interline itinerary

- Have a statement that the carrier will apply, as its own, the rules chosen by the selecting carrier when it is a down line carrier and a passenger is travelling on one of its flights as part of an interline itinerary; and,

### iv. Disclosure

- Provide for the carrier's disclosure undertakings consistent with the Agency's approach (refer to Part 3 of this IN).

Carriers may refer to the **Agency's Sample Tariff**<sup>3</sup> developed by Agency staff for assistance in establishing their interline baggage rules tariff information reflecting the Agency's approach. Carriers should ensure that they allow for the appropriate amount of time to file their revised tariff provisions with the Agency. The approach applies to tickets issued on or after April 1, 2015.

### **4.3.1 Tariffs must be on file with the Agency**

#### **4.3.1.1 International itineraries**

For all other international itineraries, including domestic segments of an international itinerary, only carriers with baggage rules reflected in tariffs on file and in effect with the Agency, pursuant to ATR subsection 110(1), may act as the selecting carrier. The selecting carrier may choose to apply either their own baggage rules or determine who will be the MSC for the itinerary. Any chosen MSC carrier must also have its baggage rules reflected in tariffs on file and in effect with the Agency in order for them to apply to an interline itinerary.

Note: For transborder itineraries only, a tariff must be on file with both the Agency and the U.S. DOT in order for the appropriate baggage rules to apply to an itinerary and to meet both countries' regulatory requirements.

#### **4.3.1.2 Domestic itineraries**

For interline itineraries of Canadian domestic carriers involving travel taking place wholly within Canada, the domestic carrier whose designator code is identified on the first flight segment of the passenger's interline ticket (i.e., the selecting carrier) is expected to select and apply its own baggage rules to the entire interline itinerary in so far as the baggage rules are set out in its domestic tariff. All downline carriers are expected to also apply those rules to their respective services.

This ensures that the Agency can review the reasonability of these rules pursuant to subsection 67.2(1) of the CTA and that these rules are effective pursuant to subsection 67(3) of the CTA.

### **4.3.2 Carriers that do not file tariffs with the Agency**

If a passenger's international interline itinerary begins at a foreign point (other than the U.S.) and the carrier whose designator code is identified on the first flight segment of the passenger's ticket at the beginning of the itinerary does not file tariffs with the Agency, that carrier must not be the selecting carrier on the interline itinerary. Furthermore, all other carriers must not apply that non-tariff filing carrier's baggage rules. The Agency has a list of carriers who file tariffs applicable for transportation to and from Canada.

Allowing a foreign carrier's baggage rules which are not filed with the Agency to be the rules applicable to an interline itinerary to or from Canada would result in the Agency not being able to deal with the reasonability of such rules. The Agency finds this unacceptable.

In these cases, the next carrier whose designator code appears on the passenger's international interline itinerary and who files a tariff with the Agency would be the carrier to determine which carrier's baggage rules will apply and thereby establishing the applicable baggage allowances and fees. All participating carriers should apply that alternative carrier's selection of baggage rules. This carrier, through its ongoing relationship and interline agreements, would be responsible for advising this first carrier (non-filing) of the established baggage rules for that passenger.

Carriers that do not file tariffs with the Agency but are participating in interline itineraries applicable to transportation to or from Canada and "feeding" passengers onto flights operated by a larger carrier, should ensure that they have the relevant baggage information and disclose which baggage rules apply to the itinerary.

## **4.4 Special issues affecting baggage rules**

### **4.4.1 Unchecked (carry-on) baggage**

The Agency recognizes that each operating carrier that is participating in an interline itinerary will for practical reasons apply their own unchecked carry-on baggage allowances to their respective flight segments. The Agency recognizes that due to the variety of aircraft sizes and types that may be used throughout an interline itinerary applying a single set of baggage allowances for carry-on baggage would not be practical. In particular, in the United States, each state has differing requirements and specifications regarding carry-on baggage that are applied to departing aircraft.

Nevertheless, it is possible for carriers to apply consistent charges for carry-on baggage, even if they cannot apply consistent baggage allowances. For example, once a carrier's baggage rules has been selected to apply to the passenger's entire itinerary, that carrier's baggage charges should not differ from flight to flight. Further, the passenger should not be charged an additional sum if the passenger's carry-on baggage cannot be accommodated in-cabin (due to weight, size, etc.) and it must be checked instead.

By providing carriers with this flexibility, this approach aligns with the U.S. DOT's approach.

Notwithstanding the foregoing, a carrier should disclose to passengers the carry-on baggage rules applicable to their interline itinerary.

### **4.4.2 Passenger special status**

Some passengers may be eligible for an enhanced baggage allowance or for reduced fees based on the passenger's status or other factors. For example, a passenger's status may vary due to: their participation in a frequent flyer program, travel on immigrant fares, travel connecting to a cruise, representation as a courier, or membership in the military, etc. Likewise, a passenger may also be able to avail themselves of an enhanced baggage allowance or reduced fees by virtue of pre-purchasing a more advantageous baggage allowance or by using a specific credit card to pay for their travels.

A passenger's eligibility for these entitlements is determined by the terms and conditions that were established in the selected carrier's tariff. Carriers should ensure that accurate information is reflected in their respective tariffs and that consistent with existing practice, carriers should set out in their tariffs clear

information related to a passenger's eligibility for such entitlements. The carrier should also disclose information about these entitlements to those passengers who may have special status and ensure that applicable charges are applied.

If a participating carrier wishes to provide a passenger while enroute with a more generous baggage allowance or lower baggage fees than those which were initially established on the passenger's itinerary, the carrier has the discretion (but is under no obligation) to do so as a courtesy to its customer.

#### **4.4.3 Stopovers**

Carriers participating in an interline itinerary should consistently apply a single set of baggage rules throughout that itinerary, as chosen by the selecting carrier. Accordingly, the baggage allowances and charges chosen at the beginning of the itinerary should remain with the passenger throughout the itinerary.

The application of baggage rules at stopover points is governed by provisions of the tariff of the carrier whose rules were chosen by the selecting carrier to apply. Accordingly, carriers should specify in their tariffs their baggage policies applicable at stopover points. For example, the tariff should indicate whether it is the carrier's policy to charge baggage fees only one time in each direction on international interline itineraries or if it is the carrier's policy to charge baggage fees at each point where baggage is checked, e.g. each stopover point.

The selected carrier's baggage rules as they relate to how baggage allowances and charges are applied at stopover points should also be followed by down line carriers.

If a participating carrier wishes to forgo applying baggage charges at stopover points despite the fact that the selected carrier's baggage rules, which were initially established on the passenger's itinerary, indicate that baggage charges apply at subsequent stopover points, the carrier has the discretion (but is under no obligation) to do so as a courtesy to its customer.

For the purposes of the Agency's *Interline Baggage Rules for Canada*, the Agency considers a stopover to be more than 24 hours.

#### **4.4.4 Embargoes or transportation of special items**

The Agency recognizes that there may be certain circumstances which prevent or in some manner adversely affect the transport of baggage on an itinerary. This may be as a result of special circumstances, including baggage that requires an above normal degree of care or due to specific types of equipment (aircraft or handling equipment at airports) that may not be universally available to all carriers on an itinerary. There may also be instances where due to the time of year or particular weather conditions, a carrier may be prevented from carrying certain types of baggage, e.g. surf boards, pets, oversized, or overweight carry-on baggage, etc. Any carrier participating in the itinerary may apply these restrictions to the passenger's travel as long as they are reflected in that carrier's tariff under its own baggage rules. These restrictions would then be taken into account when the passenger's baggage rules are established by the selecting carrier at the time of purchase. The Agency encourages carriers to use automated baggage rules systems (e.g. databases, GDS, Web pages, etc.) to help ensure that embargoes and the transportation of special items are communicated amongst participating carriers and that this information is disclosed to passengers.

If a passenger is travelling on a particular itinerary in which a carrier is prevented from carrying their baggage due to the foregoing, the selecting carrier, whenever the circumstances are known to it, should disclose this information to the passenger on:

- any summary page at the end of an online purchase (i.e., the Web page that appears on the carrier's Web site at the end of the booking process once a form of payment has been provided to purchase the ticket); and,
- the passenger's e-ticket once the purchase has been completed.

#### **4.4.5 Equipment changes, changes in the class of service of the passenger and irregular operations**

In the case of equipment changes, changes in the class of service of the passenger and irregular operations or the like, where a carrier determines that a new ticket must be issued to the passenger reflecting any itinerary changes, the Agency's approach should be applied to the new itinerary, which may result in a new selected carrier with new baggage rules. The passenger should be advised of the revised baggage rules applicable to their itinerary.

If the nature of the changes does not result in the need to issue a new ticket, the original baggage rules continue to apply. The Agency recognizes that due to certain operational requirements (e.g. equipment changes) a carrier may not be able to accommodate a passenger's baggage in either the cabin or on a specific aircraft. In these instances, a carrier should not charge a passenger any additional fees, and it should make the necessary arrangements to ensure that the passenger's baggage is transported to its destination. This may necessitate the checking of cabin baggage or the transportation of checked baggage on another aircraft. Although a carrier in these cases should not charge additional baggage fees, a carrier may wish to provide a post-purchase notice regarding the possibility of revised size and weight restrictions, and that in some instances, the passenger's baggage may not accompany them on a specific flight. Such a notice would allow passengers to plan accordingly.

#### **4.4.6 Passenger changes to baggage while enroute**

The Agency's approach does not prevent a carrier from charging additional baggage fees if a passenger increases the number of his or her checked or carry-on bags or varies the weight of their baggage from one flight segment to another during the course of their ticketed itinerary. Nevertheless, the baggage rules chosen by the selecting carrier at the outset of the itinerary and disclosed to the passenger at time of purchase should apply.

#### **4.4.7 Post purchase itinerary changes made by passengers**

If a passenger requests a post-purchase interline itinerary change that affects the applicable baggage rules (i.e., the passenger requests an itinerary change that results in a new ticket being issued to the passenger), the baggage allowances and fees may be reselected by the applicable selecting carrier based on the new interline itinerary as this is a passenger-driven change in the itinerary.

Additionally, the passenger should be informed at the completion of the ticket reissuance transaction on any summary Web page at the end of the online purchase and on the new e-ticket/itinerary receipt about the change in baggage fees that will result from a voluntary change in itinerary. Conditions associated with voluntary changes to a passenger's itinerary must be reflected in a carrier's tariff.

#### 4.4.8 Currency

Carriers will charge fees in Canadian dollars or local currency consistent with the applicable tariff as filed with the Agency.

## 5. What is not covered by the Approach

The Agency's *Interline Baggage Rules for Canada* do not extend to certain matters:

- The reasonability of the terms of each carrier's baggage rules, as distinct from their applicability to an interline journey. This IN does not address the reasonability of a tariff in accordance with ATR subsection 111(1) and the Montreal and Warsaw Conventions, other than as expressed in this IN. As per the ATR, the Agency requires all carriers to have reasonable baggage rules. In all circumstances where a carrier has established an unreasonable element in its baggage rules, that carrier will be held accountable to the Agency, not a participating carrier who applied the unreasonable rule to the itinerary.
- The applicability of terms and conditions other than baggage rules in an interline context (e.g. this approach does not address denied boarding, unaccompanied minors reservation requirements, etc.).
- Intra-line (online) travel (travel on the services of only one carrier excluding code share arrangements).
- Any itinerary involving charter carriers/operations (this type of operation is not typically involved in interline arrangements).
- Travel where the origin or ultimate ticketed destination is not Canada (e.g. only a connection or technical stop occurs in Canada).
- Travel conducted under a confidential contract between the carrier and the passenger.

## 6. Disclosure

Disclosure forms an important part of the Agency's *Interline Baggage Rules for Canada*. Due to the complexity of interline itineraries, the number of carriers potentially involved and the potential lack of information made available to passengers travelling to some destinations, consumers should be clearly informed of the baggage rules that apply to their travels. In the absence of disclosure, there may be confusion and misunderstanding, not only by passengers but also by carriers.

The Agency's approach with respect to disclosure ensures that passengers at the time of the ticket purchase and post ticket purchase, are made aware of the applicable baggage rules associated with their interline itinerary.

### 6.1 Who should disclose

There are important roles for most of the parties involved in the sale of an interline itinerary.

It begins with the selecting carrier who should make known or make sure arrangements are in place to make known to down line carriers which carrier's baggage rules apply. Down line carriers should be made aware that the passenger will be traveling with them and be familiar with and be prepared to respect the applicable baggage rules. Much of this information sharing is increasingly being achieved through automation and most carriers have access to or use automated baggage rules systems that are already in place.

Nevertheless, the ticketing carrier is ultimately responsible for the complete disclosure of the baggage rules applicable to a passenger's interline itinerary. Carriers should also ensure that their ticket sellers, as they are acting as agents of the carrier, can fulfill the disclosure obligations of the carrier by giving them access to the necessary tools and support.

## **6.2 When should disclosure to the consumer occur**

There are disclosure expectations before, at the time of, and after purchase. However, the specificity of the information expected to be provided will vary from the general to the more specific depending on the stage of the purchase process.

Ultimately, full disclosure of applicable baggage rules can only occur on any summary Web page at the end of an online purchase and on any e-ticket sold in Canada and will be largely dependent on the choices the consumer makes as to routes, stopovers, schedules (including aircraft used) and carriers.

## **6.3 Information to be disclosed**

### **6.3.1 Disclosure related to carriers' standard baggage allowances and charges on any summary page at the end of an online purchase and e-tickets**

For baggage rules provisions related to a passenger's 1<sup>st</sup> and 2<sup>nd</sup> checked bag and the passenger's carry-on baggage (i.e., the passenger's "standard" baggage allowance), carriers and ticket sellers acting on their behalf should disclose to the passenger the applicable carrier's baggage rules related to a passenger's "standard" baggage allowances and charges on any summary page at the end of an online purchase and on e-ticket confirmations that were sold in Canada.

The information to be disclosed to a passenger should include, the:

- a. name of the carrier whose baggage rules apply;
- b. passenger's free baggage allowance and/or applicable fees
- c. size and weight limits of the baggage, if applicable;
- d. terms or conditions that would alter or impact a passenger's standard baggage allowances and charges (e.g. frequent flyer status, early check-in, pre-purchasing baggage allowances with a particular credit card);
- e. existence of any embargoes that may be applicable to the passenger's itinerary; and,
- f. application of baggage allowances and charges (i.e., whether they are applied once per direction or if they are applicable at each stopover point).

Carriers should provide this information in text format on the passenger's e-ticket confirmation. Any fee information provided for carry-on bags and the first and second checked bag should be expressed as specific charges (i.e., not a range).

Carriers should also disclose in text format to the passenger any applicable terms or conditions that would alter or impact the standard baggage allowances and charges applicable to the passenger (e.g. frequent flyers status, early check-in, pre-purchasing baggage allowances with a particular credit card and so forth) so that the passenger can ascertain the charges that would apply to their itinerary.

Ticket sellers could communicate this information to the passenger via a hyperlink from the passenger's e-ticket to the specific location on a carrier's Web site or the ticket seller's Web site where such baggage information is available for review.

If the itinerary was purchased from a ticket seller in Canada, carriers should ensure that their ticket sellers are provided specific baggage information (i.e., the carrier whose baggage fees/rules apply) on the e-ticket confirmation.

Carriers are responsible for providing accurate and specific information regarding baggage allowances and fees on e-ticket confirmations sold in Canada, sufficient for passengers to determine the allowances and fees that apply to their travel. Carriers should also ensure that their tickets sellers have the necessary tools and support to meet their disclosure obligation.

In lieu of the standard baggage allowance information, carriers are encouraged to provide individualized information regarding baggage allowances and fees to passengers when possible.

### **6.3.2 Full disclosure of a carrier's baggage rules on its website**

Disclosure of all of a carrier's baggage rules information on its Web site provides a means for consumers and other air carriers to verify the applicable interline itinerary baggage rules.

Carriers should disclose on their Web sites, in a convenient and prominent location, a complete and a comprehensive summary of **all** of their baggage rules. This information includes not only those baggage allowances and charges related to a passenger's "standard" baggage allowance as set out above in Section 6.3.1 but also any other baggage rule information that a carrier may apply beyond its "standard" baggage allowance and charges provisions. Carriers can organize the display of this information as they deem appropriate. For instance, carriers may choose to provide a primary rule/fee page that includes links or subpages to different categories of fees to ease consumer research.

Baggage rule information provided on carriers' Web sites should be clear and specific to ensure that consumers who are seeking details about any aspect of a carrier's baggage rules can readily obtain and understand the information provided.

Ticket sellers may offer hyperlinks to carriers' baggage rules information via their own Web sites or via their customers' e-tickets to ensure that passengers have access to all of the details regarding the applicable carrier's baggage rules.

### **6.3.3 Websites subject to the Agency's approach**



Carriers and their ticket sellers with Web sites targeting Canadian consumers should disclose baggage rules on such Web sites. The Agency's Air Services Price Advertising: Interpretation Note, as amended from time to time, can be consulted to obtain further details on Web sites targeting Canadian consumers.

### **6.3.4 Additional information for consideration**

Given that baggage charges are considered by the Agency to be optional charges pursuant to the ATR, Part V.1 - Advertising Prices, they are subject to certain price transparency and disclosure requirements. As a result, any price disclosed to the passenger must be the total amount inclusive of any third party charges (e.g. taxes, etc.). Foreign originating travel is not subject to the provisions of Part V.1. Nevertheless, the Agency encourages carriers to disclose the total amount, inclusive of all taxes, fees and charges, even in these situations.

## **6.4 Tariff provisions related to disclosure**

Carriers should include their disclosure commitments in their filed tariffs.

## **6.5 Effective date, implementation and compliance**

The Agency's *Interline Baggage Rules for Canada* will be enforced for tickets issued on or after April 1, 2015. In particular, air carriers should have on file with the Agency tariffs in effect that reflect their interline baggage rules.

The Agency may assess a carrier's tariff on a case by case basis to determine whether it meets the standards of the ATR, and may do so on its own motion <sup>4</sup>.

Under Canadian law, the Agency has the authority to suspend, disallow or substitute any term and condition of carriage that it deems unclear, unjust and unreasonable, or prejudicial.

## **6.6 Additional information**

For additional information you may contact the Agency at:

Canadian Transportation Agency  
Ottawa, Ontario K1A 0N9  
Telephone: 1-888-222-2592  
TTY: 1-800-669-5575  
Facsimile: 819-997-6727

To seek feedback on any special circumstances or a particular situation, you may contact the Agency at:

**E-mail:** info@otc-cta.gc.ca

## **7. Appendices**

## 7.1 Appendix A: IATA Resolution 302

- Baggage Provisions Selection Criteria. IATA (International Air Transport Association) (International Air Transport Association) Resolution 302

## 7.2 Appendix B: IATA Resolution 302 as modified by the Agency's Reservation

### 7.2.1 Canadian Transportation Agency Reservation:

Alignment with the Canadian Transportation Agency's (Agency) *Interline Baggage Rules for Canada*, effective for tickets issued on or after April 1, 2015, requires:

- a. that a single set of baggage rules will be applied throughout a passenger's interline itinerary issued on a single ticket whose origin or ultimate ticketed destination is a point in Canada, regardless of stopovers.
- b. the carrier whose designator code is identified on the first flight segment of the passenger's interline ticket (i.e. the selecting carrier) will select the baggage rules which will apply for the entire interline itinerary
- c. for international itineraries, including domestic segments of an international itinerary, only the baggage rules of carriers with tariffs on file and in effect with the Agency are eligible to be selected for application per a) and b);
- d. a carrier's filed tariff must include:
  - i. i. The carrier's own baggage rules,
  - ii. ii. The circumstances/methodology that the carrier applies when it selects per a) and b) the baggage rules of any other carrier,
  - iii. iii. Have a statement that the carrier will apply, as its own, the rules chosen by the selecting carrier when the carrier is a down line carrier and a passenger is travelling on one of its flights as part of an interline itinerary; and,
  - iv. iv. The carrier's baggage disclosure undertaking.

If per provisions of this Resolution carriers otherwise agree, in part or in whole, to another baggage regime as an amendment or as an alternative to Resolution 302, such regime shall be filed in tariffs with the Agency at least 45 days before effectiveness. Such alternative approach to Resolution 302 must comply with the *Air Transportation Regulations* and for certainty shall be just and reasonable and shall, under substantially similar circumstances and conditions and with respect to all traffic of the same description, be applied equally to all that traffic. Any alternative regime should also respect the two fundamental principles of the Agency's *Interline Baggage Rules for Canada*, namely, 1) a seamless and transparent baggage regime for passengers and 2) a harmonized and practical regime for industry.

## 7.3 Appendix C: U.S. Rule 399.87 & U.S. DOT FAQs

- U.S. Rule 399.87: April 2011 Amendment Federal Register Version
- U.S. DOT FAQs: FAQ on Rule2 for Enhancing Airline Passenger Protections

## 7.4 Appendix D: Carriers who file tariffs with the Agency

The following is a list of carriers that currently file tariffs with the Canadian Transportation Agency applicable to scheduled international transportation to/from Canada. This list should be used for determining baggage rule selection as per the Interline Baggage Rules for Canada for transportation to/from Canada.

## 7.5 Appendix E: Agency approach examples

### 7.5.1 Domestic

#### 7.5.1.1 Domestic interline - Simple

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**YOW – XX – x/YHZ – BB – x/YYT – CC – YDF**

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The passenger is flying with Carrier XX from Ottawa to Halifax, connecting in Halifax onto Carrier BB to St. John's Nfld, connecting in St. John's with carrier CC to Deer Lake, Newfoundland.

✈️ As Carrier XX is the first carrier whose designator code is identified on the itinerary (the selecting carrier), it will apply its rules (Carrier XX) to the entire itinerary. The MSC methodology does not apply to domestic interline transportation.

#### 7.5.1.2 Domestic interline – code sharing

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**YOW – BB\* – x/YHZ – BB – x/YYT – CC – YDF**

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Where carrier BB\* is the marketing carrier, Carrier XX is the operating carrier

The passenger is flying with Carrier BB from Ottawa to Halifax, connecting in Halifax onto Carrier BB to St. John's Nfld, connecting in St. John's with carrier CC to Deer Lake, Newfoundland.

✈️ As Carrier BB is the first carrier whose designator code is identified on the itinerary (the selecting carrier), it will apply its rules (Carrier BB) to the entire itinerary. The MSC methodology does not apply to domestic interline transportation.

### 7.5.2 Transborder

**ⓘ Note:** A tariff must be on file with both the Agency and the U.S. DOT in order for the appropriate baggage rules to apply to an itinerary and to meet both countries' regulatory requirements.

#### 7.5.2.1 Transborder itinerary - Simple

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**YTZ – XX – BOS – BB – YOW**

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The passenger is flying with Carrier XX from Toronto to Boston.

The return flight, the passenger is flying with Carrier BB from Boston to Ottawa

✈️ As Carrier XX is the selecting carrier it may choose to:

- a. Apply its own rules (Carrier XX); or,
- b. Apply the MSC methodology to the itinerary which would result in Carrier XX rules applying to the entire itinerary since Carrier XX is the first carrier to cross an international boundary.

### 7.5.2.2 Transborder itinerary - more complex

**YHM – XX – x/YTZ – BB – x/MCO – BB – PSP – CC – x/YYC – XX – YHM**

The passenger is flying with Carrier XX from Hamilton to Toronto, connecting in Toronto and Orlando with Carrier BB to Palm Springs.

The return flight, the passenger is flying with Carrier CC from Palm Springs to Hamilton, connecting in Calgary

✈️ As Carrier XX is the selecting carrier it may choose to:

- a. Apply its own rules (Carrier XX); or,
- b. Apply the MSC methodology to the itinerary which would result in Carrier BB rules applying to the entire itinerary since Carrier BB is the first carrier to cross an international boundary.

### 7.5.2.3 Transborder itinerary- code-sharing

**YVR – CC – SEA – DD - YVR**

Where Carrier CC is the marketing carrier; Carrier DD is the operating carrier

Where Carrier DD is the marketing carrier; Carrier CC is the operating carrier

The passenger is flying with Carrier CC from Vancouver to Seattle.

The return flight, the passenger is flying with Carrier DD from Seattle to Vancouver

✈️ As Carrier CC is the selecting carrier it may choose to:

- a. Apply its own rules (Carrier CC); or,
- b. Apply the MSC methodology to the itinerary which would result in Carrier CC rules applying to the entire itinerary since Carrier CC is the first carrier to cross an international boundary.

## 7.5.3 International

### 7.5.3.1 International interline itineraries – origin Canada (simple)

**YWG – CC – x/YYZ – CC – x/FRA – DD – GVA – DD – LON – CC – x/YYZ – CC – YWG**

The passenger is flying with Carrier CC from Winnipeg to Geneva (connecting in Toronto with Carrier CC and Frankfurt with Carrier DD).

On the return, the passenger is flying with Carrier DD from Geneva to London (stopping in London), then with Carrier CC flying from London to Winnipeg (connecting in Toronto).

Carriers CC and DD have tariffs on file with Canada

✈️ As Carrier CC is the selecting carrier it may choose to:

- a. Apply its own rules (Carrier CC); or,
- b. Apply the MSC methodology to the itinerary which would result in Carrier CC rules applying to the entire itinerary since Carrier CC is the first carrier to cross between IATA tariff conference areas.

**YWG – XX – x/YYZ – BB – AMS – CC – MAD – CC – x/AMS – BB – x/YYZ – XX – YYC**

The passenger is flying with Carrier XX from Winnipeg to Toronto, connecting in Toronto with Carrier BB to Amsterdam (stopping over in AMS). The Passenger then flies with Carrier CC from Amsterdam to Madrid (stopping in MAD)

On the return flights home the passenger flies with Carrier CC from Madrid to Amsterdam and then connecting in Amsterdam onto Carrier BB to Toronto, connecting in Toronto onto Carrier XX to Calgary.

Carriers XX, BB, CC have tariffs on file with Canada

✈️ As Carrier XX is the selecting carrier it may choose to:

- a. Apply its own rules (Carrier XX); or,
- b. Apply the MSC methodology to the itinerary which would result in Carrier BB rules applying to the entire itinerary since Carrier BB is the first carrier to cross between IATA tariff conference areas.

**7.5.3.2 International interline itinerary – origin international (simple)****SHA – XX – HKG – BB – x/TPE – BB – YVR – XX – SHA**

The passenger is flying with Carrier XX from Shanghai to Hong Kong (stopping over in HKG). Then the passenger is flying with Carrier BB from Hong Kong connecting in Taipei to Vancouver (stopping in Vancouver).

The return flight is with Carrier XX from Vancouver to Shanghai.

Carriers XX and BB have tariffs on file with Canada.

✈️ As Carrier XX is the selecting carrier it may choose to:

- a. Apply its own rules (Carrier XX); or,
- b. Apply the MSC methodology to the itinerary which would result in Carrier BB rules applying to the entire itinerary since Carrier BB is the first carrier to cross between IATA tariff conference areas.

### 7.5.3.3 International interline itinerary - code-sharing example

**YWG – BB\* – x/YYZ – BB – AMS – CC\*\* – MAD – CC\*\* – x/AMS – BB – x/YYZ – BB\* – YYC**

Where Carrier BB\* is the marketing carrier; Carrier XX is the operating carrier.

Where Carrier CC\*\* is the marketing carrier; Carrier DD is the operating carrier.

The passenger is flying with Carrier BB from Winnipeg to Toronto, connecting in Toronto with Carrier BB to Amsterdam (stopping over in AMS). The Passenger then flies with Carrier CC from Amsterdam to Madrid (stopping in MAD).

On the return flights home the passenger flies with Carrier CC from Madrid to Amsterdam and then connecting in Amsterdam onto Carrier BB to Toronto, connecting in Toronto onto Carrier BB to Calgary.

Carriers XX, BB, CC have tariffs on file with Canada

✈ As Carrier BB is the selecting carrier it may choose to:

- a. Apply its own rules (Carrier BB); or,
- b. Apply the MSC methodology to the itinerary which would result in Carrier BB rules applying to the entire itinerary since Carrier BB is the first carrier to cross between IATA tariff conference areas.

### 7.5.3.4 International interline itinerary – stopover example

**YEG–XX–x/YYZ–XX–x/FRA–BB–BKG–CC–SYD–DD–MEL–DD–x/SYD–XX–x/YVR–XX–YEG**

Passenger is flying on Carrier XX from Edmonton to Toronto, connecting in Toronto onto Carrier XX to Frankfurt, connecting in Frankfurt on Carrier BB to Bangkok, stopping over in Bangkok, flying on carrier CC from Bangkok to Sydney, stopping over in Sydney, and then flying on Carrier DD from Sydney to Melbourne, stopping over in Melbourne

On the return, passenger is flying on Carrier DD from Melbourne to Sydney, connecting in Sydney onto Carrier XX to Vancouver, and then connecting in Vancouver onto Carrier XX to Edmonton.

Carriers XX, BB, CC, and DD have tariffs on file with Canada.

✈ As Carrier XX is the selecting carrier it may choose to:

- a. Apply its own rules (Carrier XX); or,
- b. Apply the MSC methodology to the itinerary which would result in Carrier XX rules applying to the entire itinerary since Carrier XX is the first carrier to cross between IATA tariff conference areas.

### 7.5.3.5 International interline itinerary - ultimate ticketed point example

**MOW – XX – x/FCO – BB – x/YUL – CC – YYZ – DD – EWR – EE – MOW**

Passenger is flying with Carrier XX from Moscow to Rome, connecting in Rome onto Carrier BB to Montreal, connecting in Montreal onto Carrier CC to Toronto (stopping over in Toronto). The passenger then flies with Carrier DD from Toronto to Newark (stopping in Newark).

On the return flight, the passenger flies with Carrier EE from Newark to Moscow.

Carriers XX, BB, CC, DD and EE have tariffs on file with Canada.

✈️ As Carrier XX is the selecting carrier it may choose to:

- a. Apply its own rules (Carrier XX); or,
- b. Apply the MSC methodology to the itinerary which would result in Carrier BB rules applying to the entire itinerary since Carrier BB is the first carrier to cross between IATA tariff conference areas.

✈️ In situations where a passenger's origin is a non-Canadian point and the itinerary includes at least one stop in Canada, as well as at least one stop outside of Canada. If the stop in Canada is the farthest ticketed point and the stop is more than 24 hours the Agency would consider the ultimate ticketed destination to be Canada. As a consequence, its *Interline Baggage Rules for Canada* applies.

**7.5.3.6 International interline itinerary - no tariff filed for 1<sup>st</sup> carrier on itinerary****MVD – XX – x/EZE – BB – x/YYZ – CC – YVR**

Passenger is flying with Carrier XX from Montevideo to Buenos Aires, connecting in Buenos Aires on Carrier BB to Toronto and then connecting in Toronto onto Carrier CC to Vancouver.

Carriers BB and CC have tariffs on file with Canada. Carrier XX does not have a tariff on file with Canada.

✈️ Under the Agency's approach Carrier XX would normally be the selecting carrier on such an interline itinerary, however, Carrier XX does not have a tariff on file with the Agency and as a consequence may not be the selecting carrier.

✈️ The selecting carrier becomes the next down line carrier who does have a tariff on file with the Agency. That carrier is Carrier BB. Carrier BB can choose to:

- a. Apply its own rules (Carrier BB); or,
- b. Apply the MSC methodology to the itinerary which would result in Carrier BB rules applying to the entire itinerary since Carrier BB is the first carrier to cross between IATA tariff sub-conference areas.

**7.6 Appendix F: Terminology****Carrier definitions (various)**

**Carrier**

For the purposes of the Agency's approach to interline baggage, a carrier includes Canadian and foreign carriers, licensed and unlicensed providing transportation by air to, from and within Canada where Canada is the origin or the ultimate ticketed destination.

**Down line carrier**

any carrier, other than the selecting carrier, who is identified as providing interline transportation to the passenger by virtue of the passenger's ticket

**Marketing carrier**

the carrier that sells flights under its code.

**Most significant carrier (MSC)**

is determined by a methodology, established by IATA (Resolution 302) (see [Appendix 7.1.1](#)), which establishes, for each portion of a passenger's itinerary where baggage is checked through to a new stopover point, which carrier will be performing the most significant part of the service. For travelers under the Resolution 302 system, the baggage rules of the MSC will apply. For complex itineraries involving multiple checked baggage points, there may be more than one MSC, resulting in the application of differing baggage rules through an itinerary.

**Most significant carrier (MSC) – IATA Resolution 302 as conditioned by the Agency**

In this instance, the MSC is determined by applying IATA's Resolution 302 methodology as conditioned by the Agency. The Agency's reservation has stipulated that only a single set of baggage rules may apply to any given interline itinerary. The aim of the Agency's reservation is to allow the selecting carrier to use the MSC methodology to determine which carrier's baggage rules apply to an international interline itinerary to or from Canada, while reinforcing the role of tariffs in the determination of which carrier's rules apply.

**Operating carrier**

the carrier that operates the actual flight

**Participating carrier(s)**

includes both the selecting carrier and down line carriers who have been identified as providing interline transportation to the passenger by virtue of the passenger's ticket.

**Selected carrier**

the carrier whose baggage rules apply to the entire interline itinerary.

**Selecting carrier**

the carrier whose designator code is identified on the first flight segment of the passenger's ticket at the beginning of an interline itinerary issued on a single ticket whose origin or ultimate destination is in Canada.

**Other Terminology****Airline designator code**



an identification code comprised of two-characters which is used for commercial and traffic purposes such as reservations, schedules, timetables, ticketing, tariffs and airport display systems. Airline designators are assigned by IATA. When this code appears on a ticket, it reflects the carrier that is marketing the flight, which might be different from the carrier operating the flight.

## **Baggage**

includes both checked and carry-on baggage.

## **Baggage rules**

the conditions associated with the acceptance of baggage, services incidental to the transportation of baggage, allowances and all related charges. For example, baggage rules should address the following topics:

- The maximum weight and dimensions of passenger bags, if applicable, both checked and unchecked;
- The number of checked and unchecked passenger bags that can be transported and the applicable charges;
- Excess and oversized baggage charges;
- Charges related to check-in, collection and delivery of checked baggage;
- Acceptance and charges related to special items, e.g. surf boards, pets bicycles, etc.
- Baggage provisions related to prohibited or unacceptable items, including embargoes
- Terms or conditions that would alter or impact the baggage allowances and charges applicable to passengers (e.g. frequent flyer status, early check in, pre-purchasing baggage allowances with a particular credit card);and,
- Other rules governing treatment of baggage at stopover points, including passengers subject to special baggage allowances or charges, etc.

## **Code share**

an arrangement between air carriers in which one air carrier (marketing carrier) sells transportation in its name (under its code) on flights operated by the partner air carrier (operating carrier). Transportation involving a code share is considered interline travel.

## **Conference areas**

divisions of the world by the International Air Transportation Association (IATA) used to establish fares. There are three Conference areas, which roughly correspond as follows:

1. North and South America;
2. Europe Africa and the Middle East; and
3. Asia and the Pacific.

## **Interline agreement**

an agreement between two or more carriers to co-ordinate the transportation of passengers and their baggage from the flight of one air carrier to the flight of another air carrier (through to the next point of stopover).

**Interline itinerary**

all flights reflected on a single ticket involving multiple air carriers. Only travel on a single ticket is subject to the Agency's approach provided the origin or the ultimate ticketed destination is a point in Canada.

**Interline travel**

travel involving multiple air carriers listed on a single ticket that is purchased via a single transaction.

**Single ticket**

a document that permits travel from origin to destination. It may include interline/code-share and intra-line segments. It may also include end-to-end combinations (i.e. stand alone fares that can be bought separately but combined together to form one price).

**Summary page at the end of an online purchase**

any page on a carrier's Web site which summarizes the details of a ticket purchase transaction just after the passenger has agreed to purchase the ticket from the carrier and has provided a form of payment

**Tariff**

a tariff is the contract of carriage between an air carrier and its passengers. It contains enforceable provisions respecting passengers' rights and obligations, as well as the air carrier's rights and responsibilities towards the passenger. It must include the applicable baggage rules and charges of the air carrier.

**Ticket seller**

any person that sells air transportation and issues tickets on behalf of a carrier. This excludes an employee of an air carrier.

**Ultimate ticketed destination**

In situations where a passenger's origin is a non-Canadian point and the itinerary includes at least one stop in Canada, as well as at least one stop outside of Canada. If the stop in Canada is the farthest checked point and the stop is more than 24 hours, the Agency would consider the ultimate ticketed destination to be Canada.

**7.7 Appendix G : Legislative reference**

Air carriers are required to set their policies in their tariff, including provisions respecting interline baggage rules and these policies must be clear, reasonable, not unduly discriminatory and not prejudicial.

The Agency's jurisdiction in matters respecting international tariffs is set out, in part, in Part V, Tariffs, of the *Air Transportation Regulations*, SOR/88-58, as amended (ATR).

Section 110 of the *ATR* provides, *in part*, that:

110(1) Except as provided in an international agreement, convention or arrangement respecting civil aviation, before commencing the operation of an international service, an air carrier or its agent shall file with the Agency a tariff for that service, including the terms and conditions of free and reduced rate transportation for that service, in the style, and containing the information, required by this Division

...

110(4) Where a tariff is filed containing the date of publication and the effective date and is consistent with these Regulations and any orders of the Agency, the tolls and terms and conditions of carriage in the tariff shall, unless they are rejected, disallowed or suspended by the Agency or unless they are replaced by a new tariff, take effect on the date stated in the tariff, and the air carrier shall on and after that date charge the tolls and apply the terms and conditions of carriage specified in the tariff.

110(5) No air carrier or agent thereof shall offer, grant, give, solicit, accept or receive any rebate, concession or privilege in respect of the transportation of any persons or goods by the air carrier whereby such persons or goods are or would be, by any device whatever, transported at a toll that differs from that named in the tariffs then in force or under terms and conditions of carriage other than those set out in such tariffs.

Section 111 of the ATR provides, in part, that:

111(1) All tolls and terms and conditions of carriage, including free and reduced rate transportation, that are established by an air carrier shall be just and reasonable and shall, under substantially similar circumstances and conditions and with respect to all traffic of the same description, be applied equally to all that traffic.

...

(2)(c) No air carrier shall, in respect of tolls or the terms and conditions of carriage, subject any person or other air carrier or any description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatever.

...

(3) The Agency may determine whether traffic is to be, is or has been carried under substantially similar circumstances and conditions and whether, in any case, there is or has been unjust discrimination or undue or unreasonable preference or advantage, or prejudice or disadvantage, within the meaning of this section, or whether in any case the air carrier has complied with the provisions of this section or section 110.

In addition, paragraph 122(a) of the ATR provides, in part, that:

Every tariff shall contain:

(a) the terms and conditions governing the tariff generally, stated in such a way that it is clear as to how the terms and conditions apply to the tolls named in the tariff;

[...]

(c) the terms and conditions of carriage, clearly stating the air carrier's policy in respect of at least the following matters, namely,

[...]

(ix) method of calculation of charges not specifically set out in the tariff

## 7.8 Appendix H: Sample Tariff Provisions developed by Agency staff

- Rule 54: Interline Baggage Acceptance
- Rule 55: Baggage Acceptance

---


### Notes

- 1 ..... Matters related to liability regarding baggage matters are addressed in the Montreal Convention and any other applicable Conventions. This IN does not address nor does it affect matters related to liability.
- 2 ..... With one exception, as laid out in section 4.3.2.
- 3 ..... The Sample Tariff does not represent an Agency endorsement or approval of its terms. If a carrier chooses to adopt the Sample Tariff as its own, in whole or in part, it can still be subject to Agency review and complaints filed pursuant to the CTA or the ATR. The Agency, upon investigating a complaint or on its own motion, could find a carrier's tariff provision to be unreasonable and require a carrier to amend its tariff accordingly even if the carrier's tariff reflects the wording of the Sample Tariff.
- 4 ..... The Agency's jurisdiction with respect to own motion authority is only applicable to international services

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#### Publication information

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**Date modified:**

2015-10-02

Exhibit B of the Affidavit of Meredith Desnoyers  
affirmed on July 14, 2021

A handwritten signature in blue ink, reading "Elysia Van Zeyl". The signature is written in a cursive style with a large initial "E".

---

Elysia Van Zeyl (LSUC #53499H)



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# Notice to Industry: Applications for Exemptions from Section 59 of the Canada Transportation Act, S.C., 1996, c. 10, as amended (CTA)

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- [2. Legislative references to the CTA](#)
- [3. Exemptions from section 59](#)
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- [6. Exercise of discretion](#)

⚠ The Canadian Transportation Agency (Agency) is the economic regulator of Canada's federal transportation network. It publishes guidance material advising of changes to or clarifications of Agency processes or requirements. Should there be any discrepancy between the content of this Notice and the CTA and associated regulations, the latter prevail.

## 1. Purpose

This notice to industry outlines the Agency's approach to considering applications for exemptions from section 59 of the CTA.

This notice is not intended to address exemption requests related to temporary licences issued under subsection 78(2) of the CTA, where an exemption from section 59 is required in order to continue selling the service beyond the expiry date of the licence. For any questions in this regard, you may contact the [Manager of Air Licensing and Charters](#).

## 2. Legislative references to the CTA

Section 59 states:

No person shall sell, cause to be sold or publicly offer for sale in Canada an air service unless, if required under this Part, a person holds a licence issued under this Part in respect of that service and that licence is not suspended.

Subsection 80(1) states:

The Agency may, by order, on such terms and conditions as it deems appropriate, exempt a person from the application of any of the provisions of this Part or of a regulation or order made under this Part where the Agency is of the opinion that

- a. the person has substantially complied with the provision;
- b. an action taken by the person is as effective as actual compliance with the provision; or
- c. compliance with the provision by the person is unnecessary, undesirable or impractical.

### **3. Exemptions from section 59**

Section 59 of the CTA was introduced in 1996 to protect consumers by prohibiting the sale of an air service by any person who does not hold a licence for that service. Therefore, if an air carrier is ultimately not licensed, or licensed in time, the consumer will not be left out of pocket or experience inconvenience or undue hardship because the carrier cannot operate the service. This prohibition is broad and applies to air carriers and any other persons, including Canadians and foreigners, for passenger and cargo transportation services, as well as scheduled and non-scheduled services.

However, the Agency recognizes that there are circumstances where the interests of consumers would not be adversely affected by allowing an air carrier to sell an air service before it obtains the necessary licence(s). Therefore, Canadian and foreign carriers proposing to operate publicly available air services can apply to the Agency for an exemption from section 59 of the CTA.

#### **3.1 Criteria for granting exemption**

The Agency deals with section 59 exemption requests using a risk-based approach that gives primary consideration to the consumer protection intent of the provision, taking into account the facts and circumstances of each application.

Before granting an exemption, the Agency must be satisfied that the applicant has demonstrated a high probability of obtaining the required licence(s) prior to the commencement of a service. In the event that the applicant does not obtain the appropriate licence(s), it must provide:

1. alternative air transportation at no additional cost to the passengers; or
2. a full refund if alternative arrangements are not possible or acceptable to the passengers.

#### **3.2 Burden of proof**

An exemption to a legislative requirement is not an entitlement.

The onus is on the applicant to demonstrate that compliance with section 59 is unnecessary based on the criteria laid out in 3.1 above and to provide the Agency with the information in support of its application.

## 4. Agency's considerations

### 4.1 Considerations applicable to Canadian and foreign applicants

#### **Does the applicant already hold a licence issued by the Agency?**

The Agency's position is that established carriers that already hold a similar licence with the Agency pose a minimal risk and are likely to obtain a licence for the proposed air service as they already meet the requirements to hold a licence, albeit for another air service.

The Agency will consider the nature of the licensing requirements already met by the carrier in the past. If the requirements to obtain the licence for the proposed air service are similar, there is less risk for passengers that the carrier will not meet the requirements.

#### **Does the applicant have an air operator certificate issued by Transport Canada?**

In many instances, carriers that apply for section 59 exemptions do not yet hold the necessary Canadian aviation document from Transport Canada – the air operator certificate (AOC) – that is required to obtain a licence. The process of obtaining an AOC can be time consuming, in particular if a base inspection and subsequent follow-ups are required. There are no guarantees that a carrier will obtain an AOC in a timely manner.

The Agency may consider what steps the carrier has taken to obtain its AOC and the likelihood of the AOC being obtained in time for the Agency to issue a licence before the proposed start date.

Specific issues that the Agency might consider include:

- Has the applicant submitted its application to Transport Canada?
- If Transport Canada has considered that a base inspection is necessary, has it been scheduled?
- If a base inspection has been completed, what type of follow-up is necessary?
- What are the anticipated timelines for Transport Canada to conclude?
- Has Transport Canada expressed any concerns in issuing an AOC by these anticipated timelines?
- Will the issuance of the AOC within these timelines provide sufficient time for the Agency to issue the licence (provided all the other requirements are met) before the proposed start date?

In some cases, a carrier may have already received an AOC for an operation of a similar nature and is simply seeking to expand this authority. In this situation, there would be less risk of a lengthy approval process.

While the onus is on the applicant to provide evidence and assurances that the AOC will be issued in time, the Agency may validate any information with Transport Canada. If there are inconsistencies between the applicant's submission and the information from Transport Canada, the Agency will inform the applicant and provide an opportunity to respond.



## **Does the applicant have liability insurance coverage?**

If an applicant does not already hold a licence with the Agency, assurance must be provided that the insurance requirement will be met.

The applicant must either file a certificate of insurance or, at minimum, provide a written confirmation from its insurer that it already holds the prescribed liability insurance coverage or that it has secured such coverage.

## **How far in advance of the anticipated start date of the air service does the applicant intend to sell the service before receiving a licence?**

If an applicant intends to sell an air service long before the proposed start date (and before receiving a licence), it may pose an increased risk to consumers as more tickets may be sold before the carrier is licensed.

However, if an applicant provides strong assurances that the licensing requirements will be met well in advance of the proposed start date, a long period of advance sales would likely pose less concern.

## **For a scheduled international air service, is there an agreement in place between Canada and the foreign country?**

If there is an agreement between Canada and a foreign country, it indicates a national policy objective to encourage expanded air services between Canada and that country. As a result, there is less risk that a licence will not be issued.

## **What measures does the carrier have (or will have) in place to accommodate passengers if the licence is not issued (or not issued in time)?**

If the carrier is likely to obtain the required licence before the proposed start of operations, the risk to consumers is negligible and compliance with section 59 is not necessary.

While the Agency will seek assurances that this is the case, the Agency also recognizes that it is not possible to get absolute assurance. The Agency will also consider what measures the carrier has (or will) put in place to accommodate passengers if the licence is not obtained. This could include offering timely alternative transportation with another carrier or reimbursement.

## **4.2 Additional considerations for Canadian applicants**

### **Has the applicant met the Canadian status requirement?**

Before issuing a licence, the Agency is responsible for determining whether an applicant is Canadian.

This process must be completed before a section 59 exemption application can be approved, as it will have a direct impact on if and when the licence requirements are met.

If a Canadian applicant already holds an Agency licence, this determination has already been made and is not a consideration.

## **Has the applicant met all financial requirements (if applicable)?**

Under certain circumstances, an applicant must meet financial requirements when applying for a licence that authorizes the operation of an air service using medium or large aircraft.

The purpose of this requirement is essentially the same as section 59 – to ensure that air passengers are not being left out of pocket (in this case, as a result of an air carrier not being financially solvent in the critical first months of operation).

If an applicant has to meet financial requirements, this part of the process must be completed before a section 59 exemption application can be approved, as it will have a direct impact on if and when the licence requirements are met.

## **For an international air service, has the applicant been designated by the Government of Canada to operate the service?**

In its application, the applicant must provide evidence that it is designated by the Minister of Transport, Infrastructure and Communities as eligible to hold a scheduled international licence.

Non-designated carriers cannot obtain a scheduled international licence.

## **4.3 Additional considerations for foreign applicants**

### **For a scheduled international air service, has the applicant been designated by the government of its home country to operate the service?**

A foreign applicant for a scheduled international licence must be designated by the government of its state, or an agent of that government, to operate an air service under the terms of an agreement or arrangement.

This designation is part of the basic requirements for a licence – a scheduled international licence will not be issued unless the carrier is designated.

### **Does the applicant hold the equivalent licence issued by its home country?**

When applying for a licence, foreign carriers must provide the Agency with a copy of the equivalent licence issued by their home country.

This is another basic licence requirement which will be taken into account when reviewing section 59 exemption applications.

## **4.4 Increased risks associated with non-scheduled international services**

Carriers that are designated and authorized in accordance with the terms of an Agreement are typically established in the air transportation industry and have demonstrated, to the satisfaction of their government, the capacity to operate the scheduled international air service. These carriers would likely

have the means to reimburse passengers or coordinate alternative travel arrangements if a licence was not issued.

However, if a carrier proposes to offer only non-scheduled international air services, there is a greater chance the carrier may not be as well established in the industry. It is also likely that the carrier has not been subjected to the same level of scrutiny by its government, compared to a carrier proposing to obtain a designation for scheduled international services. Therefore, in the event a licence is not issued (or not issued in time), there are fewer assurances that the carrier could offer a refund or alternative arrangements.

This added risk factor needs to be addressed in the application and will be taken into consideration by the Agency when assessing the applicant's submission.

## **5. Conditions normally attached to section 59 exemptions**

When granting section 59 exemptions, the Agency has the power under subsection 80(1) to impose conditions.

The Agency will normally subject the carrier to the following conditions:

- All advertising in any media, whether written, electronic or telecommunications, shall include a statement that the air service is subject to government approval, unless and until the section 59 exemption expires following the issuance of a licence. All prospective passengers shall be made aware, before a reservation is made or a ticket issued, that the air service is subject to government approval;
- The applicant shall apply its published tariffs, on file with the Agency and in effect, to sales of transportation for each scheduled point;
- The exemption does not relieve the applicant from the requirement to hold a licence in respect of the service to be provided and, accordingly, no flights shall be operated until the appropriate licence authority has been granted;
- Should the licence not be issued or not issue by the time an air service sold to a passenger is to be used, the applicant shall arrange to provide alternative air transportation by an appropriately licensed air carrier, at no additional cost for all passengers who have made reservations with the applicant. If such arrangements are not possible or acceptable to the passenger, the applicant shall arrange to provide a full refund of all monies paid by the passenger.

The Agency could also, at its own discretion, attach other conditions that it deems appropriate in the circumstances.


## **6. Exercise of discretion**

While guided by the above general principles, the Agency will retain full discretion to address the facts and circumstances of each application as it sees appropriate.

The Agency reserves the rights to remove an exemption when a carrier does not comply with the conditions of the exemption, or when the Agency deems it otherwise necessary.

## Publication information

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**Date modified:**  
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Exhibit C of the Affidavit of Meredith Desnoyers  
affirmed on July 14, 2021

A handwritten signature in blue ink, reading "Elysia Van Zeyl". The signature is written in a cursive style with a large initial "E".

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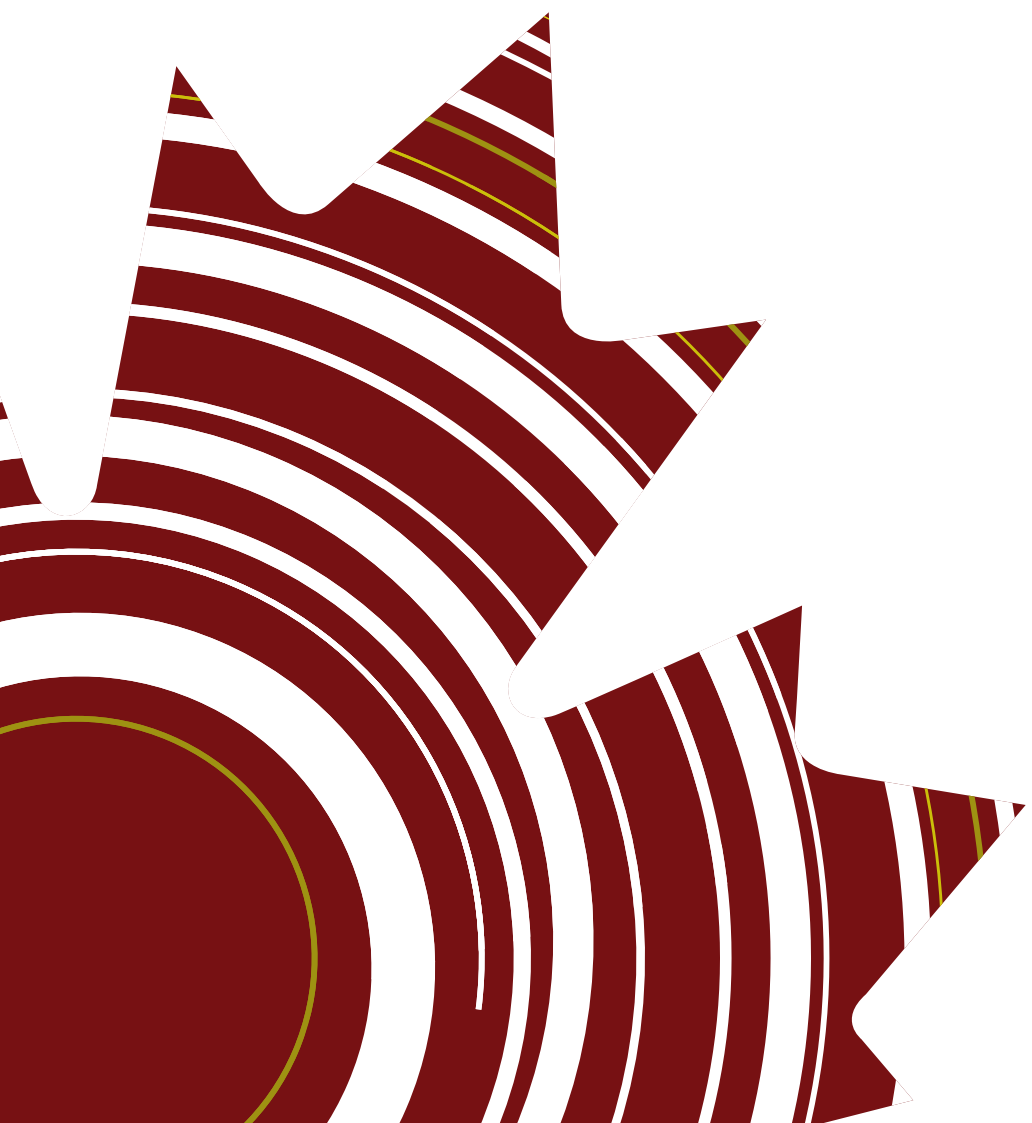
Elysia Van Zeyl (LSUC #53499H)



Office  
des transports  
du Canada

Canadian  
Transportation  
Agency

# Guide to Canadian Ownership and Control in Fact for Air Transportation



Canada 

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## Introduction

This Guide explains the Canadian ownership requirement for obtaining a licence to operate an air service from the Canadian Transportation Agency (Agency), and for maintaining such a licence.

It explains how the Agency interprets and applies the legal requirement for an air licence holder to be "Canadian" as defined in the [Canada Transportation Act](#) (Act).

This document is intended to support the Act, which is the definitive source for licence applicants and licence holders regarding the Canadian ownership requirement. Using this document and the examples it provides is not mandatory and nothing in this document supersedes the Act.

## Legislative Authority

The Agency is an independent, quasi-judicial tribunal and regulator that has, with respect to all matters necessary for the exercise of its jurisdiction, all the powers of a superior court.

The Agency oversees the very large and complex [Canadian transportation system](#), which is essential to the economic and social well-being of Canadians.

The Agency is responsible for ensuring all air carriers licensed to provide domestic air services meet the Canadian ownership requirements set out in the Act. These requirements state that air service licensees must be owned and controlled "in fact" by Canadians. The Agency uses business and other information to determine whether a licence holder or applicant is "in fact" Canadian. Those who wish to apply for a determination should also consult the [Application Process for Canadian Ownership Determinations](#).

The Agency conducts monitoring and enforcement activities to ensure ongoing compliance with licensing requirements.

## Definition of Canadian

As of June 27, 2018, "Canadian" is defined within [subsection 55\(1\) of the Act](#).



Refer to the Act for the complete definition, which includes:

- (a) a Canadian citizen or a permanent resident;
- (b) a government in Canada; and
- (c) a corporation;
- (d) limited partnership, partnership, proprietorship or other legal form of business enterprise where the following apply:
  - It must be incorporated or formed under the laws of Canada or a province (corporate entities only);
  - At least 51 percent of its voting interests must be owned and controlled by Canadians;
    - No single non-Canadian owns or controls, directly or indirectly, more than 25 percent of the voting interests in that corporation (either individually or in affiliation with another person). In addition, no more than 25 percent of the voting interest in a Canadian carrier is owned by foreign air carriers (either individually or in affiliation); and
  - It must be controlled in fact by Canadians.

Failure to meet these criteria will result in being considered non-Canadian.

*Note: Where the ownership of an entity resides with one or more corporations or other entities, the definition of Canadian will also be applied to those entities. If they are, in turn, owned by other entities, the Agency must determine who controls the company up to the top of the ownership chain, applying the definition of Canadian at each step.*

## **Consequences of Failing to Demonstrate Canadian Status**

If the Agency determines that a new licence applicant doesn't meet the Canadian ownership requirement, the licence application will be denied. If the Agency determines that an existing licensee no longer meets the requirement, the Agency must suspend or cancel the licence.

## Further Details

See [Annex A](#) for additional information about demonstrating that your corporation or other business enterprise is owned by Canadians.

See [Annex B](#) for the principles that guide the Agency's determination of "control in fact."

See [Annex C](#) for the factors the Agency considers when determining "control in fact."

See [Annex D](#) for examples of the Agency's previous Canadian ownership determinations.

## **Annex A: Canadian Ownership Requirements**

There are three requirements that must be met to be considered Canadian and therefore to obtain or maintain an air service licence:

1. [Incorporation or Formation Requirement](#);
2. [Voting Interest Requirement](#); and
3. [Control in Fact Requirement](#).

These three requirements are detailed below.

### **Requirement No. 1: Incorporation or Formation Requirement**

For a corporation, partnership, proprietorship or other form of business enterprise to be Canadian, it must be incorporated or formed under the laws of Canada or one of its provinces.

### **Requirement No. 2: Voting Interest Requirement**

For an enterprise to be considered Canadian, at least 51 percent of the voting interests need to be both owned and controlled by Canadians.

- "Voting interests" means voting securities and the votes assigned to those securities.
- "Owned by Canadians" means the securities are owned on a beneficial ownership basis by Canadians; it is not enough for them to be registered to Canadians.
- "Controlled by Canadians" means the votes attached to the securities should be exercisable by their Canadian beneficial owners.

No single non-Canadian may hold more than 25 percent of the voting interests, directly or indirectly, whether individually or in affiliation with another person. In addition, for any non-Canadian shareholders that have the authority to provide an air service in any jurisdiction (i.e. whether in Canada or abroad), the sum total of their voting interests cannot exceed 25 percent, either individually or in affiliation with another person.

## Affiliation

The term "affiliation" as it concerns two or more persons who may act together to exercise their voting interests, is defined in [subsection 55\(2\)](#) of the Act. Refer to the Act to see the complete list of circumstances in which corporations, partnerships, or sole proprietorships are considered "affiliated," which includes:

- one of them is a subsidiary of the other,
- both are subsidiaries of the same corporation, or
- both are controlled by the same person, corporation, or subsidiary of a corporation.

Also, if two corporations are affiliated with the same corporation at the same time, they are deemed to be affiliated with each other.

Note that the Act provides extensive detail on "affiliation," including the circumstances in which a corporation is controlled by a person other than Her Majesty in right of Canada or a province. Refer to the [Act](#) for the complete information.

## Publicly traded corporations

For an entity that lists its securities on a publicly-traded stock exchange, the percentage of voting interests owned by Canadians can be subject to constant fluctuations. To ensure that the entity continues to meet the ongoing requirements to be Canadian, the Agency may require the entity to put in place one of the following:

- a security constraint and control system, which is a system that restricts any purchase or transfer of the corporation's securities if it would result in a breach of the voting interest requirement; or
- a variable voting system. This is when non-Canadians are allowed to hold only variable voting shares. This results in the voting interest requirement being respected, because when the percentage of the variable voting shares exceeds the maximum allowable percentage of the total voting shares, the vote attached to each variable voting share automatically decreases to ensure that the maximum allowable threshold isn't exceeded.

## Requirement No. 3: Control In Fact Requirement

### Overview

To be Canadian, the company needs to be "controlled in fact" by Canadians.

Control in fact (also known as *de facto* control) differs from control in law (also known as *de jure* or legal control). Control in law is generally shown by owning enough shares to carry the right to a majority of votes. Control in fact goes beyond control in law as it includes the ability to exert control by any direct or indirect influence.

Although the term is not defined in the Act, the Agency considers control in fact to be:

- the power, whether exercised or not, to control the strategic decision-making activities of an enterprise and to manage and run its day-to-day operations.

Those who may have the power to influence a company's decisions can include minority owners, designated representatives, financial institutions, employees and others. They may use their influence either positively or negatively. For example, they may demonstrate a *positive* influence by requiring positive approval when a decision needs to be made. Conversely, *negative* influence could be the ability to veto a decision. Either way, the influence needs to be dominant or determining to be considered "control in fact."

Determining who has "control in fact" is a question of fact. The Agency evaluates this on a case-by-case basis, as each case is unique. The principles that the Agency follows when determining "control in fact" are listed at Annex B. The factors that the Agency considers are shown at Annex C. All managerial, financial and operational air carrier relationships (or proposed relationships) must be considered before making a determination.

Ownership structures with little or no involvement from non-Canadians do not normally require extensive analysis. Nevertheless, licence applicants and existing licence holders should take note of the "control in fact" issues concerning joint ventures and ownership by proxy.

## Joint Ventures

Applicants and licensees who enter into arrangements or joint ventures with non-Canadian air carriers should carefully consider whether this could result in joint or entire control by the non-Canadian. Such arrangements typically involve collaboration or strategic business decisions around matters like:

- prices,
- routes,
- schedules,
- capacity,
- ancillary services, and
- revenue and cost sharing.

The Canadian licensee must always be in a position to control its decision-making. They must be free of any dominant and determining influence from the non-Canadians participating in the joint venture. Otherwise, the non-Canadian could be found to be in a position of control, thereby resulting in the Canadian licensee no longer complying with the requirement to be Canadian.

*For additional information regarding joint ventures, please contact:*

National Air Services Policy Directorate  
Air Policy Group  
Transport Canada  
Place de Ville, Tower C  
Ottawa, Ontario  
K1A 0N5

Telephone: 613-993-7284 or 1-800-305-2059

Fax: 613-991-6445

Website: [www.tc.gc.ca](http://www.tc.gc.ca)

Email: [TC.natair-aernat.TC@tc.gc.ca](mailto:TC.natair-aernat.TC@tc.gc.ca)

### Ownership by Proxy

When a non-Canadian shareholder who makes a monetary investment transfers its corresponding voting interest to a Canadian who otherwise has only a nominal

investment in the applicant, the Agency will consider the substance over the form of the proposal. Business structures that violate the spirit of the control in fact requirement by using a Canadian proxy to hold the voting interests of a non-Canadian investor will likely not meet the requirement.

## **Annex B: General Principles for Determining "Control in Fact"**

### **All the facts are weighed together**

Normally, no single factor dictates whether control in fact is held by Canadians. The Agency considers and weighs all facts together to make a determination. There is no single objective test that can be relied upon to determine where control in fact lies. Judgment is required to evaluate the facts of each case.

### **Control does not need to be exercised**

Control does not need to be exercised for a person to have control in fact. When the individual has the ability to control, whether they use it or not, they are considered to have control in fact.

### **Control can reside with different individuals**

Control in law and control in fact can reside in the hands of different individuals or groups of individuals. Control in fact may exist even without ownership of any voting securities.

### **Joint Control**

Where an air carrier is controlled jointly by Canadians and non-Canadians, it is not considered to be Canadian.

## Annex C: Factors Considered in Determining "Control in Fact"

To determine who has "control in fact," the Agency assesses every applicable factor. This includes whether that factor, individually or in combination with others, provides any non-Canadians with:

- direct means to control the company (e.g., formal voting or other rights), and/or
- indirect means to control the company (e.g., ability to exert influence through their investment in the company or through any other means).

The Agency also considers the intent and ability of the non-Canadian(s) to exercise control over the company, particularly where control is obtained through indirect means.

Below is a list of factors considered by the Agency. This list is not exhaustive and is not ranked in any particular order of priority. There may be other factors depending on the situation.

Following the list there is more information about each factor. This includes information about risky situations that can emerge, and how licence applicants and licence holders can reduce the risk of receiving a negative "control in fact" determination.

### *Note: Importance of Risk Mitigation*

*Unless an applicant or licence holder takes steps to mitigate risks, situations identified as "high risk" will likely result in a negative determination. Situations identified as "medium risk" may result in a negative determination on Canadian ownership if they cause a non-Canadian's influence to be dominant and determining, whether on their own or in combination with other factors.*

*A situation identified as being risky when combined with other factors will not necessarily result in a negative Canadian ownership determination, but may be a contributing factor to a negative determination.*



## **LIST OF FACTORS:**

### **Corporate Governance Factors**

1. Board of Directors
2. Officers
3. Shareholder and Board of Directors' meetings

### **Shareholder Rights Factors**

1. Veto rights
2. Security rights, options, and warrants
3. Rights of first refusal/Pre-emptive rights
4. Power to wind up the company

### **Risks and Rewards Factors**

1. Risks and benefits
2. Concentration of voting interests

### **Business Affairs and Activities Factors**

1. Debt
2. Guarantees
3. Lease of assets
4. Financial strength and business activity
5. Management agreements
6. Operational or service agreements
7. Charterer/air carrier relationship

## **ADDITIONAL INFORMATION AND RISK-REDUCTION STRATEGIES:**

### **Corporate Governance Factors**

#### **1. Board of Directors**

The board of directors is elected by the shareholders to govern and manage the affairs of the corporation. The following conditions must be met for control in fact to reside with Canadians:

- Canadian shareholders must have the right to appoint no less than half of the board of directors.
- No less than half of the board members must be Canadian.

Generally, the same principle applies to board members sitting on individual board committees.

The Agency recognizes major investors will normally expect to have board representation reflective of their voting interest. Given that non-Canadians can hold up to 49 percent of voting interests (subject to the conditions prescribed in subsection 55(1) of the Act), the number of board members representing Canadians and non-Canadians could be equal.

#### *Risk Condition (Risk Level: High)*

Non-Canadian control in fact is indicated when:

- The board representation of the non-Canadian investors is disproportionately high compared to the voting interests held; or,
- The majority of board members are non-Canadians, regardless of who nominated them.

#### *Risk Mitigation*

If there are an equal number of Canadian and non-Canadian board members, there must be tie-breaker provisions in favour of the Canadian board members for control in fact to reside with Canadians.

## 2. Officers

Officers of a corporation serve at the pleasure of the board of directors. They are entrusted with the day-to-day responsibility of running the corporation. Officers normally do not have the ability to exercise control in fact. Officers do not need to be Canadian for the corporation to be considered Canadian by the Agency. However, control in fact implications could arise if officers have a relationship with non-Canadian shareholders that provides a means for the non-Canadians to exert influence over the operations of the air carrier.

### *Risk Condition (Risk Level: High)*

When the officers of the company have a fiduciary duty to, or are otherwise beholden to, the non-Canadian board members and/or the non-Canadian shareholders, this will be interpreted as indicating non-Canadian control in fact.

### *Risk Mitigation*

Officers must not be in a position to exercise control in fact. To avoid any ambiguity in this regard, they should be at arms' length from any non-Canadian shareholders of the business.

## 3. Shareholder and Board of Directors' Meetings

A quorum indicates the minimum number of members that must be present at a meeting for the meeting to be considered valid. The Agency generally expects a corporation's quorum provisions to require:

- no less than half of the shareholders or directors present at a shareholder or board of directors meeting be Canadian; and
- no less than half of the members at a board of directors meeting have been appointed by Canadian shareholders.

### *Risk Conditions (Risk Level: High)*

Non-Canadian control in fact is indicated when:

- Less than 50 percent of the shareholders or directors present at a meeting are Canadian;
- Less than 50 percent of the members at a board of directors meeting have been appointed by Canadian shareholders; and/or
- Non-Canadians can cast the deciding vote in a tie-breaker situation.

### *Risk Mitigation*

For shareholder meetings, when there is an equal number of Canadian and non-Canadian shareholders present, there must be a provision to ensure the Canadian shareholders always have the ability to cast the deciding vote.

For board of directors' meetings, when there is an equal number of Canadian and non-Canadian board members present, there must be a tie-breaker provision to ensure the director allowed to cast the deciding vote is a Canadian appointed by Canadian shareholders.

## Shareholder Rights Factors

### 1. Veto Rights

Veto rights allow a shareholder or director to reject or veto a resolution in spite of having majority assent. Veto rights come in many different forms. For example, the affirmative vote required of a specific shareholder or director for a resolution to pass is a type of veto right. The requirement for unanimous shareholder or director approval is another.

Generally, there are no Canadian ownership implications associated with non-Canadian shareholders and their designated directors having veto rights to protect minority shareholder investment.

### *Risk Conditions (Risk Level: High)*

A significant accumulation of restrictions could indicate that control in fact resides with non-Canadians. The risk increases when these restrictions are combined with other means of exercising influence.

Veto rights which are comprehensive and broad could indicate that control in fact resides with non-Canadians. This includes veto rights regarding:

- the selection, removal and remuneration of the company's officers and executives;
- the approval of the annual business plan; and
- changes to airline operations of the carrier.

### *Risk Mitigation*

As a general rule, veto rights that do not pose any control in fact implications are limited to matters outside the scope of the day-to-day operations of the air carrier. Veto rights that do not pose control in fact concerns must not have any impact on the operational, marketing and financial decisions made on an ongoing basis. For example, matters not normally considered to show control in fact include veto rights regarding:

- the payment of dividends;
- the sale or transfer of major assets;
- the incursion of large capital expenditures;
- entry into large and significant agreements, mergers, amalgamations and large business purchases;
- amendments to incorporation documents; and
- the issuance or redemption of capital stock.

The above kinds of veto rights could represent normal and acceptable provisions to protect the minority shareholders' investment.

The Agency will view control in fact as not residing with Canadians when the non-Canadian shareholders have the ability to veto matters that could be viewed as being related to day-to-day operations, or matters that do not pose a significant and demonstrable risk to the non-Canadian shareholder.

## **2. Security Rights, Options and Warrants**

The individual rights, privileges, restrictions and conditions attached to each class of security are relevant when evaluating control in fact. In addition to voting rights, there are other rights that could influence where control in fact lies. These include:

- redemption rights (right to force the corporation to buy back securities);
- conversion rights (right to exchange one security for another); and
- buy-out rights (right to acquire another person's interest in a security).

The same applies to rights associated with warrants and options that provide the right of conversion or the right to purchase securities of the corporation at specified prices. This particularly applies in cases where the holder has the right to convert from a non-voting to a voting interest.

*Risk Conditions (Risk Level: Risky When Combined With Other Factors)*

When a non-Canadian investor is the sole holder of the right or of a disproportionate amount of the rights, it indicates control in fact resides with non-Canadians, particularly when the rights can be exercised at prices below the market price.

*Risk Mitigation*

To ensure that control in fact resides with Canadians, the aforementioned rights must be exercisable at fair market value and be reciprocal to all of the shareholders.

### **3. Rights of First Refusal/Pre-emptive Rights**

Rights of first refusal and pre-emptive rights are contractual rights. These exist when a person has an opportunity to purchase securities or other assets from the owner on specified terms prior to their being offered for sale to a third party. All shareholders would normally have these rights in proportion to holdings for specific securities purchases.

If the potential purchase of securities or other assets could result in the air carrier no longer being Canadian, the proposed transaction will generally be considered to cause the loss of Canadian status. An additional provision would need to be inserted to ensure that no purchase of this type can proceed and be completed unless the air carrier remains Canadian.

*Risk Conditions (Risk Level: Risky When Combined With Other Factors)*

The Agency will view control in fact as not residing with Canadians when:

- rights of first refusal or pre-emptive rights are exercisable below fair market value and reflect terminology that unilaterally benefits the non-Canadian shareholder;
- rights concerning the purchase of specific securities are not reciprocal between the Canadian and the non-Canadian shareholder(s) and/or are disproportionate with the shareholdings in favour of the non-Canadian, or
- rights are not reciprocal to both Canadian and non-Canadian shareholders (i.e., are in favour of the non-Canadian shareholders only).

### *Risk Mitigation*

If rights of first refusal or pre-emptive rights reflect typical terms and are exercisable at fair market value, the Agency will generally view such rights as a means to protect shareholders from situations such as undesirable takeovers.

Rights concerning the purchase of specific securities should be held by all shareholders and be commensurate with the shareholdings.

## **4. Power to Wind Up the Company**

An individual shareholder or lender with the power to close down the company by calling loans payable on demand may be in a position to exercise control in fact over the affairs of an air carrier. This is because loans may contain standard covenants that:

- restrict how the funds may be used (e.g., the funds can only be used for a specific business purpose);
- restrict how the business may disburse funds (e.g., restrict the payment of dividends when the business is not profitable); and
- require that certain conditions be maintained (e.g., ensuring the business remains solvent and complying with any applicable legislation).

The breach of such covenants typically provides the lender with the right to call a loan payable and/or force the winding up of the business. This winding up may be carried out through sale, liquidation or otherwise. If loans contain standard

commercial loan covenants that are reflective of an arm's length lending relationship, where a lender is reasonably protecting itself from default, this is not indicative of control in fact over the company's affairs. For example, a bank does not normally control a company, even though it might have the ability to call a demand loan, due to a material breach of covenants leading to the winding up of the company.

### *Risk Conditions (Risk Level: High)*

If a non-Canadian's ability to influence the winding up of a company is so great that it poses an ongoing threat that effectively forces the Canadian board members to comply with the ongoing strategic business decisions of the non-Canadian board members, the Agency will consider this to be dominant and determining influence by the non-Canadian. This will result in the Agency finding that control in fact does not reside with Canadians.

For example, the breach of any covenant (within a very exhaustive list of items that encompass day-to-day strategic decision-making matters) that could trigger the wind-up process would be viewed as a condition that poses an ongoing threat.

### *Risk Mitigation*

To ensure that a loan does not create a control in fact concern, the loan agreement should:

- only contain standard commercial terms and covenants that protect the lender from the usual lending risks, and
- not interfere with typical day-to-day operations or strategic business decisions.

## **Risks and Rewards Factors**

### **1. Risks and Benefits**

The Agency generally expects that the parties that assume the majority of the risks and are entitled to the majority of benefits related to the air carrier's operation are also the parties with the ability to exercise control in fact. Risks are generally tied to the level of economic interest in the air carrier, including:



- investment in its voting, non-voting and debt securities;
- commitments for future investment; and
- any guarantees that may have been provided.

Benefits generally come from an entitlement to share in the expected profit of the company. They can also come from revenues that result from aircraft lease, managerial services, royalty and other similar agreements. However, as this is not always the case, the evaluation of other factors specific to each case is critical to a determination.

#### *Risk Conditions (Risk Level: Medium)*

Non-Canadian control in fact may be indicated if the disparity between the proportion of voting interests and the level of capital investment by the non-Canadian investor increases. The non-Canadian investor will be expected to ensure it has levers in place to minimize its risk while maximizing its return on investment. Consequently, applicants should expect applications of this nature to receive a high degree of scrutiny.

Non-Canadians whose commitments for future investment are necessary for the ongoing survival of the business raise control in fact concerns. This is because the business is dependent upon the non-Canadian investor, who is assuming the greatest risk. The higher the level of risk, the higher the expected reward. This can lead to situations where the non-Canadian gains dominant and determining influence.

A similar situation arises when the business is dependent upon the guarantee of the non-Canadian investor to finance the business. The reliance on non-Canadians for normal business financing activities strongly indicates non-Canadian control in fact.

#### *Risk Mitigation*

There may be situations where a non-Canadian invests a significantly higher proportion of capital than the Canadian shareholders, but accepts a disproportionately lower voting share in order to comply with the maximum permitted voting interest for non-Canadians under the Act. In these situations, applicants should ensure any agreements are structured

to limit the non-Canadian to a more passive role in the business and to have only those rights necessary to protect its investment in a minority voting situation.

To avoid raising control in fact concerns, the long-term viability of the business should not be entirely dependent on receiving future investment by the non-Canadian investor.

With respect to guarantees, applicants should ensure they are not dependent upon a non-Canadian investor to guarantee their debt. This is to avoid any concerns that the non-Canadian is assuming the majority of the investment risk.

## **2. Concentration of Voting Interests**

The concentration of voting interests owned and controlled by Canadians versus non-Canadians can show where control in fact lies. Situations can arise where the majority of the voting interests—while owned and controlled by Canadians—are dispersed among a large number of unrelated individuals each holding a small interest. In this situation, if a non-Canadian or a group of non-Canadians holds a concentration of the voting interests, it could indicate Canadian shareholders are not able to exercise control in fact.

As defined in the Act, the voting interest requirement contains restrictions to ensure that affiliated non-Canadians collectively do not hold more than 25 percent of the total voting interests. The Agency will verify that this restriction is being respected. It will also scrutinize the ownership structure to see whether a relatively small number of unaffiliated non-Canadians hold a disproportionate amount of the voting interests (versus a large number of unrelated Canadian shareholders with relatively small shareholdings).

### *Risk Conditions (Risk Level: Medium)*

Non-Canadian control in fact may be indicated when there are multiple Canadian shareholders and only one or two non-Canadian shareholders exist. In these situations, the non-Canadian shareholder(s) may try to create a strategic voting bloc. By aligning themselves with one or more of the Canadian shareholders, the non-Canadian shareholder(s) could instruct votes. While not necessarily indicating control in fact by the non-Canadian

shareholder(s), the Agency will consider whether the non-Canadian shareholder(s) could be in a position to influence the votes of a Canadian shareholder to vote.

### *Risk Mitigation*

Applicants should ensure that the ownership structure is designed in such a way to avoid situations where a small group of affiliated and/or unaffiliated shareholders could form a voting bloc.

## **Business Affairs and Activities Factors**

### **1. Debt**

Debt transactions executed in the normal course of business activity do not normally raise any control in fact concerns. However, there could be control in fact implications in cases where the monetary size of the debt is significant to the other sources of financing. Concerns may be raised if there is reason to believe the intent for the transaction extends beyond typical financing. In these cases, the specific terms of the agreements would be of particular significance. The Agency would scrutinize the following in particular:

- Provisions that provide for the debt to be converted into voting securities of the company; and
- Restrictions or veto rights that go beyond what would normally be expected from a passive lender.

The nature of the debt holders and their relationship to the air carrier would be equally important. A non-Canadian financial or lending institution would not normally have an interest in managing or influencing the direction of an air carrier. This would not raise concerns regarding control in fact. However, a non-Canadian air carrier or other non-Canadian investor might have different intentions. These could magnify indicators of control in fact.

### *Risk Conditions (Risk Level: Medium)*

Non-Canadian control in fact may be indicated when the applicant relies on substantial debt financing provided by a non-Canadian who is not at arm's length from the non-Canadian shareholder.

### *Risk Mitigation*

Commercial loans that are not guaranteed by non-Canadians and that are obtained from arm's length lenders such as financial institutions for the purpose of financing business operations do not raise control in fact concerns.

Loans obtained from non-Canadian lenders who have a relationship with the applicant, such as a shareholder of the business, should be based on commercial lending terms that reflect an arm's length relationship to avoid raising control in fact concerns.

Any restrictive covenants must be strictly limited to standard commercial lending clauses limited to the protection of a creditor. These covenants cannot interfere in any way with the normal day to day operations of the business.

## **2. Guarantees**

A debt or loan guarantee is a promise by a person or an entity to assume a debt obligation in the event of non-payment by the borrower. When a non-Canadian provides the guarantee, control in fact considerations will include:

- the monetary size,
- the terms,
- the borrower's level of dependence, and
- the guarantor's intent.

### *Risk Conditions (Risk Level: Medium)*

Non-Canadian control in fact is indicated when an applicant is dependent upon a guarantee from a non-Canadian (e.g., a non-Canadian shareholder) to obtain or secure debt financing.

### *Risk Mitigation*

To avoid raising control in fact concerns, lending agreements must not contain any means for a non-Canadian guarantor to exercise its influence over the direction of the air carrier.

### **3. Lease of Assets**

The operation of an air service is a capital-intensive business. It often involves the purchase or lease of aircraft, hanger space and other key assets.

An agreement with arm's length parties for the use of assets at market terms would not normally indicate control in fact. Control in fact is not normally indicated even in cases where a high concentration of assets is being provided by one or more parties.

Control in fact may be indicated when an air carrier is dependent on a specific party to provide assets that cannot be obtained practically or financially elsewhere. In these cases, the Agency would consider the following:

- The nature of the relationship;
- The terms of the agreement; and
- The intent or ability of the lessor party to influence the affairs of the air carrier.

### *Risk Conditions (Risk Level: Medium)*

Control in fact concerns are raised when an applicant is dependent upon a non-Canadian who is not at arm's length from the non-Canadian shareholder to provide the aircraft. Control in fact concerns are also arranged when the terms of the arrangement contain provisions that allow the non-Canadian to exercise dominant and determining influence. An example of such influence would include any provision that covers day-to-day business decisions such as aircraft routes and flight frequency.

### *Risk Mitigation*

To avoid raising control in fact concerns, asset lease agreements involving non-Canadians should reflect standard terms associated with an arm's

length business relationship. If the lease agreement contains any standard restrictive covenants, they must be limited to provisions that are intended to protect the assets and credit risk to the lessor. Covenants cannot infringe upon the normal day-to-day or strategic business operations of the applicant.

#### **4. Financial Strength and Business Activity**

The comparative financial strength, business activity and relevant expertise of individual shareholders can indicate which shareholders exercise influence and control in fact over an air carrier. This is especially true when dealing with shareholders who are non-Canadian air carriers. In these situations, the nature of the non-Canadian shareholders equity investment is important. This could be a passive investment from a private equity investment firm, or an investment from a business with extensive knowledge and experience in the aviation sector that intends to be active in the business operations. Also important is the ability or the need for the non-Canadian shareholders to offer financial, managerial and operational assistance to the air carrier.

The greater the financial ability and airline business acumen of the individual Canadian shareholders, the less likely a large, non-Canadian investor would be viewed as raising any control in fact concerns.

##### *Risk Conditions (Risk Level: Risky When Combined With Other Factors)*

Control in fact concerns are raised when non-Canadian shareholders have the ability to exercise dominant and determining influence through their greater experience and business knowledge in the aviation sector.

##### *Risk Mitigation*

If an applicant can show that the Canadian shareholders have the aviation sector experience and expertise necessary for the operation of the business, this reduces concerns that the non-Canadian investors may use their business experience as a means to exercise control in fact.

## **5. Management Agreements**

Management services can be an essential component of an air carrier's business strategy. However, some management agreements could result in an independent entity managing the affairs of the air carrier. Payment should be based on services rendered. Any incentive bonus should represent a small percentage of the overall fee and the overall corporate profit.

### *Risk Conditions (Risk Level: Medium)*

Control in fact concerns are raised when the person providing management services is a non-Canadian shareholder or is affiliated with a non-Canadian shareholder.

Non-Canadian control in fact is indicated when an agreement does not allow the board of directors of the applicant to have:

- the unilateral right to accept or reject any advice given by the manager; or
- the right to terminate the agreement.

### *Risk Mitigation*

When management services are provided by a non-Canadian, the following terms should be met to avoid any control in fact concerns:

- The manager should be an independent contractor in the airline management business rather than an employee of a carrier or an affiliate of any non-Canadian shareholders;
- The board of directors should have the authority for all major decisions; and
- The board of directors should have the right to terminate the management agreement (on reasonable notice and terms) if they are not satisfied with the manager's performance.

## **6. Operational or Service Agreements**

Operational or service agreements for the provision of services to the air carrier can sometimes include the provision of an aircraft with flight crew, maintenance

activities, ground-handling services, and reservations and other computer-based services.

Non-Canadian control in fact is indicated when:

- the service provider handles operations of the air carrier; or
- the service provider fee is based directly or indirectly on the profit or loss of the air service.

#### *Risk Conditions (Risk Level: Medium)*

Control in fact concerns are raised when a non-Canadian management services provider performs many or all of the major operational activities of the air service business on its behalf. This includes:

- managers who are not at arm's length from a non-Canadian shareholder; and
- any non-Canadian shareholders or their affiliates acting in the capacity of a management services provider.

#### *Risk Mitigation*

When an air carrier contracts a non-Canadian service provider to perform the day-to-day operational functions of the air carrier, or enters into an arrangement (such as a joint venture) with a non-Canadian air carrier, all major decisions (such as approval of the business plan, incursion of large debt and operational expansion) should remain with the air carrier's board of directors in order to avoid any control in fact implications. The air carrier must also be entitled to the profit and be responsible for any loss associated with the operation of the air service.

## **7. Charterer/Air Carrier Relationship**

A charterer leases the full aircraft capacity from the air carrier, which it then sells to the public, typically through a travel agent. Charterers fall under provincial jurisdiction. They are not subject to the Canadian ownership and control requirement of the Act. Charterers have the ability to enter into contracts with air carriers that dictate items such as the level of service, routes and schedules.



Normally, these charterer/air carrier relationships do not pose any federal control in fact implications.

*Risk Conditions (Risk Level: Medium)*

Control in fact concerns are raised when:

- a non-Canadian charterer assumes the role and responsibility of the air carrier, as shown by the assumption of the risks and entitlement to the benefits relating to the air carrier's operations;
- the air carrier intends to conduct business with only one charterer; or
- the air carrier does not have an arms' length relationship with the non-Canadian charterer.

*Risk Mitigation*

Charterer/air carrier relationships do not pose control in fact concerns on the air carrier if:

- the air carrier assumes the risks and benefits relating to the air carrier's operations; and/or
- the charterer, if non-Canadian, is in an arm's length relationship with the carrier.

## Annex D: Examples of Previous Canadian Ownership Determinations

Below are links to some of the Agency's previous public decisions that specifically address the requirement to be Canadian. There is particular emphasis in this list on decisions discussing the voting interest and control in fact requirements.

This list is not exhaustive, and is not presented in any particular order of priority. This list will be updated periodically.

- Decision No. [297-A-1993](#) (Canadian Airlines Decision)
- Decision No. [299-A-2000](#) (Air Canada Decision)
- Decision No. [511-A-2004](#) (ACE Decision)
- Decision No. [10-A-2010](#) (Sunwing Airlines Decision)
- [Public redacted version of October 6, 2010 Confidential Decision](#) (CHC Helicopters Canada Decision)
- Decision No. [32-A-2012](#) (Thunderhook Air Charter Services Decision)
- Decision No. [359-A-2012](#) (Cougar Helicopters Decision)
- Decision No. [423-A-2012](#) (Sunwing Airlines Inquiry)
- Decision No. [493-A-2012](#) (Alpine Helicopters Decision)

Exhibit D of the Affidavit of Meredith Desnoyers  
affirmed on July 14, 2021

A handwritten signature in blue ink, reading "Elysia Van Zeyl". The signature is written in a cursive style with a large initial "E".

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Elysia Van Zeyl (LSUC #53499H)



[Home Publications](#)

# Sample tariff — containing rules applicable to scheduled services for the transportation of passengers and their baggage between points in Canada and points inside and outside Canada

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  - Rule 69: Carriage of persons with disabilities – Large Carrier ATPDR
  - Rule 70: Carriage of persons with disabilities – Small Carrier Non-ATPDR operating aircraft with 30 or more passenger seats
  - Rule 71: Carriage of persons with disabilities – Small Carrier non-ATPDR operating aircraft with 29 or less passenger seats
  - Rule 75: Acceptance of animals (pets and search and rescue dogs)
  - Rule 80: Administrative formalities – travel documents, customs and security
  - Rule 85: Ground transfer services
  - Rule 90: Delay or cancellation – outside the carrier’s control
  - Rule 91: Delay or cancellation – within the carrier’s control and within the carrier's control but required for safety purposes
  - Rule 92: Tarmac delay
  - Rule 95: Denial of boarding – outside the carrier’s control
  - Rule 96: Denial of boarding – within the carrier’s control and within the carrier's control but required for safety purposes
  - Rule 97 – Communication of information – cancellation, delay, tarmac delay, or denial of boarding
  - Rule 98 – Schedule irregularities
  - Rule 105: Refusal to transport
  - Rule 115: Tickets
- Part IV – After travel
  - Rule 120: Liability of the carrier for loss, damage to or delay of baggage, passenger delay or death or bodily injury – domestic transportation
  - Rule 121: Liability of the carrier for loss, damage to or delay of baggage, passenger delay or death or bodily injury – international transportation
  - Rule 125: Refunds

**Published February 2021**

## Part I – General tariff information

### Explanation of abbreviations, reference marks and symbols

**\$**

Dollar(s)

**(C)**

Denotes change which results in neither increases or decreases

**(I)**

Denotes increase

**(N)**

Denotes addition

**(R)**

Denotes reduction

**(X)**

Denotes cancellation

**APPR**

*Air Passenger Protection Regulations*

**ATPDR**

*Accessible Transportation for Persons with Disabilities Regulations*

**CAD**

Canadian dollar(s)

**CTA**

Canadian Transportation Agency also referred to as the "Agency"

**EU**

European Union

**IATA**

International Air Transport Association

**ICAO**

International Civil Aviation Organization

**N/A**

Not applicable

**No**

Number

**SDR**

Special drawing rights

**USD**

United States dollar(s)

**U.S. DoT**

United States Department of Transportation

## **Rule 1: Definitions**

**"Agency"**

means the Canadian Transportation Agency.

**"APPR"**

means the *Air Passenger Protection Regulations*.

**"assistive device"**

means any medical device, mobility aid, communication aid or other aid that is specially designed to assist a person with a disability with a need related to their disability.

**"ATPDR"**

means the *Accessible Transportation for Persons with Disabilities Regulations*.

**"ATR"**

means the *Air Transportation Regulations*.

**"baggage"**

means any good that is necessary or appropriate for the wear, use, comfort, or convenience of the passenger for the purpose of the trip. Unless otherwise specified, it shall include both checked and unchecked baggage of the passenger.

**"baggage identification tag"**

means a document issued by the carrier solely for identification of checked baggage, part of which is given to the passenger as a receipt for the passenger's checked baggage and the remaining part is attached by the carrier onto a particular piece of the passenger's checked baggage.

**"bank of seats"**

means passenger seats that are immediately adjacent to each other and does not include passenger seats that are across the aisle.

**"bankers' buying rate of exchange or bankers' selling rate of exchange"**

means:

- In Canada, the unit rate published in the Toronto *Globe and Mail* Friday edition each week, as the foreign exchange mid-market rate in Canadian funds. When a national holiday falls on Friday, the rates quoted on the previous business day will be used. These rates will be applicable from Monday of the following week up to and including the following Sunday.
- In the United States, the rate published each Tuesday in the *Wall Street Journal* under the heading Foreign Exchange. This rate will be applicable from Wednesday of each week up to and including the Tuesday of the following week. When a national holiday falls on a Monday, foreign exchange rates do not appear in the Tuesday edition of the *Wall Street Journal*. In such exceptional cases, the previous week's rates are used through Wednesday instead of Tuesday, and the Wednesday edition of the *Wall Street Journal* will be used for the period Thursday through Tuesday of the following week.
- In other countries, the rate at which a bank will purchase a given amount of foreign currency in exchange for one unit or units of the national currency of the country in which the exchange transaction takes place for the purpose of the transfer of funds through banking channels i.e., other than transactions in bank notes, travellers checks, and similar banking instruments.

### **"boarding area"**

means the point where the passenger's flight coupons are lifted and kept by the carrier or the point where the carrier examines the passenger's boarding pass prior to the passenger being permitted on the aircraft.

### **"boarding pass"**

includes either a paper document or an electronic document issued by the carrier to the passenger and serves as a record that the passenger has checked in for their flight and, when it shows a seat assignment, it permits a passenger to board a particular flight.

### **"boarding time deadline"**

is the time limit specified by the carrier by which the passenger must be present at the designated boarding area of their flight.

### **"barrier"**

means anything – including anything physical, architectural, technological or attitudinal, anything that is based on information or communications or anything that is the result of a policy or a practice – that hinders the full and equal participation in society of persons with an impairment, including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment or a functional limitation.

### **"Canada"**

means the ten provinces of Canada, the Yukon Territory, the Districts and Islands comprising the Northwest Territories of Canada and Nunavut.

### **"Carrier"**

means:



**Note to carrier:** carrier must fill in their company name as it appears on their licence issued by the Canadian Transportation Agency.

**"checked baggage"**

means baggage of which the carrier takes sole custody and for which the carrier issues a baggage identification tag.

**"check-in deadline"**

is the time limit specified by the carrier by which the passenger must have completed check-in formalities and received a boarding pass.

**"circle trip"**

means any trip conducted in a continuous and circuitous route where the point of origin is also the ultimate destination but is not a round trip because it involves more than one stopover.

**"code-share"**

refers to a marketing agreement in which two or more airlines i.e. marketing carrier(s) sell seats using their own airline code on a flight that one of them operates (i.e. the operating carrier).

**"Convention"**

means the Convention for the unification of certain rules relating to international carriage by air, signed at Warsaw, 12 October 1929, or that convention as amended by the Hague protocol, 1955, or the Montreal Convention signed in Montreal on 28 May, 1999 whichever may be applicable to carriage hereunder. **Note:** For roundtrip international transportation that originates and ends in Canada, the Montreal Convention will apply to the passenger's journey.

**"conjunction ticket"**

means a ticket issued to a passenger concurrently with another ticket(s) which together constitute a single contract of carriage.

**"curbside zone"**

means an area that is located outside of a terminal where passengers are picked up or dropped off and that is owned, operated, leased or otherwise controlled by the terminal operator.

**"denial of boarding"**

occurs when a passenger is not permitted to occupy a seat on-board a flight because the number of seats that may be occupied on the flight is less than the number of passengers who have checked in by the required time, hold a confirmed reservation and valid travel documentation, and are present at the boarding gate at the required boarding time.

**"destination"**

is a deliberate break of a journey initiated by the passenger and agreed to in advance by the carrier at a point after the place of departure but before the ultimate destination has been reached. The deliberate break must be for a purpose other than changing aircraft. Transportation to a destination may involve multiple flight segments on a single ticket/itinerary.

**"destination, ultimate"**

see **ultimate destination**.

**"disability"**

means any impairment, including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment — or a functional limitation — whether permanent, temporary or episodic in nature, or evident or not, that, in interaction with a barrier, hinders a person's full and equal participation in society.

**"domestic transportation"**

means air transportation between points in Canada, from and to the same point in Canada or between points in Canada and a point outside Canada that is not in the territory of another country.

**"emotional support animal"**

means an animal that provides emotional support, comfort, or therapeutic benefits to meet the disability-related needs of a person with disability, but has not been individually trained by an organization or person specializing in such training to perform a specific task to assist the person with a disability-related need.

**"European Union (EU)"**

means any one of the sovereign nation states that have acceded to the EU. In accordance with Article 299(2) of the Treaty Establishing the EU, this tariff also applies to overseas departments, namely Guadeloupe, French Guyana, Martinique, Reunion Island, the Azores, Madeira and the Canary Islands.

**"flight coupon"**

means that portion of the ticket which is either held electronically in the carrier's database or on paper when a paper ticket is issued to a passenger. It indicates the particular points between which the passenger is entitled to transportation.

**"immediate family"**

means spouse, parents and grandparents, children and grandchildren, brothers and sisters, mother in law and father in law, brothers in law and sisters in law, daughters in law and sons in law. Adopted and step members are also included in immediate family.

**"gratuitous carriage"**

means air transportation of passengers, goods or animals for no reward.

**"international transportation"**

means air transportation between Canada and a point in the territory of another country.

**"involuntary refunds"**

means any refund made in the event the passenger is prevented from using all or a portion of their ticket in situations set out in Rule 91, Delay or cancellation – within the carrier's control and within the carrier's control but required for safety purposes, or Rule 96, Denial of boarding – within the carrier's control and within the carrier's control but required for safety purposes.

**Note to carrier:** The APPR do not require that airlines provide refunds to passengers when flights are disrupted for reasons outside the carrier's control because the Canada Transportation Act only provided the authority to make regulations requiring that the airline ensure passengers can complete their itineraries. The ATR, however, require a carrier to state its policies for all situations in respect of refunds for services purchased but not used, whether in whole or in part, either as a result of the client's unwillingness or inability to continue or the air carrier's inability to provide the service for any reason. Until such a time as further obligations in this area are established, carriers are encouraged to adopt policies that ensure no passenger is left out of pocket for the value of a cancelled flight, irrespective of the fare purchased, when the carrier is unable to provide for alternate transportation acceptable to the passenger in situations covered by Rule 90, Delay or cancellation – outside the carrier's control and Rule 95, Denial of boarding – outside the carrier's control, or in the case of Rule 105, Refusal to transport.

### **"itinerary/receipt"**

means a travel document or documents the carrier or its agent issues to the passenger travelling on a ticket. The itinerary/receipt contains the passenger's name, flight information and notices relevant for the journey. This document is to be retained by the passenger during the entire journey.

### **"Large Carrier APPR"**

is a carrier that has transported a worldwide total of two million passengers or more during each of the two preceding calendar years.

### **"Large Carrier ATPDR"**

is a carrier that has transported a worldwide total of one million passengers or more during each of the two preceding calendar years.

### **"minor"**

means a person who has not reached their XXth birthday on the date that travel commences.

**Note to carrier:** Insert the appropriate information according to your policy and consistent with Rule 65, Unaccompanied minors.

### **"miscellaneous charges order (MCO)"**

is a document which may be used as a future travel voucher valid for 1 year from the date of issuance. This document may also, for instance, be issued for residual value of a ticket, collection of miscellaneous charges, refundable balances or compensation provided in the case of a denied boarding situation.

### **"mobility aid"**

means any manual or electric wheelchair, scooter, boarding chair, walker, cane, crutch, prosthesis or other aid that is specially designed to assist a person with a disability with a need related to mobility.

### **"normal fare"**

means the highest priced fare established for a first, business or economy class service during the period of applicability.

### **"open jaw trip"**

means any trip comprising of two separate fare components with a surface break.

**"open-date ticket"**

means a ticket issued to a passenger without the passenger having specified or made a decision concerning the date of travel. Travel is subject to a specific flight being selected to travel on, an actual reservation for space being confirmed in the carrier's reservation system, a boarding pass being issued and the passenger meeting all carrier-imposed restrictions.

**"origin"**

means the initial starting place of the journey as shown on the ticket.

**"passenger"**

means any person, except members of the crew, carried or to be carried in an aircraft with the consent of the carrier pursuant to a valid contract of carriage.

**"person with a disability"**

means a person with any impairment, including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment — or a functional limitation — whether permanent, temporary or episodic in nature, or evident or not, that, in interaction with a barrier, hinders a person's full and equal participation in society.

**"priority baggage"**

means baggage that will be the last items to be stowed in the aircraft hold and the first items to be removed. Aids required for the mobility or well-being of persons with disabilities shall be treated as priority baggage.

**"refusal to transport"**

means, despite a passenger holding a valid ticket/itinerary, the carrier will not carry or, if necessary, remove the passenger at any point for reasons found in Rule 105, Refusal to Transport.

**"required for safety purposes"**

means required by law in order to reduce risk to passenger safety and includes required by safety decisions made within the authority of the pilot of the aircraft or any decision made in accordance with a safety management system as defined in subsection 101.01(1) of the *Canadian Aviation Regulations* but does not include scheduled maintenance in compliance with legal requirements.

**"reservation"**

is a record, either in paper form or in electronic form, of the accommodation held by a passenger on any given flight. The reservation would specify the date and times of travel, flight number and the class of service to be provided to the passenger.

**"routing"**

establishes the possible points via which travel may take place for a specific fare.

**"self-reliant"**

means that a person does not require services related to a disability beyond that normally provided by the carrier, or beyond that which applicable rules or regulations require the carrier to provide.

**"service animal"**

means an animal that is required by a person with a disability for assistance and is certified, in writing, as having been trained by a professional service animal institution to assist a person with a disability and which is properly harnessed in accordance with standards established by a professional service animal institution.

**"service dog"**

means a dog that has been individually trained by an organization or person specializing in service dog training to perform a task to assist a person with a disability with a need related to their disability.

**"severe allergy"**

means an allergy to an allergen that may cause a person to experience significant physical distress if they are directly exposed to the allergen.

**"situations outside the carrier's control"**

include, but are not limited to the following:

- war or political instability;
- illegal acts or sabotage;
- meteorological conditions or natural disasters that make the safe operation of the aircraft impossible;
- instructions from air traffic control;
- a NOTAM, (Notice to Airmen) as defined in subsection 101.01(1) of the *Canadian Aviation Regulations*;
- a security threat;
- airport operation issues;
- a medical emergency;
- a collision with wildlife;
- a labour disruption within the carrier or within an essential service provider such as an airport or an air navigation service provider;
- a manufacturing defect in an aircraft that reduces the safety of passengers and that was identified by the manufacturer of the aircraft concerned, or by a competent authority; and
- an order or instruction from an official of a state or a law enforcement agency or from a person responsible for airport security.

**"Small Carrier APPR"**

means any carrier that is not a Large Carrier APPR. For greater certainty, Small Carrier APPR means a carrier that has not transported a worldwide total of two million passengers or more during each of the two

preceding calendar years. For the purposes of APPR, the small carrier has the same obligations as a Large Carrier APPR towards a passenger that it carries on behalf of a Large Carrier APPR under a commercial agreement with that carrier.

**"Small Carrier Non-ATPDR"**

means any carrier that is not a Large Carrier ATPDR. For greater certainty, Small Carrier Non-ATPDR means a carrier that has not transported a worldwide total of one million passengers or more during each of the two preceding calendar years.

**"special drawing rights (SDR)"**

is a unit of account of the International Monetary Fund.

**"special fare"**

means any fare other than a normal fare.

**"stopover"**

is, for the purposes of fare construction and establishing the applicable fare or fares which apply to a passenger's itinerary, a deliberate break of a journey initiated by the passenger and agreed to in advance by the carrier at a point between the place of departure and the place of ultimate destination. The deliberate break in the journey must be for a purpose other than changing aircraft and might result in a calculation of additional charges as set out in the corresponding fare rules.

**"support person"**

means a person who is needed by a person with a disability, because of the nature of their disability, after departure and before arrival for assistance with eating meals, taking medication, using the washroom, transferring to and from a passenger seat, orientation and communication; or for physical assistance in an emergency, including in the case of an evacuation or decompression.

**"tariff"**

means a schedule of fares, rates, charges or terms and conditions of carriage applicable to the provision of an air service and other incidental services.

**"tarmac delay"**

occurs when a flight is delayed on the tarmac after the doors of the aircraft are closed for take-off or after the flight has landed.

**"ticket"**

means either a paper or electronic document issued by or on behalf of the carrier which includes the passenger's flight coupons. The ticket serves as evidence of payment of air fare and constitutes for the passenger proof of their contract of carriage. In instances where a ticket exists as an electronic document, the carrier issues to the passenger, as proof of purchase, an itinerary/receipt.

**"traffic"**

means any persons or goods that are transported by air.

### **"transfer point"**

means any point at which the passenger transfers between aircraft.

### **"ultimate destination"**

is the ultimate stopping place according to the tariff/contract of carriage as shown on the ticket/itinerary. In round trip itineraries, the ultimate destination and the origin are the same.

### **"unchecked baggage"**

means any baggage (carry-on) accompanying the passenger other than checked baggage.

### **"United States of America" or the "United States" or the "U.S.A."**

means the area comprising the 48 contiguous Federated States, The Federal District of Columbia, Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, Midway and Wake Islands.

### **"voluntary refunds"**

means a refund of an unused or partially used ticket or an unused electronic miscellaneous document (EMD) for reasons other than those mentioned under the definition of an involuntary refund.

### **"voucher"**

means a monetary credit provided either in paper or electronic format to a passenger that may be used toward future travel services or the provision of incidental services such as meals, ground transportation, and hotel accommodation.

## **Rule 5: Application of tariff**

### **(A) General**

- (1) This tariff shall apply to carriage of passengers and their accompanying baggage, and to all services incidental thereto:
  - (a) For carriage on flights operated and marketed (carrying a [Carrier Name] flight number) to a passenger by [Carrier Name], and
  - (b) For carriage on flights marketed by [Carrier Name] to a passenger but operated by another carrier.
- (2) With the exception of code-share agreements, when the carrier issues a ticket, baggage check, or makes any other arrangements for transportation over the services of, and in the name of, any other carrier (whether or not such transportation is part of a through service), the carrier acts only as agent for such other carrier and the tariff of that other carrier will apply.
- (3) Air transportation will be subject to the rules, rates, fares and charges published or referred to in this tariff, in effect on the date of the ticket issuance.

**Note to carrier:** Carriers are reminded that different jurisdictions may have differing regulations as to pricing. Carriers should consult the appropriate regulations of those jurisdictions to which they intend to operate so as to ensure conformity.

- (4) Unless the fare rule governing a specific fare basis code applicable to the transportation purchased by the passenger states otherwise, the general rules contained in this tariff will apply.
- (5) The contents of this tariff constitute the contract between the carrier and the passenger. Should there be a conflict between this tariff and any other document issued or posted by the carrier, this tariff will prevail.
- (6) The carrier's rules, regulations and conditions of carriage as found in this tariff are subject to change without notice only when required by applicable laws, government regulations, orders and requirements.

## **(B) Liability under the applicable tariff**

- (1) For international transportation, in the case of damages due to death or bodily injury, passenger delay and lost, damaged, and delayed baggage, the carrier will be subject to the rules relating to liability established by, and to all other provisions of either the Warsaw or the Montreal Convention. The carrier may stipulate that the limits of liability contained in this tariff are higher than those provided for within the applicable Convention or that there are no limits of liability whatsoever. In all other instances, tariff rules which are inconsistent with any provision of the applicable Convention will, to that extent, be inapplicable to international transportation (see Rule 121, Liability – international transportation).
- (2) For domestic transportation, under the provisions of the APPR, carriers will be subject to the same rules and liability limits as found in the Montreal Convention for lost, delayed and damaged baggage (see Rule 120, Liability – domestic transportation).
- (3) Carrier liability under the APPR:
  - (a) The carrier operating a flight is liable to passengers with respect to the obligations set out in sections 7 to 22 and 24 of the APPR, or, if they are more favourable to those passengers, the obligations on the same matter that are set out in the applicable tariff.
  - (b) However, if one carrier carries passengers on behalf of another carrier under a commercial agreement, the carriers are jointly and severally, or solidarily, liable to those passengers with respect to the obligations set out in sections 7, 22 and 24 of the APPR, or, if they are more favourable to those passengers, the obligations on the same matter that are set out in the applicable tariff.

## **(C) Overriding law/severability**

- (1) If any provision contained or referred to in the ticket or this tariff is found to be contrary to an applicable law, government regulation, order or requirement, which cannot be waived by agreement of the parties, such provision, to the extent that it is invalid, shall be severed from the ticket or tariff and the remaining provisions shall continue to be in full force and effect.

## **(D) Gratuitous carriage**

- (1) [Insert Policy]



**Note to carrier:** Insert the appropriate provision based on your policy on gratuitous carriage of passengers, bearing in mind, the provisions of APPR and the Convention apply to all passengers.

## **(E) Passenger recourse**

- (1) Any compensation offered to passengers is found in this tariff and is subject to applicable government regulations.
- (2) In the case of dispute with [Carrier Name], passengers should, as the first recourse, try to resolve any problem by dealing directly with the carrier. If the passenger has attempted to resolve a complaint with the carrier and is still not satisfied, the passenger may take the matter to either the Canadian Transportation Agency or the appropriate court, as the passenger prefers.

## **(F) Modification and waiver**

- (1) No agent, servant or representative of the carrier has the authority to alter, modify, or waive any provisions of this tariff.

## **(G) Self identification – large or small carrier**

### **APPR**

- (1) For the purposes of establishing obligations toward passengers under the APPR, [Carrier Name] declares that it is a [Large Carrier APPR] or [Small Carrier APPR].

**Note to carrier:** The APPR differentiates certain provisions as being applicable only to small or large carriers. According to the definition found in the APPR:

**Large Carrier APPR** means a carrier that has transported a worldwide total of two million passengers or more during each of the two preceding calendar years;

**Small Carrier APPR** means any carrier that is not a Large Carrier APPR. For greater certainty, Small Carrier APPR means a carrier that has not transported a worldwide total of two million passengers or more during each of the two preceding calendar years. For the purposes of APPR, the small carrier has the same obligations as a Large Carrier APPR towards a passenger that it carries on behalf of a Large Carrier APPR under a commercial agreement with that carrier.

The following rules differentiate between large and small carriers:

- Rule 90, Delay or cancellation – outside the carrier's control
- Rule 91, Delay or cancellation – within the carrier's control and within the carrier's control but required for safety purposes
- Rule 95, Denial of boarding – outside the carrier's control
- Rule 96, Denial of boarding – within the carrier's control and within the carrier's control but required for safety purposes

## Accessibility for persons with disabilities

- (2) For the purposes of establishing obligations toward passengers with disabilities under the ATPDR or otherwise, [Carrier Name] declares that it is [a Large Carrier ATPDR and that it has included a statement on its website indicating that it is subject to the ATPDR ] or [a Small Carrier Non-ATPDR operating aircraft with 30 or more passenger seats] or [a Small Carrier Non-ATPDR operating aircraft with 29 or less passenger seats].

**Note to carrier:** The ATPDR imposes requirements on all carriers that meet the definition of Large Carrier ATPDR, being an air carrier that provides passenger services within and to and from Canada and that transported a worldwide total of 1,000,000 passengers or more during each of the two preceding calendar years. For any other carrier that is not subject to the ATPDR, it will have accessibility obligations toward persons with disabilities based on other instruments, such as the ATR and the Agency's Codes of Practice, or on human rights principles.

The following rules differentiate between the terms and conditions of carriage for persons with disabilities for large and small carriers:

- Rule 69, Carriage of persons with disabilities – Large Carrier ATPDR
- Rule 70, Carriage of persons with disabilities – Small Carrier Non-ATPDR operating aircraft with 30 or more passenger seats
- Rule 71, Carriage of persons with disabilities – Small Carrier non-ATPDR operating aircraft with 29 or less passenger seats

**Note to carrier:** Carriers will adopt either Rule 69, or Rules 70 and/or 71 based on their declaration in (2) above. Carriers that are not subject to the ATPDR, the ATR or the Agency's codes of practice are nevertheless required to set out in their tariffs their terms and conditions of carriage for persons with disabilities. Carriers are strongly encouraged to adopt and apply Rules 69, 70 and/or 71 as appropriate.

Should a carrier that is not subject to the ATPDR, the ATR or the Agency's codes of practice choose not to adopt one of these rules, it must replace it with a rule that sets out its terms and conditions of carriage for persons with disabilities being mindful of human rights obligations under Canadian law.

## Part II – Before departure

### Rule 10: Application of fares and charges

#### (A) General

- (1) Applicable fares are those published by or on behalf of the carrier or, if not published, constructed in accordance with the carrier's tariff.

- (2) Fares and charges will apply only to air transportation between the points named on the ticket. Ground transfer services, unless otherwise specified in Rule 85, Ground transfer services, will be arranged by the passenger and at their own expense and are not subject to the terms of this tariff.

## **(B) Fares in effect**

- (1) Subject to government requirements and this tariff:
  - (a) The applicable fare is the fare in effect on the date of the ticket issuance.

**Note to carrier:** Carriers are reminded that different jurisdictions may have differing regulations as to pricing. Carriers should consult the appropriate regulations of those jurisdictions to which they intend to operate so as to ensure conformity.

## **(C) Routing**

- (1) Unless otherwise provided in the carrier's tariff, fares apply only to their associated routing.
- (2) If there is more than one routing associated with a fare, the passenger, prior to their ticket being issued, may specify the routing they prefer. If no routing is specified, the carrier may determine the routing. (See Rule 50, Routings)

## **(D) Taxes and charges**

- (1) Any tax or charge imposed by government or other authority, or by the operator of an airport, in respect of a passenger or the use by a passenger of any services or facilities will be in addition to the published fares and charges and will be payable by the passenger, except as otherwise provided in the carrier's tariff. (See Rule 15, Taxes)

## **(E) Currency of fares**

- (1) All fares and charges are stated in Canadian dollars for travel commencing in Canada.
- (2) All fares and charges are stated in U.S. dollars for travel commencing in the United States.
- (3) All fares and charges, for travel commencing outside Canada or the United States, are stated in the local currency of the country where travel commences, except to the extent that IATA rules provide for the establishment of fares in another currency.

**Note to carrier:** The carrier may wish to include in this Rule specific provisions about particular types of fares (such as round trips, circle trips) or fare construction details which are specific to the nature of the carrier's operation.

# **Rule 15: Taxes**

## **(A) General**

- (1) Taxes imposed by governments are payable by the passenger and are in addition to the published or constructed fare.
- (2) At the time of the ticket purchase, the passenger will be advised by the carrier of all the taxes appearing on the ticket.
- (3) Taxes will be shown separately on the ticket.
- (4) The conditions under which taxes are imposed, collected or refunded are established by the taxing authority (domestic or foreign) and in all cases will be respected. As a result, the carrier will either collect new or higher amounts or refund all or a portion of the tax paid based on the conditions imposed by the taxing authority.

## **Rule 20: Methods of payment**

### **(A) General**

The following is a list of payment options accepted by the carrier for the payment of tickets and services offered by the carrier:

- (1) Cash in currencies acceptable to the carrier
- (2) Credit card
- (3) Bank debit card, where facilities permit
- (4) Certified cheques
- (5) Bank drafts
- (6) MCOs (miscellaneous charges order)
- (7) Vouchers
- (8) Travelers cheques
- (9) Redeemable travel points or travel miles.

**Note to carrier:** If you accept other methods of payment, please ensure that these other methods are detailed in this Rule. Furthermore, if you have restrictions related to forms of payment, such as use of credit card only for the purchase of tickets or services, this must be set out in this Rule.

## **Rule 25: Currency of payment**

### **(A) General**

- (1) Currency provisions are subject to government regulations and applicable foreign exchange regulations.
- (2) When travel commences in Canada, payment for tickets will be in Canadian dollars at the Canadian dollar fare, or its equivalent in other currencies converted to Canadian dollars at the

bankers' buying rate of exchange.

- (3) When travel commences in the United States, payment for tickets will be in U.S. dollars at the U.S. dollar fare, or its equivalent in other currencies converted to U.S. dollars at the bankers' buying rate of exchange.
- (4) When travel originates outside Canada/United States but payment is made in Canada, the published fare in anything other than Canadian dollars will be converted to Canadian currency at the bankers' buying rate of exchange.
- (5) When travel originates outside Canada/United States but payment is made in the United States, the published fare in anything other than U.S. dollars will be converted to U.S. currency at the bankers' buying rate of exchange.
- (6) When travel originates outside Canada/United States and payment is not made in Canada or the United States, the published fare will be converted to local currency at the bankers' buying rate of exchange.

## **Rule 30: Classes of service**

### **(A) First class or class "F"**

- (1) The first class section will be located in the area of the aircraft designated by the carrier as first class.
- (2) Separate check-in facilities will be provided for passengers in first class seating, when airport space and staffing permit.
- (3) Passengers in first class seating will be afforded the use of first class lounges where such facilities exist.
- (4) Passengers seated in the first class section will be provided first class services.
- (5) First class services will consist of:

**[Carrier to define its services here]**

### **(B) Business class or class "C"**

- (1) The business class section will be located in the area of the aircraft designated by the carrier as business class.
- (2) Separate check-in facilities will be provided for passengers in business class seating where such facilities exist.
- (3) Passengers seated in the business class section will be provided business class service.
- (4) Business class services will consist of:

**[Carrier to define its services here]**

## **(C) Economy class or class “Y”**

- (1) The economy class/tourist class section will be located in the area of the aircraft designated by the carrier as economy class.
- (2) Passengers seated in the economy class section will be provided economy class service.
- (3) Economy class services will consist of:

**[Carrier to define its services here]**

**Note to carrier:** The above noted provisions will need to be tailored to reflect your operations and services offered. Please amend accordingly.

## **Rule 40: Reservations**

### **(A) General**

- (1) A reservation for space on a specific flight is valid when the availability and allocation of the space is entered into the carrier's reservation system, a confirmation number/code is obtained from the carrier which authenticates the reservation, the passenger has paid the appropriate fare, and a ticket has been issued for that space.
- (2) The carrier will only issue a ticket against a valid reservation. Subject to payment or other satisfactory arrangements and passenger compliance with the check-in time limits set out in paragraph (E) below, a ticket will be issued to the passenger by the carrier or agent of the carrier indicating that the passenger is holding confirmed space for the flight(s) shown on the ticket. The ticket will only apply between the points named on the ticket and the flight coupons that are presented.
- (3) On any specific flight, the carrier may limit the number of passengers carried at any specific fare. All fares will not necessarily be available on all flights. The number of seats which the carrier shall make available on a specific flight will be determined by the carrier's best judgment as to the anticipated total number of passengers on each flight.
- (4) A passenger who is holding an unused open-date ticket or a portion of that ticket or is in possession of another electronic document issued to the passenger by the carrier which entitles the passenger to onward travel, or who wishes to change their reservation for another date, will not be entitled to any preferential right to secure a new reservation.
- (5) For provisions related to the assignment of seats on-board an aircraft for all passengers including children, see Rule 41, Seat assignment for passengers including the seating of children under the age of 14 years.
- (6) For more specific provisions related to the assignment of seats on-board an aircraft for persons with disabilities, see:

**Note to carrier:** Carrier to choose from the following based on its declaration in Rule 5(G)(2) above.

- [Rule 69(C)(1)(b)-(c), Reservations and online services], or
- [Rule 70(C)(1)(b)-(d), Reservations – information about services and seating assignments], and/or
- [Rule 71(C)(1)(c)-(e), Reservations – information about services and seating assignments.]

(7) For more specific provisions related to making reservations in an accessible manner for persons with disabilities, see:

- Rule 69(C)(3), Reservations and online services

**Note to carrier:** This is an obligation for Large Carriers ATPDR. Small Carriers Non-ATPDR are encouraged to offer alternative means of making a reservation in an accessible manner, as noted in Rule 69(C)(3).

(8) The carrier will not accept a reservation for a child under 5 years of age who will be travelling alone, irrespective of whether the child's parent or guardian wishes to use the carrier's unaccompanied minors (UM) service for their child to travel alone. (see Rule 60, Acceptance of children and Rule 65, Unaccompanied minors)

**Note to carrier:** This is an obligation for international transportation according to paragraph 122(d) of the ATR; however, this is not an obligation for purely domestic transportation. Canadian carriers may be prepared to accept younger children, and if so they should set out their policy here.

## **(B) Cancellation of reservations**

(1) The carrier may cancel reservations of any passenger:

- (a) If circumstances require due to situations within a carrier's control as defined in Rule 1, Definitions and applied in Rule 91, Delays or cancellation – within the carrier's control and within the carrier's control but required for safety purposes or Rule 96, Denial of boarding – within the carrier's control and within the carrier's control but required for safety purposes;
- (b) If circumstances require due to situations outside a carrier's control as defined in Rule 1, Definitions and applied in Rule 90, Delays or cancellation- outside the carrier's control or Rule 95, Denial of boarding – outside the carrier's control;
- (c) If circumstances require due to any situation identified in and applied in Rule 105, Refusal to transport; or,
- (d) When the passenger has failed to meet check-in or boarding gate requirements set out in paragraph (E) below.

(2) If the carrier cancels a passenger's reservation due to (B)(1)(a) (above), the passenger may be eligible to take advantage of the provisions found in Rule 91, Delays or cancellation – within the carrier's control and within the carrier's control but required for safety purposes or Rule 96, Denial of boarding – within the carrier's control and within the carrier's control but required for safety purposes.

- (3) If the carrier cancels a passenger’s reservation due to (B)(1)(b) (above), the passenger may be eligible to take advantage of the provisions found in Rule 90, delays or cancellation – outside the carrier’s control or Rule 95 Denial of boarding – outside the carrier’s control.
- (4) If the carrier cancels a passenger’s reservation due to (B)(1)(c) (above), the passengers will be treated in accordance with the provisions of Rule 105, Refusal to transport.

**(C) Passenger’s responsibility**

- (1) The passenger must arrive at the airport with sufficient time to complete check-in, government formalities, security clearance and the departure process while meeting the time limits detailed in (E) below. Flights will not be delayed for passengers who have not completed any of these pre-boarding requirements.

**Note to carrier:** If the carrier requires additional time for preparing services for persons with disabilities in advance of completing the check-in and/or departure process such as disassembling or reassembling a mobility aid, the carrier must state its policies in that regard in its tariff under Rule 69(G)(4)(b) Acceptance of mobility aids and other assistive devices; Rule 70(G) Acceptance of mobility aids and other assistive devices; or Rule 71(G) Acceptance of aids.

- (2) The passenger should provide the carrier with their preferred means of communication from among means offered by the carrier (for example, email address and/or telephone numbers) when the carrier solicits point of contact information from the passenger in case the carrier must communicate with the passenger prior to their departure or at any point during the passenger’s itinerary. The carrier has an obligation to communicate information to its passengers as per Rule 97, Communication of information – cancellation, delay, tarmac delay, or denial of boarding.

**Note to carrier:** If the carrier has policies in regard to the consequences if the passenger fails to comply with their responsibilities as outlined above, they must be stipulated here.

**(D) Failure to occupy seat**

- (1) If the passenger does not occupy space which has been reserved by/for them and the carrier is not notified of the cancellation of such reservation up to and until the scheduled departure of that particular flight, the carrier will [carrier to insert its policy regarding consequences to the passenger here].

**(E) Check-in time limits**

<b>Travel</b>	<b>Recommended check-in time <sup>1</sup></b>	<b>Check-in/baggage drop-off deadline <sup>2</sup></b>	<b>Boarding gate deadline <sup>3</sup></b>
Within Canada	<b>60 minutes</b>	<b>30 minutes</b>	<b>20 minutes</b>



<b>Travel</b>	<b>Recommended check-in time <sup>1</sup></b>	<b>Check-in/baggage drop-off deadline <sup>2</sup></b>	<b>Boarding gate deadline <sup>3</sup></b>
To/From the U.S.	<b>90 minutes</b>	<b>60 minutes</b>	<b>20 minutes</b>
International	<b>120 minutes</b>	<b>60 minutes</b>	<b>35 minutes</b>

**1** ..... **Recommended check-in time:** To ensure that the passenger has plenty of time to check in, drop off checked baggage and pass through security, the above table sets out how much in advance of the flight's departure time the passenger should check in. e.g. if the passenger's flight from Paris to Toronto leaves at 4:00 pm, the carrier recommends that the passenger check in by 2:00 pm (120 minutes before their flight).

**2** ..... **Check-in and baggage drop-off deadline:** The passenger must have checked in, obtained their boarding pass and **checked all baggage** at the baggage drop-off counter before the check-in deadline for their flight. e.g. if the passenger's flight from Montreal to Miami leaves at 7:00 a.m., the passenger is required to have checked in and checked all baggage with carrier by 6:00 a.m. (60 minutes before their flight).

**3** ..... **Boarding gate deadline:** The passenger must be available for boarding at the boarding gate by the boarding gate deadline, e.g. if the passenger's flight from Toronto to Ottawa leaves at 11:00 a.m., the passenger must be at the boarding gate no later than 10:40 a.m. (20 minutes before their flight).

**Note to carrier:** The times above are examples of common times wherever travel is taking place. If certain circumstances require a passenger to check-in or present themselves at the boarding gate earlier than the above deadlines, carriers should set out such circumstances and the related deadlines (e.g. to reflect additional time that might be needed to disassemble, package, and stow a person with a disability's power wheelchair at certain airports).

If the passenger fails to meet either the check-in/baggage drop off deadline or the boarding gate deadline specified in the above chart, the carrier may reassign any pre-reserved seat and/or cancel the reservation of the passenger and the carrier may not be able to transport the passenger's baggage.

**Note to carrier:** If the carrier has policies in regard to consequences if the passenger fails to comply with the time limits as outlined above, they must be stipulated here.

## Rule 41: Seat assignment for passengers including the seating of children under the age of 14 years

### (A) Applicability

- (1) This Rule applies to all passengers irrespective of the type of fare on which they are travelling or have purchased.
- (2) Unaccompanied children will be carried pursuant to the provisions of Rule 65, Unaccompanied minors.
- (3) The carrier will not accept a reservation for a child under 5 years of age who will be travelling alone, irrespective of whether the child's parent or guardian wishes to use the carrier's unaccompanied minors (UM) service for their child to travel alone.

**Note to carrier:** This is an obligation for international transportation according to paragraph 122(d) of the ATR. However, this is not an obligation on purely domestic transportation. Canadian carriers may be prepared to accept younger children, and if so they should lay out their policy here and in Rule 65, Unaccompanied minors.

### (B) Seat assignment

- (1) The carrier does not guarantee the assignment of any particular space on the aircraft.

#### Advance seat selection

- (2) The passenger may pre-select a seat once they have purchased their ticket when booking a fare. If a passenger is choosing a specific seat, a fee may be assessed based on the conditions of the fare purchased (unless the seat is required to meet a disability related need – see (3) below). Nonetheless, complimentary seat selection is available at the time of check-in.

**Note to carrier:** If a carrier charges for advance seat selection, then it must set out those charges below.

The advance seat selection fee will be charged per passenger and will be applied as set out in the table below:

- (a) Applicable fees for travel:

Type of service	Seat selection fee within Canada	Seat selection fee between Canada and the USA	Seat selection fee between Canada and international points
First class	(Carrier to complete table)		
Business class			

Type of service	Seat selection fee within Canada	Seat selection fee between Canada and the USA	Seat selection fee between Canada and international points
Full fare economy class			
Special or discounted fares seated in economy class section of the aircraft			

(b) Seat selection fees will be refunded if:

- (i) the carrier must move the passenger from their pre-paid, pre-selected seat due to an involuntary schedule or airport change or due to safety or operational reasons,
- (ii) the passenger has a confirmed upgrade to a Normal Fare prior to flight check-in, or,
- (iii) [Otherwise, state refund policy for seat selection fees for other situations]

**Note to carrier:** If the carrier has policies regarding the refundability of seat selection fees, they are required to outline those policies here.

(3) **Exception:** A person with a disability who requires a specific seat to meet a disability-related need will not be charged a seat selection fee.

For additional obligations on seat assignment for persons with disabilities, including persons who need additional adjacent seating, see:

**Note to carrier:** Carrier to choose from the following based on its declaration in Rule 5(G)(2) above.

- [Rule 69(C)(1)(b)-(c), Reservations and online services], and Rule 69(F) Services for which advance notice is required], or
- [Rule 70(C)(1)(b)-(d), Reservations – information about services and seating assignments], and/or
- [Rule 71(C)(1)(c)-(e), Reservations – information about services and seating assignments]

### **(C) Assignment of seats to accompanied children under the age of 14 years**

(1) In order to facilitate the assignment of a seat to a child who is under the age of 14 years that is in close proximity to an accompanying person (parent, guardian or tutor) in accordance with part (D) (below), the carrier will, at no additional charge:

- (a) assign a seat before check-in to the child that is in close proximity to the accompanying person, or

- (b) if the carrier does not assign seats prior to check-in, in accordance with paragraph (a), the carrier will:
- (i) advise passengers before check-in that the carrier will facilitate seat assignment of children in close proximity to an accompanying person at no additional charge at the time of check-in or at the boarding gate,
  - (ii) assign seats at the time of check-in, if possible,
  - (iii) if it is not possible to assign seats at the time of check-in, the carrier will, via an announcement at the gate, ask for volunteers to change seats at the time of boarding, and
  - (iv) if it is not possible to assign seats at the time of check-in and no passenger has volunteered to change seats at the time of boarding, the carrier will ask again for volunteers on-board the aircraft to change seats before take-off.

#### **(D) Proximity to accompanying person's seat**

- (1) The carrier will facilitate, pursuant to the steps outlined in (C) (above), the assignment of a seat to a child who is under the age of 14 years by offering, at no additional charge:
- (a) in the case of a child who is 4 years of age or younger, a seat that is adjacent to their accompanying person's seat;
  - (b) in the case of a child who is 5 to 11 years of age, a seat that is in the same row as their accompanying person's seat, and that is separated from that accompanying person's seat by no more than one seat; and
  - (c) in the case of a child who is 12 or 13 years of age, a seat that is in a row that is separated from the row of their accompanying person's seat by no more than one row.

#### **(E) Difference in price**

- (1) If the passenger who is assigned seating in accordance with (D)(1) (above) is seated in a lower class of service than their ticket provides, the carrier will reimburse the price difference between the classes of service.
- (2) If the passenger who is assigned seating in accordance with (D)(1) (above) chooses a seat that is in a higher class of service than their tickets provide, the carrier **[will /will not]** request supplementary payment representing the price difference between the classes of service.

**Note to carrier:** Carrier will select either to collect or not collect a supplementary payment in (E) (2).

## **Rule 45: Stopovers**

### **(A) General**

- (1) Stopovers will be permitted under the following conditions:
  - (a) Stopovers must be arranged with the carrier in advance and specified on the ticket.
  - (b) Specific fare rules may not permit stopovers or limit the number of stopovers allowed or there may be an additional charge for stopovers based on the fare purchased by the passenger. Refer to the rule applicable to the fare in question for further information.
  - (c) If a portion of a journey is travelled by surface transportation, a stopover will be deemed to have taken place for such transportation.
  - (d) **For travel within Canada and between Canada and the U.S.A:** A deliberate interruption of a journey for more than 4 hours will constitute a stopover.
  - (e) **For travel to/from Canada except within Canada and between Canada and the U.S.A:** No stopover will have occurred if the passenger departs the connecting point on the date of arrival or if there is no scheduled connecting departure on the date of arrival, the passenger's departure occurs the next day and within 24 hours of arrival at the connecting point.

## Rule 50: Routings

### (A) Application

- (1) A routing is applicable only to the fares which are specifically associated with it.
- (2) A routing may be travelled via any or all of the cities named in the carrier's routing diagram, unless otherwise restricted.
- (3) All or part of the applicable routing may result in non-stop travel.
- (4) An intermediate point(s) specified along the routing may be omitted.
- (5) All routings are applicable in either direction, unless otherwise restricted.
- (6) For those routings permitting choice of carrier for carriage between the same points, only one of those carriers may be used.
- (7) Where no carrier is indicated between two points, travel is limited to [Carrier Name].
- (8) If more than one routing is applicable via the same fare, the passenger, and prior to the issuance of the ticket, may specify the routing. If no routing is specified by the passenger, the carrier will determine the routing.

## Rule 54: Interline baggage acceptance

### Definitions

"airline designator code"

means an identification code comprised of two-characters which is used for commercial and traffic purposes such as reservations, schedules, timetables, ticketing, tariffs and airport display systems. Airline designators are assigned by IATA. When this code appears on a ticket, it reflects the carrier that is marketing the flight, which might be different from the carrier operating the flight.

### **"baggage rules"**

means the conditions associated with the acceptance of baggage, services incidental to the transportation of baggage, allowances and all related charges. For example, baggage rules may address the following topics:

- The maximum weight and dimensions of passenger bags, if applicable, both checked and unchecked;
- The number of checked and unchecked passenger bags that can be transported and the applicable charges;
- Excess and oversized baggage charges;
- Charges related to check-in, collection and delivery of checked baggage;
- Acceptance of and charges related to special items, e.g. surf boards, pets, bicycles;
- Baggage provisions related to prohibited or unacceptable items, including embargoes;
- Terms or conditions that would alter or impact the baggage allowances and charges applicable to passengers (e.g. frequent flyer status, early check-in, pre-purchasing baggage allowances with a particular credit card); and,
- Other rules governing treatment of baggage at stopover points, including passengers subject to special baggage allowances or charges.

### **"down line carrier"**

means any carrier, other than the selecting carrier, that is identified as providing interline transportation to the passenger by virtue of the passenger's ticket.

### **"interline agreement"**

means an agreement between two or more carriers to co-ordinate the transportation of passengers and their baggage from the flight of one air carrier to the flight of another air carrier (through to the next point of stopover).

### **"interline itinerary"**

means all flights reflected on a single ticket involving multiple air carriers. Only travel on a single ticket is subject to the Agency's [Decision No. 144-A-2014](#) related to [Interline Baggage Rules for Canada](#) provided the origin or the ultimate ticketed destination is a point in Canada.

### **"interline travel"**

means travel involving multiple air carriers listed on a single ticket that is purchased via a single transaction.

**"marketing carrier"**

means the carrier that sells flights under its code.

**"most significant carrier (MSC)"**

is determined by a methodology, established by IATA (Resolution 302), which establishes, for each portion of a passenger's itinerary where baggage is checked through to a new stopover point, which carrier will be performing the most significant part of the service. For travelers under the Resolution 302 system, the baggage rules of the MSC will apply. For complex itineraries involving multiple checked baggage points, there may be more than one MSC, resulting in the application of differing baggage rules through an itinerary.

**"most significant carrier (MSC) – IATA Resolution 302 as conditioned by the Agency"**

means that in this instance, the MSC is determined by applying IATA Resolution 302 methodology as conditioned by the Agency in its Decision No. 144-A-2014. The Agency's reservation has stipulated that only a single set of baggage rules may apply to any given interline itinerary. The aim of the Agency's reservation is to allow the selecting carrier to use the MSC methodology to determine which carrier's baggage rules apply to an international interline itinerary to or from Canada, while reinforcing the role of tariffs in the determination of which carrier's rules apply.

**"operating carrier"**

means the carrier that operates the actual flight.

**"participating carrier(s)"**

includes both the selecting carrier and down line carriers who have been identified as providing interline transportation to the passenger by virtue of the passenger's ticket.

**"selected carrier"**

means the carrier whose baggage rules apply to the entire interline itinerary.

**"selecting carrier"**

means the carrier whose designator code is identified on the first flight segment of the passenger's ticket at the beginning of an interline itinerary issued on a single ticket whose origin or ultimate destination is in Canada.

**"single ticket"**

is a document that permits travel from origin to destination. It may include interline/code-share and intra-line segments. It may also include end-to-end combinations (i.e., stand alone fares that can be bought separately but combined together to form one price).

**"summary page at the end of an online purchase"**

is a page on a carrier's Web site which summarizes the details of a ticket purchase transaction just after the passenger has agreed to purchase the ticket from the carrier and has provided a form of payment.

**"ultimate ticketed destination"**

means in situations where a passenger's origin is a non-Canadian point and the itinerary includes at least one stop in Canada, as well as at least one stop outside of Canada. If the stop in Canada is the farthest checked point and the stop is more than 24 hours, the Agency would consider the ultimate ticketed destination to be Canada.

## **(A) Applicability**

- (1) This Rule is applicable to all interline itineraries issued on a single ticket whose origin or ultimate ticketed destination is in Canada.
- (2) It establishes how the carrier will determine which carrier's baggage rules apply to any passenger's entire interline itinerary.

## **(B) General**

- (1) For the purposes of interline baggage acceptance:
  - (a) the carrier whose designator code is identified on the first segment of the passenger's interline ticket will be known as the selecting carrier.
  - (b) any carrier who is identified as providing interline transportation to the passenger by virtue of the passenger's ticket will be known as a participating carrier.

## **(C) Baggage rule determination by selecting carrier**

### **Checked baggage**

- (1) The selecting carrier will:
  - (a) Select and apply its own baggage rules as set out in its tariff to the entire interline itinerary.  
OR
  - (b) Select the MSC, as determined by IATA Resolution 302 as conditioned by the Agency , in order for that carrier's baggage rules, as established in its tariff, to apply to the entire interline itinerary.
- (2) The carrier identified by means of (a) or (b) will be known as the selected carrier.

### **Carry-on baggage**

- (3) Each operating carrier's carry-on baggage allowances will apply to each flight segment in an interline itinerary. Notwithstanding, the carry-on baggage charges that will apply to the entire interline itinerary will be those of the selected carrier.

### **Note to carrier: Pursuant to IATA Rule 302 as conditioned by the Agency:**

- \) The selecting carrier may choose to apply a consistent approach (ie., it always selects its own rules to apply) irrespective of the circumstances.



- 3) Given that a carrier may choose to apply its own baggage rules if it is the selecting carrier, or be chosen by another carrier to be the selected carrier whose baggage rules apply to an interline itinerary, a carrier must ensure that its own **baggage rules** related to checked and unchecked items, in the context of interline transportation, address the following topics:
- The maximum weight and dimensions of passenger bags, if applicable, both checked and unchecked;
  - The number of checked and unchecked passenger bags that can be transported and the applicable charges;
  - Excess and oversized baggage charges;
  - Charges related to check in, collection and delivery of checked baggage;
  - Acceptance of and charges related to special items, e.g. surf boards, pets, bicycles;
  - Baggage provisions related to prohibited or unacceptable items, including embargoes;
  - Terms or conditions that would alter or impact the baggage allowances and charges applicable to passengers (e.g. frequent flyer status, early check in, pre-purchasing baggage allowances with a particular credit card); and,
  - Other rules governing treatment of baggage at stopover points, including passengers subject to special baggage allowances or charges.
- 2) The carrier must be aware of the following and must amend its own baggage rules to address the following matters:

### **Passenger's special status**

The baggage rules, as set out in the applicable carrier's tariff, chosen at the beginning of a passenger's itinerary will determine what entitlements the passenger is eligible for based on their status, by virtue of the fare the passenger purchased, their frequent flyer status or other factors.

### **Stopovers**

The baggage rules, as set out in the applicable carrier's tariff, chosen at the beginning of a passenger's itinerary will determine whether a passenger's baggage allowance and charges may be applied at each checked point or whether it is the carrier's policy to apply the charges only one time in each direction.

### **Carry on**

Each operating carrier's carry-on baggage allowances will apply per flight segment. The carrier should make reference to this in its tariff.

### **Embargoes**

Embargoes applicable to any operating carrier participating in an interline itinerary will be taken into account when determining the baggage allowances and charges that apply to the passenger's travel. Embargoes must be specified in any carrier's tariff.

### **Transportation of special items**

Likewise, there may be certain circumstances which prevent or in some manner adversely affect the transport of baggage on an itinerary e.g. oversized or overweight baggage, such as surfboards, pets, bicycles, etc. In these cases, any participating carrier in a passenger's interline itinerary may apply these restrictions to the passenger's travel as long as they are reflected in that carrier's tariff under its own baggage rules.

### **Transportation of assistive devices, including mobility aids, for persons with disabilities**

Persons with disabilities may need to refer to the respective carriers on their itinerary to determine their policies with respect to the transportation of assistive devices on interline itineraries.

## **(D) Baggage rule application by participating carrier**

- (1) Where the carrier is not the selected carrier on an interline itinerary but is a participating carrier that is providing transportation to the passenger based on the ticket issued, the carrier will apply as its own the baggage rules of the selected carrier throughout the interline itinerary.

## **(E) Disclosure of baggage rules**

### **Summary page at the end of an online purchase and e-ticket disclosure**

- (1) For baggage rules provisions related to a passenger's 1st and 2nd checked bag and the passenger's carry-on baggage (i.e., the passenger's "standard" baggage allowance), when the carrier sells and issues a ticket for an interline itinerary, it will disclose to the passenger on any summary page at the end of an online purchase and on the passenger's itinerary/receipt and e-ticket at the time of ticketing the baggage information relevant to the passenger itinerary as set out in paragraph (2) below. The disclosed information will reflect the baggage rules of the selected carrier.
- (2) The carrier will disclose the following information:
  - (a) name of the carrier whose baggage rules apply;
  - (b) passenger's free baggage allowance and/or applicable fees;
  - (c) size and weight limits of the bags, if applicable;
  - (d) terms or conditions that would alter or impact a passenger's standard baggage allowances and charges (e.g. frequent flyer status, early check-in, pre-purchasing baggage allowances with a particular credit card);
  - (e) existence of any embargoes that may be applicable to the passenger's itinerary; and,
  - (f) application of baggage allowances and charges (i.e., whether they are applied once per direction or if they are applicable at each stopover point).
- (3) The carrier will provide this information in text format on the passenger's e-ticket confirmation. Any fee information provided for carry-on bags and the first and second checked bag will be expressed as specific charges (i.e., not a range).

## Web site disclosure

- (4) The carrier will disclose on its Web site, in a convenient and prominent location, a complete and comprehensive summary of all of the carrier's own baggage rules, including information concerning:
- (a) The maximum weight and dimensions of passenger bags, if applicable, both checked and unchecked;
  - (b) The number of checked and unchecked passenger bags that can be transported and the applicable charges;
  - (c) Excess and oversized baggage charges;
  - (d) Charges related to check in, collection and delivery of checked baggage;
  - (e) Acceptance of and charges related to special items, e.g. surf boards, pets, bicycles;
  - (f) Baggage provisions related to prohibited or unacceptable items, including embargoes;
  - (g) Terms or conditions that would alter or impact the baggage allowances and charges applicable to passengers (e.g. frequent flyer status, early check in, pre-purchasing baggage allowances with a particular credit card); and,
  - (h) Other rules governing treatment of baggage at stopover points, including passengers subject to special baggage allowances or charges.

## Rule 55: Baggage acceptance

### (A) Applicability

- (1) This Rule only applies to flights operated by [Carrier Name] ("the carrier") for single carrier (i.e. online) transportation of baggage and interline transportation of baggage where the carrier is selected to apply its own baggage rules to an entire interline itinerary.

### (B) General conditions of acceptance of checked and unchecked baggage

The carrier will accept for transportation as baggage, any good that is necessary or appropriate for the wear, use, comfort or convenience of the passenger for the purpose of the trip, subject to the following:

- (1) Checked baggage
- (a) Once the carrier takes possession of the passenger's checked baggage, the carrier will issue a baggage identification tag for each piece of checked baggage. A portion of this tag will be provided to the passenger and each bag will be affixed with the corresponding remaining portion of the tag.
  - (b) Subject to the provisions of this tariff related to mobility aids and musical instruments, checked baggage will be carried on the same aircraft as the passenger unless the baggage is delayed or the carrier decides that it is impractical to carry the baggage on the same aircraft.

**Note:** For additional provisions related to the transportation of assistive devices for persons with disabilities, refer to:

**Note to carrier:** Carrier to choose from the following based on its declaration in Rule 5(G)(2) above.

- [Rule 69(G), Acceptance of mobility aids and other assistive devices], or
- [Rule 70(G), Acceptance of mobility aids and other assistive devices], and/or
- [Rule 71(G), Acceptance of aids.]

**Note:** For additional provisions related to the transportation of musical instruments, refer to Rule 56(E)(2), Acceptance of Musical Instruments as Baggage.

## (2) Unchecked baggage (carry-on baggage)

- (a) Unchecked baggage must be within the carrier's size and weight limits to be taken **on-board the aircraft**.
- (b) **Unchecked baggage** must fit under the seat located in front of the passenger or in the enclosed storage compartment in the passenger cabin of the aircraft.

**Note:** This provision does not apply to assistive devices for persons with disabilities. For provisions related to the transportation of assistive devices for persons with disabilities, refer to:

**Note to carrier:** Carrier to choose from the following based on its declaration in Rule 5(G)(2) above.

- [Rule 69(G), Acceptance of mobility aids and other assistive devices], or
- [Rule 70(G), Acceptance of mobility aids and other assistive devices], and/or
- [Rule 71(G), Acceptance of aids].

- (c) Objects which are not suitable for carriage as checked baggage (e.g. objects made of glass or ceramic) will only be accepted for transportation in the passenger cabin of the aircraft if advance notice is given to the carrier and the carrier agrees to carry the object. **[Note to carrier:** The carrier must state its policy with respect to carriage of such objects and whether there are any additional charges to transport them]. Passengers should contact the carrier or review its Web site for more information about which specific objects are not suitable for carriage as checked baggage and will only be accepted for transportation in the passenger cabin of the aircraft upon prior agreement with the carrier.

**Note:** This does not apply to the carriage of musical instruments (See Rule 56 (E)(3), Acceptance of musical instruments as baggage)

## (C) Baggage allowance

- (1) The passenger is entitled to carry free of charge checked and unchecked baggage as specified and subject to the conditions and limitations set out in the charts below.

**Note to carrier:** If a carrier charges to transport baggage then it must set out those charges.

### Checked baggage

Type of service	Maximum number of bags permitted	Weight per bag	Dimension per bag	Fees
First class	(Carrier to complete table)			
Business class				
Full fare economy class				
Special or discounted fares seated in economy class section of the aircraft				

### Unchecked baggage (carry-on baggage)

Type of service	Maximum number of bags permitted	Weight per bag	Dimension per bag	Fees
First class	(Carrier to complete table)			
Business class				
Full fare economy class				
Special or discounted fares seated in economy class section of the aircraft				

- (2) The carrier will accept for transportation assistive devices for persons with disabilities in addition to the baggage allowances set out in the charts above at no additional charge to the person. For provisions related to the transportation of assistive devices for persons with disabilities, refer to:

**Note to carrier:** Carrier to choose from the following based on its declaration in Rule 5(G)(2) above.

- o [Rule 69(G), Acceptance of mobility aids and other assistive devices], or
- o [Rule 70(G), Acceptance of mobility aids and other assistive devices], and/or
- o [Rule 71(G), Acceptance of aids.]

- (3) If a passenger exceeds the maximum number of bags permitted and/or the maximum weight allowed for each bag or the maximum dimensions permitted for each checked or carry-on bag in the chart in (1) above, the passenger will be subject to the excess baggage charges set out in the chart in (E) below.

**Note:** Musical instruments will be considered as part of the passenger's baggage allowance and there may be associated fees dependent on the fare purchased. The carrier may also charge additional fees specific to the carriage of musical instruments. (See Rule 56(F), Acceptance of musical instruments as baggage).

- (4) The passenger's name and contact information must appear on the baggage. It is recommended that the name and contact information also be included inside the baggage.

## **(D) Collection and delivery of baggage**

- (1) The passenger has the right to retrieve their baggage without delay.
- (2) Only the passenger who was given a baggage identification tag when the carrier took possession of the baggage is entitled to accept delivery of the baggage.
- (3) If the passenger claiming the checked baggage is unable to produce their portion of the baggage identification tag and identify the baggage by means of its baggage identification tag, the carrier must receive satisfactory proof that the baggage belongs to the passenger in question before delivering the baggage to the passenger.
- (4) Acceptance of the baggage without complaint, within the time limits stipulated in Rule 120(C), Liability – domestic transportation or Rule 121(C), Liability – international transportation, by the passenger in possession of the baggage identification tag is evidence that the carrier delivered the baggage in good condition and in accordance with this tariff.

## **(E) Excess baggage**

- (1) **Note to carrier:** If a carrier charges for excess baggage then it must set out those charges. Baggage in excess of the free baggage allowance will be accepted by the carrier upon payment of the applicable charge. The charge for the excess baggage is payable prior to departure at the point of check-in.

**Note:** This provision does not apply to assistive devices for persons with disabilities. For provisions related to the transportation of assistive devices for persons with disabilities, refer to:

**Note to carrier:** Carrier to choose from the following based on its declaration in Rule 5(G)(2) above.

- [Rule 69(G), Acceptance of mobility aids and other assistive devices], or
- [Rule 70(G), Acceptance of mobility aids and other assistive devices], and/or
- [Rule 71(G), Acceptance of aids.]

## **Excess baggage**

Type of service	Overweight/ oversize	Charge per piece
<b>First class</b>	(Carrier to complete table)	
<b>Business class</b>		
<b>Full fare economy class</b>		
<b>Special or discounted fares seated in economy class</b>		

**Note:** In addition to the baggage allowances established based on the type of fare purchased by the passenger and any applicable excess baggage charges, the carrier, may also charge additional fees for the transportation of musical instruments. See Rule 56(F), Acceptance of musical instruments as baggage.

## (F) Excess value declaration charge

- (1) The passenger may declare a value in excess of the applicable liability limits for the checked baggage by completing a special declaration of interest and paying any excess value charges to the carrier prior to departure at the point of check-in at the rate of \$XXX CAD per \$100 CAD of excess valuation to a maximum of \$XXX CAD of excess valuation.

**Note:** The special declaration of interest is set out in Article 22(2) of the Montreal Convention, which provides the carrier an opportunity to establish a mechanism for allowing passengers to declare excess baggage value for checked baggage.

**Note to carrier:** The excess value declaration is provided for international carriage by means of the Montreal Convention. The sample tariff adopts it for domestic carriage as well.

**Note:** An excess value declaration charge does not apply to assistive devices for persons with disabilities. For provisions related to the transportation of assistive devices for persons with disabilities, refer to:

**Note to carrier:** Carrier to choose from the following based on its declaration in Rule 5(G)(2) above.

- [Rule 69(G), Acceptance of mobility aids and other assistive devices], or
- [Rule 70(G), Acceptance of Mobility aids and other assistive devices], and/or
- [Rule 71(G), Acceptance of aids],
- [Rule 120, Liability of the carrier for loss, damage to, delay of baggage, passenger delay or death or bodily injury – domestic transportation],

- o [Rule 121, Liability of the carrier for loss, damage to, delay of baggage, passenger delay or death or bodily injury – international transportation].

## (G) Items unacceptable as baggage

- (1) The following items are unacceptable as baggage and will not be transported by the carrier:
- (a) Items which are forbidden to be carried by the applicable laws, regulations, or orders of any country to be flown from, to, or over.
  - (b) Items which are likely to endanger the aircraft or persons or property on-board the aircraft. These unacceptable items are specified in the International Civil Aviation Organization (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air and the International Air Transport Association (IATA) Dangerous Goods Regulations.
  - (c) Items, which in the carrier's opinion, are unsuitable for carriage because of their weight, size or character, for example, fragile or perishable items.

**Note:** Not applicable to assistive devices for persons with disabilities. For limitations on the carriage of mobility aids, refer to:

**Note to carrier:** Carrier to choose from the following based on its declaration in Rule 5(G)(2) above.

- [Rule 69(G), Acceptance of mobility aids and other assistive devices], or
- [Rule 70(G), Acceptance of Mobility aids and other assistive devices], and/or
- [Rule 71(G), Acceptance of aids].

**Note:** Not applicable to musical instruments. For limitations on the carriage of musical instruments, refer to Rule 56(B), (C) and (E), Acceptance of musical instruments as baggage.

- (d) Live animals except as provided in Rule 75, Acceptance of animals (pets and search and rescue dogs).

**Note:** Not applicable to service dogs, other service animals and emotional support animals for persons with disabilities. For limitations on the carriage of service dogs, other service animals and emotional support animals, refer to:

**Note to carrier:** Carrier to choose from the following based on its declaration in Rule 5(G)(2) above.

- [Rule 69(H), Acceptance of service dogs and (I), Acceptance of other service animals and emotional support animals], or
- [Rule 70(H), Acceptance of service animals and (I), Acceptance of emotional support animals], and/or
- [Rule 71(H), Acceptance of service animals and (I), Acceptance of emotional support animals].



(e) Firearms and ammunition other than for hunting or sporting purposes.

- (2) Firearms and ammunition for hunting and sporting purposes will be accepted as checked baggage provided the firearms are not loaded, the safety catch is in the “on” position and the firearms are suitably packed. The carriage of ammunition is subject to the ICAO and IATA regulations mentioned in (1)(b) above.
- (3) Weapons such as antique firearms, swords, knives and other similar items may be accepted as checked baggage at the carrier’s discretion, provided they are suitably packed.
- (4) Fragile or perishable items, money, jewellery, precious metals, silverware, negotiable papers, securities or other valuables, business documents, samples, passports and other identification documents are unacceptable for transportation as checked baggage and will only be transported as carry-on baggage if retained in the passenger's possession.

**Note to carrier:** The carrier may wish to include in this rule specific provisions about particular types of baggage (such as sports equipment, bicycles, antlers) which the carrier may or may not be prepared to accept as baggage and the conditions surrounding acceptance of such special items if they are accepted.

**Note to carrier:** A specific rule for the carriage of musical instruments is provided as Rule 56. Carriers are required to address the transportation of musical instruments in their tariffs pursuant to the APPR. Rule 56 is drafted with the intent of providing text for such a rule.

## (H) Right to refuse carriage of baggage

**Note:** This provision does not apply to assistive devices for persons with disabilities. For limitations on the carriage of mobility aids, refer to:

**Note to carrier:** Carrier to choose from the following based on its declaration in Rule 5(G)(2) above.

- [Rule 69(G), Acceptance of mobility aids and other assistive devices], or
- [Rule 70(G), Acceptance of Mobility aids and other assistive devices], and/or
- [Rule 71(G), Acceptance of aids.]

**Note:** This provision does not apply to musical instruments. For limitations on the carriage of musical instruments, refer to Rule 56(B), (C) and (E), Acceptance of musical instruments as baggage.

- (1) The carrier will refuse to carry as checked baggage any bag that the carrier has discovered to contain any unacceptable item mentioned in (G) above and when the passenger fails to provide the carrier with prior notice that they wish to carry such an item in their baggage.
- (2) Unless advance arrangements have been made with the carrier, the carrier may carry on later flights baggage which is in excess of the free baggage allowance.
- (3) The carrier will refuse to carry checked baggage if it determines that the baggage has not been properly and securely packed in suitable suitcases or containers.

## **(I) Right of search**

- (1) The carrier may request the passenger to permit a search to be conducted of their person and baggage. The carrier may search baggage in the passenger's absence. The purpose of any search is to ensure aircraft and passenger safety, security and to determine whether the passenger is in possession of, or the baggage contains, items mentioned in (G) above or any arms or ammunition which have not been presented to the carrier. If the passenger refuses to comply with the request for search, the carrier may refuse to carry the passenger and/or their baggage.

## **Rule 56: Acceptance of musical instruments as baggage**

**Note to carrier:** Carriers will note that the suggested text in this Rule is more extensive than that provided in subsection 24(1) of the APPR. Carriers may substitute their own text in place of that suggested here as long as they are consistent with laws and regulations, including the APPR. This sample tariff rule is being provided as an example.

### **(A) Applicability**

- (1) This Rule applies to all passengers travelling with musical instruments irrespective of the type of fare on which they are travelling or have purchased.
- (2) In case of damage, loss or delay of musical instruments, the limits of liability for baggage as found in Rule 120, Liability – domestic transportation and Rule 121, Liability – international transportation in keeping with the applicable Convention will apply.

### **(B) Small musical instruments as carry-on baggage**

- (1) The carrier will permit a passenger to bring on-board the aircraft cabin a small musical instrument, such as a violin or flute, as part of passenger's carry-on baggage allowance according to the number and size dimensions set out in Rule 55, Baggage acceptance, if:
  - (a) the instrument can be stowed safely in a suitable baggage compartment in the aircraft cabin or under the passenger seat, in accordance with the carrier's requirements for carriage of carry-on baggage; and,
  - (b) there is space for such stowage at the time the passenger boards the aircraft.

### **(C) Musical instruments as carry-on baggage (cabin seat baggage)**

- (1) The carrier will permit a passenger to bring on-board the aircraft cabin, and be transported as cabin seat baggage, a musical instrument if:
  - (a) the instrument is contained in a case or covered so as to avoid injury to other passengers;
  - (b) the weight of the instrument, including the case or covering, does not exceed XX kilograms ( XX pounds) or the applicable weight restrictions for the aircraft;

- (c) the instrument can be stowed safely and securely in accordance with the carrier's requirements;
- (d) neither the instrument nor the case contains any object not otherwise permitted to be carried in an aircraft cabin; and,
- (e) the passenger wishing to carry the instrument in the aircraft cabin has purchased an additional seat to accommodate the instrument.

(2) Musical instruments too large for the cabin may be carried as checked baggage. (See (E) below)

**Note to carrier:** If you do not accept musical instruments as cabin seat baggage, you must state that this is the case as a matter of policy.

#### **(D) Carrier unable to carry musical instruments in cabin due to substitution of aircraft**

- (1) If, due to substitution of aircraft, there is insufficient space to safely stow the musical instrument in the cabin, the carrier will offer, at no additional charge:
  - (a) to carry the instrument as cabin seat baggage, if space on-board and the nature of the instrument allows it; or alternatively
  - (b) to accept the instrument as checked baggage
- (2) If neither (1)(a) nor (b) are satisfactory, the carrier will offer the passenger rerouting options, at no additional charge, and if no rerouting options are satisfactory, the carrier will involuntarily refund the passenger pursuant to Rule 125(B).

#### **(E) Musical instruments as checked baggage**

- (1) The carrier will permit a passenger to transport as checked baggage a musical instrument that cannot be carried in the aircraft cabin if:
  - (a) the sum of the length, width, and height measured in centimetres of the outside linear dimensions of the instrument (including the case) does not exceed XX centimetres (XX inches) or the applicable size restrictions established for the aircraft;
  - (b) the weight of the instrument (including the case) does not exceed XX kilograms (XX pounds) or the applicable weight restrictions established for the aircraft;
  - (c) the instrument can be stowed safely and securely in accordance with the carrier's requirements; and
  - (d) the passenger has paid the applicable checked baggage fee.
- (2) A passenger has the option of checking suitable musical instruments if all applicable fees are paid.
- (3) Musical instruments carried as checked baggage will be carried on the same aircraft as the passenger unless the baggage is delayed or the carrier decides that it is impractical to carry the baggage on the same aircraft. This will also include cases of substitution of aircraft. In case of

baggage delay, the carrier will take necessary steps to inform the passenger of the status of the baggage and arrange to deliver the musical instrument to the passenger as soon as possible unless applicable laws require the presence of the passenger for customs clearance.

- (4) Delicate musical instruments are not suitable for carriage as checked baggage. Passengers should contact the carrier or review its Web site for more information about which musical instruments are not suitable for carriage.
- (5) The passenger may make a special declaration that their checked musical instrument has a higher value than the carrier's maximum liability. If the passenger does so, then the passenger must make this declaration to the carrier at the time of check-in and, if required by the carrier, shall, as per Rule 55 (F), Excess value declaration charge, pay the supplementary charge to allow for additional liability coverage in the case of destruction, loss, damage or delay of their musical instrument.

**Exception:** The carrier is not liable for the declared amount if it can prove that it is greater than the passenger's actual interest in delivery at destination.

## **(F) Fees**

- (1) Musical instruments will be considered as part of the passenger's baggage allowance, carriage of which may be dependent on the fare purchased.

**Note to carrier:** Carriers must identify here any fees they establish for the carriage of musical instruments. Carriers may, if that is their policy, state that no extra charge is payable for the transportation of musical instruments.

## **Part III – At the airport/during travel**

### **Rule 60: Acceptance of children for travel**

#### **(A) General**

- (1) Infants and children under XX years of age, accompanied in the same cabin by a passenger XX years of age or older, will be accepted for transportation.
- (2) Persons entrusted with the care of infants and children must be capable of discharging this duty.

#### **Infants**

- (1) Infants under two years of age on the date of travel do not require a seat.
- (2) For travel within Canada or between Canada and the U.S.A., infants under two years of age do not require a ticket.
- (3) For travel other than within Canada or between Canada and the United States infants under two years of age require a ticket.

- (4) Only one infant under the age of two years may be held in the lap of an accompanying passenger XX years of age or older.
- (5) No single passenger shall be responsible for more than one infant whether the infant is held on the lap of an accompanying passenger or a seat has been purchased for the infant and the infant is secured in an approved child restraint system (car seat).
- (6) An infant under two years of age at the time of departure but reaching their second birthday during the continuing/return flight(s) will require a seat and must pay the applicable fare for the continuing/return flight(s).
- (7) Infants under two years of age occupying a seat must be properly secured in a Transport Canada or United States Federal Aviation Administration (FAA) approved child restraint device.

### Children

- (1) All children, two years of age or older, must be ticketed and assigned a seat.
- (2) All children, XX years of age or older, will be able to travel unaccompanied without supervision and will be considered to be an adult for fare purposes.
- (3) All children, XX years of age or older, may accompany other infants and children under XX years old and will be considered as adults for the purposes of travel and will be charged the applicable adult fare.

## (B) Acceptance of infants and children

### For travel within Canada or between Canada and the United States

Age	Accepted	Conditions
X days to 23 months (infant)	Yes	<p>Only one infant is permitted per adult passenger. The infant may travel free of charge when the infant is held on an accompanying adult's lap.</p> <p>An infant for whom a seat is purchased must be properly secured in an approved child restraint device and will be assessed the applicable fare.</p>
2 to XX years old (child)	Yes	<p>These passengers are considered to be a child for the purpose of air travel and will pay the applicable child's fare if available, when accompanied by a ticketed passenger XX years of age or older for the entire trip.</p> <p>These passengers must be either supervised by a passenger of XX years or older or use the carrier's unaccompanied minor services, where applicable for children ages 5 and up who are travelling alone. (See Rule 65, Unaccompanied minors)</p> <p>The use of an approved child restraint device is optional for children age two and up.</p>

Age	Accepted	Conditions
XX years and older	Yes	<p>These passengers are considered to be adults for the purpose of air travel and will pay the applicable adult fare.</p> <p>These passengers are eligible to travel unaccompanied and unsupervised. Furthermore, they may accompany infants/children X days to XX years old.</p>

### For international transportation to and from Canada

Age	Accepted	Conditions
X days to 23 months (infant)	Yes	<p>Fares for infants will be XX per cent of the applicable adult fare. An infant must be held on the lap by an accompanying adult passenger.</p> <p>If it is desired that the infant secure a seat, a ticket must be purchased for that infant at the applicable fare. An infant for whom a seat is purchased must be properly secured in an approved child restraint device and will be assessed the applicable fare.</p>
2 to XX years old (child)	Yes	<p>These passengers are considered to be a child for the purpose of air travel and will pay the applicable child's fare if available, when accompanied by a ticketed adult passenger.</p> <p>These passengers must be either supervised by a passenger of XX years or older or use the carrier's unaccompanied minor services, for children ages 5 and up who are travelling alone. (See Rule 65, Unaccompanied minors)</p> <p>The use of an approved child restraint device is optional for children age two and up.</p>
XX years and older	Yes	<p>These passengers are considered to be adults for the purpose of air travel and will pay the applicable adult fare.</p> <p>These passengers will be eligible to travel unaccompanied and unsupervised. Furthermore, these passengers may accompany infants/children X days to XX years old.</p>

### (C) Documentation

All children who are passengers, whether traveling accompanied by a parent, guardian, or tutor or unaccompanied, must be in possession of the required documentation which is applicable to the points which they will be flying to, from and between.

- (1) For travel within Canada, passengers under 18 years of age must carry identification such as a passport, an original birth certificate or a non-government ID, e.g. student card.

- (2) For travel between Canada and the United States, passengers under 18 years of age require a valid passport or a Nexus card.
- (3) For all international transportation, in addition to the above, the carrier may require presentation of the following documents when children are travelling by air:
  - (a) Passport;
  - (b) Documents establishing legal custody;
  - (c) Consent letter authorizing travel (e.g. when child is taking a trip alone or with only one parent);
  - (d) Supporting identification, such as a birth certificate or citizenship card;
  - (e) Other legal documents, such as divorce papers, custody court orders or a death certificate (if one parent is deceased);
  - (f) Any other documentation required for entry into or travel via the countries on their itinerary. Passengers should verify with the nearest embassy or consulate of each country to be visited about additional entry requirements and check for other laws and regulations affecting children.

## **(D) Unaccompanied minors**

For complete details on minors travelling unaccompanied, refer to Rule 65, Unaccompanied minors.

## **Rule 65: Unaccompanied minors**

**Note to carrier:** For international transportation, Canada is a signatory to the Convention on International Civil Aviation (the Chicago Convention), which is managed and administered by the International Civil Aviation Organization (ICAO). New ICAO standards regarding the transportation of unaccompanied minors have been adopted in accordance with the Convention and are reflected in the amended ATR (see ATR 122(d)). These standards specify that carriers must establish a program for the transportation of unaccompanied minors, and that they cannot allow minors less than 5 years of age to travel without an accompanying person. The ATR state that the accompanying person must be a parent or a person who is at least 16 years old. (B)(1) and (B)(2) reflect this requirement. While not mandatory for domestic transportation, as a best practice, this sample tariff reflects the 5 years of age requirement.

### **(A) General**

- (1) For purposes of this Rule, “guardian” is any person having responsibility over the welfare of a “minor”.
- (2) The carrier offers a supervision service called the unaccompanied minor service (UM service) for all minors who have achieved the minimum age of 5 years. This service is either mandatory or optional, depending upon the age of the minor.

**Note to carrier:** Carriers may establish a minimum age that is higher for their UM Service, but it must not be lower than 5 years of age.

## **(B) Age restrictions**

- (1) Minors less than 5 years of age are not eligible to use the UM service, and must always be accompanied by their parent or a person who is at least 16 years old when travelling.
- (2) Minors aged between 5 and XX years of age may only travel unaccompanied if they are using the UM service, outlined below.
- (3) Minors from age XX up to a maximum of XX years of age can also use the UM service at the request of their parent/guardian. Please note, however, that if a guardian requests the UM service for a minor between these ages, all travel restrictions applicable to the UM service will apply.

## **(C) Travel restrictions**

- (1) The UM service is available on:
  - (a) non-stop flights; or
  - (b) direct flights (a direct flight makes a stop but there is no change of aircraft)

**Note to carrier:** Carrier to complete if other types of flight operations (such as connecting flights or interlining) permit UM transportation.

## **(D) Fares and charges**

- (1) Unaccompanied minors travelling on the UM service provided by the carrier will be subject to the applicable adult fare.
- (2) **Note to carrier:** If a carrier charges to provide an unaccompanied minor service then it must set out those charges. A charge of \$XX.XX CAD per minor, in each direction, will be applied for using the UM service.
- (3) When two or more minors are traveling together, only one UM service charge in each direction will apply.

**Note to carrier:** If the carrier has policies regarding the refundability of fares and charges related to UM services provided, they are required to outline those policies here.

## **(E) Conditions of application for unaccompanied travel**

- (1) Arrangements and registration for the UM service must be made at least XX hours prior to departure with the carrier.
- (2) The minor must be brought to the airport of departure by a parent/guardian who remains with the minor until the carrier starts providing supervision. The parent/guardian will complete all the required documents which include providing the carrier with satisfactory evidence that the minor will be met by another parent/guardian or other responsible person.



- (3) The parent/guardian or other responsible person who will be meeting the unaccompanied minor at the destination airport must have photo identification which will allow the carrier personnel to identify this person as the appropriate person designated to meet the minor.
- (4) The parent/guardian will be required to remain at the airport of departure until the aircraft has departed.
- (5) The parent/guardian must provide the carrier with the name and phone number of a person who can be contacted in case of emergency during the time the minor is in the carrier's care.
- (6) Unaccompanied minors aged XX through XX years old will not be accepted if the flight on which the minor holds a reservation is expected to terminate short of, or bypass the minor's destination.
- (7) Once the minor is under the carrier's care, the minor will be provided supervision by the carrier until they are met at destination by a parent/guardian or other responsible person who can confirm to carrier personnel by means of photo identification that they are the person(s) designated to meet the minor.
- (8) Confirmed reservations must be booked for unaccompanied minors. Standby travel is not permitted.
- (9) A minor with a medical condition or a minor with a disability may not be accepted for travel unaccompanied. Medical information and/or documents (for example, a medical certificate) may be required for any UM service to be offered to a minor with a medical condition or a disability.

**Note:** For provisions related to medical information and/or documents that are required by the carrier, refer to:

**Note to carrier:** Carrier to choose from the following based on its declaration in Rule 5(G)(2) above.

- o [Rule 69(F)(5), Services – information and/or documents required to be filed with the carrier], or
- o [Rule 70(F)(2), Services for which advance notice is required], and/or
- o [Rule 71(F)(2), Services for which advance notice is required],
- o [Rule 105, Refusal to transport].

## **(F) Carrier's responsibility**

- (1) [Insert Policy]

**Note to carrier:** The carrier must stipulate the extent to which it is responsible for unaccompanied minors and the level and degree of supervision it will provide while the unaccompanied minor is in its care.

## **Rule 69: Carriage of persons with disabilities – Large Carrier ATPDR**

**Note to carrier:** This Rule is to be adopted by any carrier that declares itself a Large Carrier ATPDR pursuant to Rule 5(G)(2) above.

The following provisions are derived from the *Accessible Transportation for Persons with Disabilities Regulations* (ATPDR) which impose requirements on all carriers that provide passenger services within and to and from Canada and that meet the definition of Large Carrier ATPDR, being an air carrier that transported a worldwide total of 1,000,000 passengers or more during each of the two preceding calendar years.

Obligations of the carrier include the duty to accommodate persons with disabilities up to the point of undue hardship and may include more than what is specified in this tariff.

For carriers not subject to the ATPDR, see:

- Rule 70, Carriage of persons with disabilities – Small Carrier Non-ATPDR operating aircraft with 30 or more passenger seats, or
- Rule 71, Carriage of persons with disabilities – Small Carrier non-ATPDR operating aircraft with 29 or less passenger seats.

## (A) Application

- (1) This rule applies to the transportation of persons with disabilities by [Carrier Name], which is a Large Carrier ATPDR, on its [insert one or both, as applicable: **domestic** and/or **international**] transportation services.

**Note to carrier:** Air carriers are strongly encouraged to apply the provisions of this rule across all of their services, including flight segments taking place entirely between foreign points although this is not technically a requirement of the ATPDR. In doing so, persons with disabilities will be provided with the certainty that their disability-related needs will be met for the entire duration of their trip. To the extent that carriers do not apply this rule to transportation between two foreign points, the terms and conditions for persons with disabilities that apply to these flights must be clearly stated in the tariff.

- (2) Pursuant to Rule 5 (A)(1), Application of tariff, this rule applies to the transportation of all persons with disabilities on all flights marketed and operated by [Carrier Name], and in respect to all flights marketed by [Carrier Name] but operated by another carrier.

## (B) Acceptance for carriage

- (1) The carrier will accept the determination made by or on behalf of a person with a disability as to their self-reliance, unless doing so would impose undue hardship on the carrier, for example, if it would jeopardize security, public health or public safety.
- (2) The carrier will not refuse to transport a person with a disability unless the transportation of the person would impose an undue hardship on the carrier, for example, if it would jeopardize

security, public health or public safety.

- (3) If the carrier refuses to transport a person with a disability for reasons related to their disability, it will, at the time of the refusal, inform the person of the reasons for the refusal. In addition, within 10 days of the refusal, the carrier will provide the person with a written notice setting out the reasons for the refusal including:
- (a) the evidence of undue hardship, such as a medical report, an expert opinion, or an engineering report that demonstrates that the risk is significant enough that it would be unreasonable to waive or modify a requirement;
  - (b) any relevant rule, policy, procedure or regulation; and,
  - (c) the duration of the refusal and the conditions, if any, under which the carrier would accept the person for transport.

**See also:** Rule 105(B), Refusal to transport, removal of passenger and Rule 105(B)(1)(f)(iv), Refusal to transport, passenger's condition, medical clearance

### **(C) Reservations and online services**

- (1) If a person with a disability identifies the nature of their disability when making a reservation with a carrier, the carrier will:
- (a) discuss with the person their needs in relation to their disability and the services offered by the carrier in relation to those needs;
  - (b) before assigning a passenger seat to a person with a disability, inform the person of the passenger seats that are available in the class of service that the person has requested and that have equipment and facilities that best meet the accessibility needs of that person, such as a wheelchair-accessible washroom or a passenger seat that has additional leg room, a larger seat pitch or movable armrests; and,
  - (c) in assigning a passenger seat to a person with a disability, take into account the person's opinion with respect to which seats would best meet the accessibility needs of that person.
- (2) The carrier will advise the person if information and/or documents are required to permit the carrier to assess their request, as per (F)(3) below. The carrier will also advise the person that the information and/or documents must be filed within 48 hours and that the assessment of the request may take up to 2 business days after receipt of the information and/or documents.
- (3) As an alternative means to using its website to make or modify a reservation, the carrier will offer to a person with a disability the following means of communication: [Insert the alternative means of communication provided and where or how the contact information can be located. For example, an alternative means of communication can include a telephone, an email or a third party's telephone relay or video relay service.]

### **(D) Written confirmation of services**

- (1) The carrier will, without delay, indicate in the record of a person's travel reservation the services that the carrier will provide to the person.
- (2) The carrier will include a written confirmation of the services in the itinerary that is issued to the person.
- (3) If a service is confirmed only after the itinerary is issued, the carrier will, without delay, provide a written confirmation of the service.

## **(E) Services for which no advance notice is required**

- (1) The services identified in (3) below will be provided at no additional fare or charge.
- (2) The carrier will not require a person with a disability to file information and/or documents, including medical certificates, to support any request for services identified in (3) below.

### **Services – no advance notice**

- (3) Regardless of when a person with a disability makes the request for the following services, the carrier will:
  - (a) **Assist the person with checking in** at the check-in counter;
  - (b) Permit the person, if they are unable to use an automated self-service kiosk or other automated check-in or ticketing process, to **advance to the front of the line at a check-in counter** or ticket counter;
  - (c) If the person is in a wheelchair, a boarding chair or any other device in which they are not independently mobile while waiting at a terminal for departure after check-in or in order to transfer to another segment of their trip, **provide the person with a place to wait that is close to personnel** who are available to provide assistance to the person and who will **periodically inquire** about the person's needs, and **attend to those needs** ;
  - (d) Assist the person in **storing and retrieving their carry-on baggage** ;
  - (e) In the case of a person who is blind or has any other visual impairment,
    - (i) describe to the person, before departure or, if impossible because of time constraints, after departure, **the layout of the aircraft** , including the location of washrooms and exits, and the location and operation of any operating controls at the person's passenger seat;
    - (ii) describe to the person, if a meal is offered on-board, **all the food and beverages that are** offered for consumption or **provide a menu** in large print or in Braille;
  - (f) Assist the person in **accessing any entertainment content** that is offered on-board an aircraft;
  - (g) Before departure, provide the person with an **individualized safety briefing and demonstration**;

- (h) Assist the person in **moving between their passenger seat and a washroom**, including by assisting them in transferring between their passenger seat and an on-board wheelchair;
- (i) Permit a person to **use the washroom that has the most amount of space**, regardless of where the washroom is located in any part of the aircraft, if the person needs an on-board wheelchair or the assistance of a support person or service dog to use a washroom;
- (j) If a meal is served on-board to the person, assist the person with the meal by **opening packages, identifying food items and their location and cutting large food portions**; and
- (k) If a person is unable to use the call button to request assistance, **periodically inquire about the person's needs**.
- (l) [Insert any other services]

**Note to carrier:** Carrier should identify any other services it provides to persons with disabilities and for which it does not require advance notice and the filing of supporting information and/or documents.

**Note:** For carrier responsibilities related to disembarkation of persons with disabilities when a flight is delayed on the tarmac at an airport in Canada, see Rule 92(C)(4), Priority disembarkation.

## **(F) Services for which advance notice is required**

**Note to carrier:** If the carrier does not require advance notice and supporting information and/or documents for any of the services identified in (3) below, they should be moved up to (E)(3) above.

- (1) The services identified in (3) below will be provided at no additional fare or charge. [Exception: in the case of (3)(b), the provision of additional adjacent seating in the case of international transportation, the carrier will require an additional fare to be paid when the person requires an additional adjacent seat.]

**Note to carrier:** The bracketed text may be added by carriers in respect of their international services only, if their policy is to charge fares for additional adjacent seating to accommodate persons with disabilities.

### **Every reasonable effort**

- (2) In all instances, the carrier will make every reasonable effort to provide a service requested by a person with a disability even if the person does not comply with any requirement in this section, to provide advance notice or to provide information and/or documents to permit the carrier to assess the request.

### **Services – 48 hours advance notice**

- (3) Subject to the carrier's requirement for a person with a disability to provide information and/or documents identified in (4) below, the carrier will provide the following services if requested by a

person with a disability at least 48 hours prior to the scheduled time of departure of the person's flight:

- (a) **Assign a passenger seat** to a person with a disability, taking into account the person's opinion with respect to which seats would best meet the accessibility needs of that person;
- (b) Provide **additional adjacent seats**, meaning seats which are next to the seat of the person with a disability, in the following three situations:
  - (i) When the person with a disability must travel with a support person for transport if, because of the nature of their disability, the person with a disability, after departure and before arrival, needs:
    - (A) assistance with eating meals, taking medication, using the washroom;
    - (B) assistance with transferring to and from a passenger seat;
    - (C) assistance with orientation or communication; or
    - (D) physical assistance in the event of an emergency, including in the case of an evacuation or decompression;
  - (ii) When the size of a service dog belonging to a person with a disability is such that the person's seat does not provide sufficient floor space for the dog to lie down at the person's feet in a manner that ensures the safety and well-being of the dog and the person; or
  - (iii) When a person with a disability needs more than one seat because of the nature of their disability, for example, if they are a person who has a fused leg or who is disabled by severe obesity;
- (c) Accept for transportation a **mobility aid and/or other assistive device**, as per section (G) below;
- (d) Accept for transportation a **service dog**, as per section (H) below;
- (e) Assist the person in **proceeding to the boarding area** after check-in;
- (f) Assist the person in **proceeding through any security screening** process at the terminal, including by
  - (i) providing personnel to assist the person through the process, or
  - (ii) collaborating with the relevant security authority to permit a person who is not travelling with the person with a disability to have access to the security screening checkpoint so that they may assist the person with a disability to proceed through the process;
- (g) Before boarding, transfer the person between the person's own mobility aid and a mobility aid provided by the carrier;
- (h) Permit the person to board in advance of other passengers if:

- (i) the person requests assistance with boarding, locating their passenger seat or cabin, transferring between a mobility aid and their passenger seat or storing carry-on baggage;
- (ii) in the case where the person is blind or has any other visual impairment, the person requests a description of **the layout of the aircraft**, or of the location and operation of operating controls at the person's passenger seat; or,
- (iii) in the case where the person is disabled due to a severe allergy, the person requests to clean their passenger seat to remove any potential allergens;

**Note:** If the person has requested the assistance in (i) or (ii) above, the carrier may require the person to board in advance of other passengers or, if they arrive at the boarding area after priority boarding, to board after the other passengers.

- (i) Assist the person in boarding and disembarking;
- (j) Before departure and on arrival at the destination, transfer the person between a mobility aid and the person's passenger seat;
- (k) Provide the person with an on-board wheelchair;

**Note:** this service is not available on the following aircraft:

- [Insert any aircraft operated by the carrier that have a certificated maximum carrying capacity of not more than 29 passengers and where the aisle width between passenger seats is not sufficient to accommodate the use of an on-board wheelchair]
- (l) Provide the person with a **personal electronic device** where the aircraft's entertainment system does not offer closed captioning and audio descriptions;

**Note to carrier:** (l) above is required to be added by any Canadian Large Carrier ATPDR using aircraft with 30 or more seats where the aircraft's entertainment system does not offer closed captioning and audio descriptions. It may also be added by any other carrier that provides personal electronic devices to make entertainment content accessible to persons with disabilities.

- (m) Establish a **buffer zone** around the passenger seat of a person who has a disability due to a severe allergy by providing the person with a passenger seat that is in a bank of seats other than the bank of seats in which the source of the allergen is located;

**Note:** For more information on allergies, please refer to the Canadian Transportation Agency's *Severe allergies: A Guide*.

- (n) Ensure that any **public announcement** that is made on-board is made in an audio format or a visual format that is accessible to a person with a disability;
- (o) Assist the person in **proceeding through border clearance** (immigration and customs);
- (p) Assist the person in **retrieving their checked baggage**;
- (q) Assist the person, after disembarkation, in **proceeding to the general public area**;

- (r) Assist the person, after disembarkation, in **proceeding to a location** where the person may receive assistance either
- (i) from a member of the terminal operator's personnel to proceed to the curbside zone, or
  - (ii) from a member of the receiving carrier's personnel to transfer to another segment of their trip within the same airport; and
- (s) [Insert any other services]

**Note to carrier:** Carrier should identify any other services it provides to persons with disabilities and for which it requires advance notice. This cannot include any of the services identified in (E)(3)(a)-(k) above.

### **Services – information and/or documents required to be filed with the carrier**

- (4) The carrier will require the person to file any information and/or documents, including a medical certificate, that are reasonably necessary to permit the carrier to assess the person's request for the following services:
- (a) [Insert any services]
- Note to carrier:** Carrier should identify here any services it provides to persons with disabilities for which it requires information and/or documents to be filed to assess a request. This cannot include any of the services identified in (E)(3) above, but the carrier may move services from (F)(3) above to here.
- (5) Notwithstanding (4) above, the carrier retains the right to require information and/or documents to assess any other requests for services to be provided to, as well as to substantiate the fitness to travel of persons with disabilities, with the exception of those services identified in (E)(3) above.
- (6) Where the carrier requires the person to file information and/or documents for a request for services identified in (4) above, they must be filed with the carrier at least 48 hours, including one full business day, prior to the scheduled time of departure of the person's flight to ensure that the carrier has sufficient time to assess the request.
- (7) The carrier may not provide the services identified in (3) and (4) above if the carrier has required the person to file information and/or documents and:
- (a) any of the conditions referred to in (5) or (6) above are not met or the information and/or documents provided are not reasonably sufficient to permit the carrier to assess the request,
  - (b) the request has not been made 96 hours in advance of travel, and
  - (c) the carrier has made every reasonable effort to provide the service but cannot do so.
- (8) If, on the request of the carrier, a person with a disability provides the carrier with information and/or documents in relation to a request for service, the carrier will offer to retain an electronic copy of the information and/or documents for a period of at least three years for the purpose of



permitting the carrier to use the information and/or documents if the person makes another request for a service.

## **(G) Acceptance of mobility aids and other assistive devices**

### **Mobility aids**

- (1) The carrier will, on request, carry, free of charge and as priority baggage, a person with a disability's mobility aid, and will permit the person to retain their mobility aid until it becomes necessary to store it for carriage.
- (2) The carrier will make every reasonable effort to permit a person with a disability who uses a walker or manual folding wheelchair to store it on-board the aircraft.
- (3) Where the aircraft can transport the mobility aid, the carrier will:
  - (a) disassemble and package, where necessary, the aid for transportation and unpackage and reassemble the aid upon arrival; and
  - (b) return the aid promptly upon arrival.
- (4) Where the mobility aid needs to be disassembled and reassembled in order for it to be transported with the person who needs it, the carrier will require that the person:
  - (a) provide the carrier with instructions for the disassembly and reassembly of the mobility aid; and

**Note:** Information for persons travelling with a mobility aid that needs to be disassembled for carriage, including the requirement to provide any specialized tools needed for assembling or disassembling the mobility aid, can be found at [insert link to location of information on carrier's own website].

- (b) check in XX minutes before the scheduled time of departure or arrive at the boarding gate of their flight XX minutes in advance to allow for the additional time needed to handle the mobility aid and prepare it for transport.
  - (c) [Insert any other requirements]
- (5) Notwithstanding (4) above, the carrier will make every reasonable effort to transport the mobility aid even if written instructions for disassembly and reassembly are not provided by the person with a disability or the aforementioned times are not met.
- (6) The carrier will refuse to transport a mobility aid where:
  - (a) the weight or size of the mobility aid exceeds the capacity of lifts or ramps,
  - (b) the doors to baggage compartments are too small for the mobility aid, or
  - (c) transportation of the mobility aid would jeopardize aircraft airworthiness or violate safety regulations.

**Note:** Information regarding maximum weight and dimensions of mobility aids that each make and model of our aircraft is capable of transporting can be found at [insert link to location of information on carrier's own website].

**Note to carrier:** the carrier must publish on its website the maximum weight and dimensions of mobility aids that each make and model of its aircraft is capable of transporting.

- (7) When the carrier refuses to transport a mobility aid for any of the reasons above, it will:
- (a) at the time of the refusal, tell the person with a disability why their mobility aid was not accepted and provide the reason in writing within the next 10 days; and
  - (b) inform the person with a disability of alternative trips operated by the carrier to the same destination on which their mobility aid can be transported, and offer to book this for the person at the lesser of the fare for the original trip and the fare for the alternative trip.

**Note:** For provisions related to limitations of liability regarding loss of, damage to, or delay in delivering mobility aids, refer to Rule 120(B)(3), Liability – Domestic Transportation, Mobility aids or Rule 121(B)(3), Liability – International Transportation, Mobility aids.

### **Other assistive devices**

- (8) The carrier will permit a person with a disability to bring on-board and to retain any small assistive device that the person needs during travel, including a cane, crutches, a communication device, an orthotic positioning device or a portable oxygen concentrator, except to the extent that the presence or use of such a device jeopardizes security, public health or public safety.

**Note:** For more information on the carriage of mobility aids and other assistive devices, please refer to the Canadian Transportation Agency's – *Travelling with mobility aids and other assistive devices: A guide.*

### **(H) Acceptance of service dogs**

- (1) The carrier will, on request, accept for transportation a service dog required to assist a person with a disability, and will permit the service dog to accompany the person on board subject to:
- (a) any advance notice requirements contained in (F)(3) or,
  - (b) the time limits set out in (F)(6) and (7) where the carrier requires the filing of additional information and/or documents and
  - (c) any requirements in (2) and (3) below.
  - (d) [insert any policies with respect to any requirements related to the leash, tether or harness required for service dogs during travel.]
  - (e) [insert any policies with respect to any requirements related to the information and/or documents required for service dogs to travel.]

- (2) Transport of a service dog accompanying a person with a disability will be free of charge (including both fees and fares). [Exception: in the case of (F)(3)(b)(ii), the provision of adjacent seating in the case of international transportation, the carrier will require an additional fare to be paid when the person requires an additional seat to accommodate the size of their service dog.]

**Note to carrier:** The bracketed text may be added by carriers in respect of their international services only, if their policy is to charge fares for additional adjacent seating to accommodate persons with disabilities.

- (3) The carrier will make every reasonable effort to accept a service dog for carriage if requested by a person with a disability even if the person does not provide advance notice or any information and/or documents that are requested by the carrier.
- (4) The person is responsible for complying with all laws, regulations, orders, demands, and travel requirements of countries to be flown from, into or through, in respect of the service dog. In particular, the person is responsible for obtaining valid health and vaccination certificates, entry permits and other documents required by countries, states or territories for entry or transit of any service dog that is to accompany the person.
- (5) The carrier may refuse to transport a service dog if the person with a disability fails to have in their possession documentation at the time of check-in which demonstrates that the dog has all the necessary valid health and vaccination certificates, entry permits and other documents required by countries, states or territories for entry or transit.

**Note to carrier:** Any restrictions on the acceptance of service dogs must be included in the carrier's tariff.

**Note:** For more information, see Rule 105, Refusal to Transport.

- (6) When travel involves more than one carrier, it is the responsibility of the person to verify the policy of each carrier involved in the itinerary and ensure that the requirements of each carrier have been met and that each carrier is aware of and has agreed to carry the service dog on its own aircraft.

**Note:** For provisions related to limitations of liability regarding service animals, refer to Rule 120(B)(5), Liability – Domestic Transportation, Service Animals or Rule 121(B)(10), Liability – International Transportation, Service Animals.

## **(I) Acceptance of other service animals and emotional support animals**

- (1) [Insert policy]

**Note to carrier:** Any policies regarding the acceptance of other service animals and emotional support animals must be included in the carrier's tariff. Insofar as the carrier has previously accepted other service animals and/or emotional support animals, it may choose to continue to recognize these types of animals and transport them free of charge pursuant to the carrier's established policy. Carriers are strongly encouraged to have such policies to provide clarity to persons with disabilities who require these types of animals in order to travel.

## (J) Other services for persons with disabilities

(1) [Insert policy]

**Note to carrier:** Any policies regarding the provision of services to persons with disabilities in addition to those set out above (e.g., oxygen provision, stretcher service) must be included in the carrier's tariff.

### Rule 70: Carriage of persons with disabilities – Small Carrier Non-ATPDR operating aircraft with 30 or more passenger seats

**Note to carrier:** This Rule is to be adopted by any carrier that declares itself a Small Carrier Non-ATPDR pursuant to Rule 5(G)(2) above and operating aircraft with 30 or more passenger seats.

The following provisions are derived from Part VII of the ATR; the Agency's codes of practice with respect to aircraft and previous decisions; ICAO's Annex 9 standards and recommended practices, and Manual on Access to Air Transport by Persons with Disabilities; and the International Air Transport Association's Recommended Practice 1700.

Obligations of the carrier include the duty to accommodate persons with disabilities up to the point of undue hardship and may go beyond what is specified in this tariff.

For carriers subject to the ATPDR (being an air carrier that transported a worldwide total of 1,000,000 passengers or more during each of the two preceding calendar years, within and to and from Canada.) see:

- Rule 69, Carriage of persons with disabilities – Large Carrier ATPDR.

For carriers not subject to the ATPDR and operating aircraft with 29 or less passenger seats see:

- Rule 71, Carriage of persons with disabilities – Small Carriers Non-ATPDR operating aircraft with 29 or less passenger seats.

## (A) Application

(1) This rule applies to the transportation of persons with disabilities by [Carrier Name], which is a Small Carrier Non-ATPDR, that operates aircraft with 30 or more seats on its [insert one or both, as applicable: **domestic** and/or **international**] transportation services.

**Note to carrier:** The ATR and *Code of Practice for Fixed-Wing Aircraft with 30 or More Passenger Seats* contain obligations that are applicable to Canadian Carriers not subject to the ATPDR in respect of their domestic operations. Even if the ATPDR and the ATR do not impose requirements, all carriers have obligations to accommodate persons with disabilities to the point of undue hardship under human rights law and, where applicable, provide services to persons with disabilities in accordance with international standards and recommended best practices and procedures as set out in Chapter 8 of Annex 9 of the Chicago Convention. Accordingly, this rule

should be applied by all carriers not subject to the ATPDR for their international services using aircraft with 30 or more passenger seats. Air carriers are strongly encouraged to apply the provisions of this rule across all of their services, including flight segments taking place entirely between foreign points.

- (2) Pursuant to Rule 5(A)(1), Application of tariff, this rule applies to the transportation of all persons with disabilities on all flights marketed and operated by [Carrier Name], and in respect to all flights marketed by [Carrier Name].

## **(B) Acceptance for carriage**

- (1) The carrier will accept the determination made by or on behalf of a person with a disability as to self-reliance, unless doing so would impose undue hardship on the carrier, for example if it would jeopardize security, public health or public safety.
- (2) The carrier will not refuse to transport a person with a disability solely based on their disability unless the transportation of the person would impose an undue hardship on the carrier, for example, if it would jeopardize security, public health or public safety.
- (3) If the carrier refuses to transport a person with a disability for reasons related to their disability, it will, at the time of the refusal, inform the person of the reasons for the refusal. In addition, within 10 days of the refusal, the carrier will provide the person with a written notice setting out the reasons for the refusal including:
  - (a) the evidence of undue hardship, such as a medical report, an expert opinion, or an engineering report that demonstrates that the risk is significant enough that it would be unreasonable to waive or modify a requirement;
  - (b) any relevant rule, policy, procedure or regulation; and,
  - (c) the duration of the refusal and the conditions, if any, under which the carrier would accept the person for transport.

**See also:** Rule 105(B), Refusal to transport, removal of passenger and Rule 105(B)(1)(f)(iv), Refusal to transport, passenger's condition, medical clearance

## **(C) Reservations – information about services and seating assignments**

- (1) If a person with a disability identifies the nature of their disability when making a reservation with a carrier, the carrier will:
  - (a) discuss with the person their needs in relation to their disability and the services offered by the carrier in relation to those needs;
  - (b) before assigning a passenger seat to a person with a disability, inform the person of the passenger seats that are available in the class of service that the person has requested and that have equipment and facilities that best meet the accessibility needs of that person, such as a wheelchair-accessible washroom or a passenger seat that has additional leg room, a larger seat pitch or movable armrests;

- (c) in assigning a passenger seat to a person with a disability, take into account the person's opinion with respect to which seats would best meet the accessibility needs of that person; and
- (d) where a person is travelling with a support person, ensure that the person and the support person are seated together.

**Note to carrier:** It is recommended that carriers develop a policy regarding airfares for support persons required by persons with disabilities and include the policy in the tariff to provide greater clarity to persons who must travel with a support person. See Rule 69(F)(3)(b)(i) Services for which advance notice is required, for the requirements under the ATPDR. The carrier can also reference *Additional seating and the One Person, One Fare requirement for domestic travel: A guide.*

- (2) The carrier will advise the person if information and/or documents are required to permit the carrier to assess any request for service, as per (F)(3) below. The carrier will also advise the person that the information and/or documents must be filed within 48 hours and that the assessment of the request may take up to 2 business days after receipt of the information and/or documents.

#### **(D) Confirmation of services and communication of information**

- (1) The carrier will indicate in the record of a person's travel reservation the services that the carrier will provide to the person.
- (2) The carrier will provide a written confirmation of the services that it will provide to the person.
- (3) The carrier will ensure that any announcements made to passengers concerning stops, delays, schedule changes, connections, and on-board services and the claiming of baggage is in visual, verbal and/or written format.

#### **(E) Services for which no advance notice is required**

- (1) The services identified in (3) below will be provided at no additional fare or charge.
- (2) The carrier will not require a person with a disability to file information and/or documents, including a medical certificates, to support any request for services identified in (3) below.
- (3) Upon request, the carrier will:
  - (a) [Insert list of all services for which no advance notice or information and/or documents is required]

**Note to carrier:** the ATR allows a carrier to require 48 hours advance notice for all services. However, in keeping with ATPDR requirements for Large Carriers ATPDR, the carrier may be able to provide some services on request, without advance notice, or the submission of information and/or documents. Should the carrier choose to provide services requiring no advance notice, they are asked to identify those services above.

**Note:** For carrier responsibilities related to disembarkation of persons with disabilities when a flight is delayed on the tarmac at an airport in Canada, see Rule 92(C)(4) – Priority disembarkation.

## **(F) Services for which advance notice is required**

**Note to carrier:** If the carrier does not require advance notice and supporting information and/or documents for any of the services identified in (3) below, they should be moved up to (E)(3) above.

(1) The services identified in (3) below will be provided at no additional fare or charge.

### **Every reasonable effort**

(2) In all instances, the carrier will make every reasonable effort to provide a service requested by a person with a disability even if the person does not comply with any requirement in this section, to provide advance notice or to provide information and/or documents to permit the carrier to assess the request.

### **Services – 48 hours advance notice**

(3) Subject to the carrier's requirement for the person with a disability to provide information and/or documents, the carrier will provide the following services if requested by a person with a disability at least 48 hours prior to the scheduled time of departure of the person's flight:

- (a) Assist the person with **registration at the check-in counter**;
- (b) Assist the person in **proceeding to the boarding area**;
- (c) Assist the person in **boarding and deplaning**;
- (d) **Periodically inquire** about the needs of the person who is in a wheelchair, is not independently mobile and is waiting to board an aircraft, and **attend to those needs**;
- (e) Allow the person, upon request, to **board the aircraft in advance** of other passengers, where time permits and where a person with a disability requests assistance in boarding or seating or in stowing carry-on baggage;

**Note:** The carrier can require a person to board the aircraft in advance of other passengers in order that it has sufficient time to provide assistance even if the person with a disability does not request to do so, or the carrier can require a person to board after the other passengers if the person arrives at the boarding area after the end of priority boarding.

- (f) Assist the person in **stowing and retrieving carry-on baggage and retrieving checked baggage**;
- (g) provide, up to the time of departure of the aircraft, to individual persons with disabilities and their support person a **briefing on emergency procedures and the layout of the cabin**;
- (h) Assist the person in **moving to and from an aircraft lavatory**;
- (i) Assist the person in **proceeding to the general public area** or, in some cases, to a representative of another carrier;

- (j) Transfer the person **between the person's own mobility aid and a mobility aid provided by the carrier**;
- (k) Transfer the person **between a mobility aid and the person's passenger seat**;
- (l) Serve the person **special meals**, where available, and **provide limited assistance with meals**, such as opening packages, identifying items and cutting large food portions;
- (m) **Periodically inquire** with the person during a flight about a person's needs and attend to those needs where the services are usually provided by the carrier or required to be provided under this provision;
- (n) [Insert any other services]

**Note to carrier:** Carrier should identify any other services it provides to persons with disabilities and for which it requires advance notice.

### **Services – information and/or documents required to be filed with the carrier**

- (4) The carrier may require the person to file any information and/or documents, including a medical certificate, that are reasonably necessary to permit the carrier to assess the person's request for a service noted below.

- (a) [Insert any services]

**Note to carrier:** Carrier should identify here any services it provides to persons with disabilities for which it requires information and/or documents to be filed to assess a request. This cannot include any of the services identified in (E)(3) above, but the carrier may move services from (F)(3) above to here.

### **(G) Acceptance of mobility aids and other assistive devices**

- (1) The carrier will accept for carriage, free of charge, in addition to the regular baggage allowance, and as priority baggage, mobility aids and any other assistive devices, subject to any safety or security restrictions that would prevent such a device from being transported.
- (2) Where a mobility aid is accepted for carriage, the carrier will:
  - (a) disassemble and package the aid for transportation and unpackage and reassemble the aid upon arrival; and
  - (b) return the aid promptly upon arrival.
- (3) Where the carrier operates aircraft with less than 60 seats, it will refuse to transport an electric wheelchair, scooter or manually operated rigid-frame wheelchair where aircraft design does not permit the carriage of the aid, for example, if the weight or size of the mobility aid exceeds the capacity of lifts or ramps, or the doors to baggage compartments are too small for the mobility aid, or transportation of the mobility aid would jeopardize aircraft airworthiness.



**Note:** Information regarding maximum weight and dimensions of mobility aids that each make and model of our aircraft is capable of transporting can be found at [insert link to location of information on carrier's own website].

**Note to carrier:** The carrier is encouraged to publish on its website the maximum weight and dimensions of mobility aids that each make and model of its aircraft is capable of transporting.

- (4) Where a carrier refuses to transport a mobility aid for any of the reasons above, the carrier will
  - (a) inform the person of the reason for refusal at the time of refusal; and,
  - (b) advise the person of alternate transportation arrangements that the person may make to transport the aid, or of alternative trips for the person to travel with the aid.
- (5) Where space permits, the carrier will store a person's manual folding wheelchair in the passenger cabin during the flight.
- (6) Where space permits, the carrier will permit a person with a disability to retain in the person's custody any of the following small assistive devices that the person needs during travel:
  - (a) a walker, a cane, crutches or braces;
  - (b) any device that assists the person to communicate; and
  - (c) any prosthesis or medical device such as a portable oxygen concentrator.

**Note to carrier:** It is recommended that carriers develop clear policies, including any safety or security restrictions, on the acceptance of assistive devices, including medical devices such as Portable Oxygen Concentrators, and set out these policies in their tariff.

**Note:** For provisions related to limitations of liability regarding loss of, damage to, or delay in delivering mobility aids, refer to Rule 120(B)(3), Liability – Domestic Transportation, Mobility aids or Rule 121(B)(3), Liability – International Transportation, Mobility aids.

## **(H) Acceptance of service animals**

- (1) The carrier will accept for transportation, without charge, a service animal required to assist a person with a disability provided that the animal is:
  - (a) properly harnessed; and,
  - (b) certified in writing as having been trained by a professional service animal institution.

**Note to carrier:** Any restrictions on the acceptance of service animals must be included in the carrier's tariff.

- (2) The carrier will permit the service animal to accompany the person with a disability on-board the aircraft and to remain on the floor at the person's passenger seat. For the comfort of all passengers, the carrier staff will determine, in consultation with the person with a disability, where the person and service animal will be seated.

- (3) The carrier will assign a seat to the person which provides sufficient space for the person and the service animal. Where there is insufficient floor space in the seat row of the person's passenger seat, the carrier will permit the service animal to remain on the floor in an area where the person can still exercise control over the animal.
- (4) The person is responsible for complying with all laws, regulations, orders, demands, and travel requirements of countries to be flown from, into or through, in respect to the service animal. In particular, the person is responsible for obtaining valid health and vaccination certificates, entry permits and other documents required by countries, states or territories for entry or transit of any service animal that is to accompany the person.
- (5) The carrier may refuse to transport a service animal if the person with a disability fails to have in their possession documentation at the time of check-in which demonstrates that the animal has all the necessary valid health and vaccination certificates, entry permits and other documents required by countries, states or territories for entry or transit. For more information see Rule 105, Refusal to Transport.
- (6) When travel involves more than one carrier, it is the responsibility of the person to verify the policy of each carrier involved in the itinerary and ensure that the requirements of each carrier have been met and that each carrier is aware of and has agreed to carry the service animal on its own aircraft.

**Note:** For provisions related to limitations of liability regarding service animals, refer to Rule 120(B)(5), Liability – Domestic Transportation, Service animals or Rule 121(B)(10), Liability – International Transportation, Service animals.

## **(I) Acceptance of emotional support animals**

- (1) [Insert policy]

**Note to carrier:** Any policies regarding the acceptance of emotional support animals must be included in the carrier's tariff. Insofar as the carrier has previously accepted emotional support animals, it may choose to continue to recognize these types of animals and transport them free of charge pursuant to the carrier's established policy. Carriers are strongly encouraged to develop such policies to provide clarity to persons with disabilities who require these types of animals in order to travel.

## **(J) Other services for persons with disabilities**

- (1) [Insert policy]

**Note to carrier:** Any policies regarding the provision of services to persons with disabilities in addition to those set out above (e.g., oxygen provision, stretcher service) must be included in the carrier's tariff.

## Rule 71: Carriage of persons with disabilities – Small Carrier non-ATPDR operating aircraft with 29 or less passenger seats

**Note to carrier:** This Rule is to be adopted by any carrier that declares itself a Small Carrier Non-ATPDR pursuant to Rule 5(G)(2) above and operating aircraft with 29 or less passenger seats.

The following provisions are derived from the *Accessibility Guidelines for Small Aircraft – Services for persons with disabilities on aircraft with 29 and fewer passenger seats*.

Obligations of the carrier include the duty to accommodate persons with disabilities up to the point of undue hardship and may go beyond what is specified in this tariff.

For carriers subject to the ATPDR (being an air carrier that transported a worldwide total of 1,000,000 passengers or more during each of the two preceding calendar years, within and to and from Canada.) see:

- Rule 69, Carriage of persons with disabilities – Large Carrier ATPDR.

For carriers not subject to the ATPDR and operating aircraft with 30 or more passenger seats see:

- Rule 70, Carriage of persons with disabilities – Small Carrier Non-ATPDR operating aircraft with 30 or more passenger seats.

### (A) Application

- (1) This rule applies to the transportation of persons with disabilities by [Carrier Name], which is a Small Carrier Non-ATPDR that operates aircraft with 29 or less seats on its [insert one or both, as applicable: **domestic** and/or **international**] transportation services.

**Note to carrier:** The *Accessibility Guidelines for Small Aircraft – Services for persons with disabilities on aircraft with 29 and fewer passenger seats* contain obligations that are applicable only to Canadian carriers not subject to the ATPDR or the ATR in respect of their domestic operations. However, even if the ATPDR and the ATR do not impose requirements, all carriers have obligations to accommodate persons with disabilities to the point of undue hardship under human rights law. We strongly encourage all carriers not subject to the ATPDR to apply this rule for their international services using aircraft with 29 or fewer passenger seats, including for flight segments taking place entirely between foreign points.

- (2) Pursuant to Rule 5(A)(1), Application of tariff, this rule applies to the transportation of all persons with disabilities on all flights marketed and operated by [Carrier Name], and in respect to all flights marketed by [Carrier Name].

### (B) Acceptance for carriage

- (1) The carrier will accept the determination made by or on behalf of a person with a disability as to self-reliance, unless doing so would impose undue hardship on the carrier, for example, if it would

jeopardize security, public health or public safety.

- (2) The carrier will not refuse to transport a person with a disability solely based on their disability unless the transportation of the person would impose an undue hardship on the carrier, for example, if it would jeopardize security, public health or public safety.
- (3) In instances when refusing transportation to a person with a disability is necessary, the carrier will offer to provide to the person, within 10 days, a written explanation of the reason for the refusal, such as relevant rules, policies, procedures or regulations or evidence in respect of undue hardship.

**See also:** Rule 105(B), Refusal to transport, removal of passenger and rule 105(B)(1)(f)(iv), Refusal to transport, passenger's condition, medical clearance

### **(C) Reservations – information about services and seating assignments**

- (1) If a person self-identifies as a person with a disability when making a reservation with a carrier, the carrier will:
  - (a) describe equipment and services available to accommodate persons with disabilities;
  - (b) discuss both:
    - (i) the level of accessibility and the limitations of the aircraft, the tarmac, the facilities and the availability of boarding equipment for the available services to accommodate that person's disability-related needs; and
    - (ii) the person's needs in relation to their disability and the services offered by the carrier in relation to those needs;
  - (c) before assigning a passenger seat to a person with a disability, inform the person of the most accessible passenger seats that are available in the class of service that the person has requested;
  - (d) in assigning a passenger seat to a person with a disability, take into account the person's opinion with respect to which seats would best meet the accessibility needs of that person; and
  - (e) where a person is travelling with a support person, ensure that the person and the support person are seated together.

**Note to carrier:** It is recommended that carriers develop a policy regarding support person airfares. If a carrier wishes to view the ATPDR provisions related to additional seating for persons with disabilities, see Rule 69(F)(3)(b)(i) Services for which advance notice is required. The carrier can also reference *Additional seating and the One Person, One Fare requirement for domestic travel: A guide*

- (2) The carrier will advise the person if information and/or documents are required to permit the carrier to assess their request.

## **(D) Written confirmation of services**

- (1) The carrier will indicate in the record of a person's travel reservation the services that the carrier will provide to the person.
- (2) The carrier will offer to provide a written confirmation of the services that it will provide to the person as soon as possible after the reservation has been made and before the flight.

## **(E) Services for which no advance notice is required**

- (1) The services identified in (3) below will be provided at no additional fare or charge.
- (2) The carrier will not require a person with a disability to file information and/or documents, including a medical certificates, to support any request for services identified in (3) below.
- (3) Upon request, the carrier will:
  - [insert list of services for which no advance notice or information and/or documents is required]

**Note to carrier:** Although the ATR require 48 hours advance notice for all services, the more recent ATPDR require a number of services to be provided upon request and with no advance notice. In keeping with this, the carrier may be able to provide some services on request, without advance notice, or the submission of information and/or documents. Should the carrier choose to provide services requiring no advance notice, they are asked to identify those services above.

**Note:** For carrier responsibilities related to disembarkation of persons with disabilities when a flight is delayed on the tarmac at an airport in Canada, see Rule 92(C)(4) Priority disembarkation.

## **(F) Services for which advance notice is required**

**Note to carrier:** If the carrier does not require advance notice and supporting information and/or documents for any of the services identified in (3) below, they should be moved up to (E)(3) above.

- (1) The services identified in (3) below will be provided at no additional fare or charge.

### **Every reasonable effort**

- (2) In all instances, the carrier will make every reasonable effort to provide a service requested by a person with a disability even if the person does not comply with any requirement in this section, to provide advance notice or to provide information and/or documents to permit the carrier to assess the request.

### **Services – 48 hours advance notice**

- (3) Subject to the carrier's requirement for the person with a disability to provide information and/or documents, the carrier will provide the following services if requested by a person with a disability at least 48 hours prior to the scheduled time of departure of the person's flight:

- (a) Assist the person with registration at the check-in counter;

- (b) Assist the person in proceeding to the boarding area;
- (c) Assist the person with boarding and deplaning using specialized equipment whenever possible. As a last recourse, a person may be carried by hand to enplane and deplane if the following applies:
  - (i) restrictions inherent to the aircraft or the tarmac prevent the use of any other boarding/deplaning method;
  - (ii) the person agrees to be hand-carried; and,
  - (iii) this can be done safely.

- (d) Assist the person in boarding and deplaning;
- (e) Periodically inquire about the needs of the person who is in a wheelchair, is not independently mobile and is waiting to board an aircraft, and attend to those needs;
- (f) Allow the person, upon request, to board the aircraft in advance of other passengers, where time permits, where a person with a disability requests assistance in boarding or seating or in stowing carry-on baggage;

**Note:** The carrier can require a person with a disability, even in the absence of a person's request to do so, to board the aircraft in advance of other passengers in order that it has sufficient time to provide assistance, or the carrier can require a person to board after the other passengers, if the person arrives at the boarding area after the end of priority boarding.

- (g) Assist the person in stowing and retrieving carry-on baggage and retrieving checked baggage;
- (h) Assist the person with transferring to or from a mobility aid;
  - (i) Assist the person with transferring to or from a passenger seat;
  - (j) Assist the person in proceeding to the general public area or, in some cases, to a representative of another carrier;
- (k) Provide limited assistance with beverages and snacks – such as opening packages and identifying items;
- (l) [Insert any other services]

**Note to carrier:** Carrier should identify any other services it provides to persons with disabilities, where it requires advance notice.

### **Information and/or documents required to be filed with the carrier**

- (4) The carrier will require the person to file any information and/or documents, including a medical certificate, that are reasonably necessary to permit the carrier to assess the person's request for a service noted below:

- (a) [Insert any services]

**Note to carrier:** Carrier should identify here any services it provides to persons with disabilities for which it requires information and/or documents to be filed to assess a request. This cannot include any of the services identified in (E)(3) above, but the carrier may move services from (F)(3) above to here.

## (G) Acceptance of aids

- (1) Upon request from a person with a disability, the carrier will carry, free of charge and as priority baggage, a person's mobility aid, where possible, and any other assistive aid, subject to any safety or security restrictions that would prevent such an aid from being transported.
- (2) The carrier will permit the person to retain their mobility aid until it becomes necessary to store it for carriage.
- (3) The carrier will permit a person to bring on-board, where possible, any small aid, including:
  - (a) a walker, a cane, crutches or braces;
  - (b) any device that assists the person to communicate; and
  - (c) any prosthesis or small medical device.
- (4) Where the facilities, the tarmac, and the weather conditions permit, the carrier will allow a manually-operated wheelchair to be used to reach:
  - (a) the boarding gate;
  - (b) the stairs of the aircraft; or,
  - (c) the door of the aircraft (for aircraft accessible via a boarding system).
- (5) Where the aircraft can carry the mobility aid, the carrier will:
  - (a) disassemble and package, where necessary, the aid for transportation and unpackage and reassemble the aid upon arrival; and,
  - (b) return the aid promptly upon arrival.
- (6) The carrier can refuse to transport a mobility aid where aircraft design does not permit the carriage of the aid, for example, the weight or size of the mobility aid exceeds the capacity of lifts or ramps, or the doors to baggage compartments are too small for the mobility aid, or transportation of the mobility aid would jeopardize aircraft airworthiness.
- (7) Where a carrier refuses to carry a mobility aid, the carrier will:
  - (a) advise the person with a disability of alternate transportation arrangements that the person may make to transport the aid, or to travel with the aid.

**Note to carrier:** It is recommended that carriers develop clear policies, subject to any safety or security restrictions, on the acceptance of assistive devices, including medical devices such as Portable Oxygen Concentrators and set out these policies in their tariff.

**Note:** For provisions related to limitations of liability regarding loss of, damage to, or delay in delivering mobility aids, refer to Rule 120(B)(3), Liability – domestic transportation, mobility aids or Rule 121(B)(3), Liability – international transportation, mobility aids.

## **(H) Acceptance of service animals**

- (1) The carrier will accept for transportation, without charge, a service animal required for disability-related needs provided the animal is:
  - (a) properly harnessed; and,
  - (b) certified in writing, as being trained by a professional service animal institution.

**Note to carrier:** Any restrictions regarding the acceptance of service animals must be included in the carrier's tariff here.

- (2) The carrier will permit the service animal to accompany the person with a disability on-board the aircraft and to remain on the floor at the person's passenger seat. For the comfort of all passengers, the carrier staff will determine, in consultation with the person with a disability, where the person and service animal will be seated.
- (3) The carrier will assign a seat to the person which provides sufficient space for the person and the service animal. Where there is insufficient floor space in the seat row of the person's passenger seat, the carrier will permit the service animal to remain on the floor in an area where the person can still exercise control over the animal.
- (4) The person is responsible for complying with all laws, regulations, orders, demands, and travel requirements of countries to be flown from, into or through, in respect to the service animal. In particular, the person is responsible for obtaining valid health and vaccination certificates, entry permits and other documents required by countries, states or territories for entry or transit of any service animal that is to accompany the person.
- (5) The carrier may refuse to transport a service animal if the person with a disability fails to have in their possession documentation at the time of check-in which demonstrates that the animal has all the necessary valid health and vaccination certificates, entry permits and other documents required by countries, states or territories for entry or transit. For more information see Rule 105, Refusal to Transport.
- (6) When travel involves more than one carrier, it is the responsibility of the person to verify the policy of each carrier involved in the itinerary and ensure that the requirements of each carrier have been met and that each carrier is aware of and has agreed to carry the service animal on its own aircraft.

**Note:** For provisions related to limitations of liability regarding service animals, refer to Rule 120(B)(5), Liability – domestic transportation, service animals or Rule 121(B)(10), Liability – international transportation, service animals.

## **(I) Acceptance of emotional support animals**



(1) [Insert policy]

**Note to carrier:** Any policies regarding the acceptance of emotional support animals must be included in the carrier's tariff. Insofar as the carrier has previously accepted emotional support animals, it may choose to continue to recognize these types of animals and transport them free of charge pursuant to the carrier's established policy. Carriers are strongly encouraged to develop such policies to provide clarity to persons with disabilities who require these types of animals in order to travel.

## **(J) Other services for persons with disabilities**

(1) [Insert policy]

**Note to carrier:** Any policies regarding the provision of services to persons with disabilities in addition to those set out above (e.g., oxygen provision, stretcher service) must be included in the carrier's tariff.

## **Rule 75: Acceptance of animals (pets and search and rescue dogs)**

With respect to terms and conditions related to the transport of any service dog, other service animal, or emotional support animal used to assist persons with disabilities please refer to:

**Note to carrier:** Carrier to choose from the following based on its declaration in Rule 5(G)(2) above.

- [Rules 69(H), Acceptance of service dogs and (I), Acceptance of other service animals and emotional support animals], or
- [Rules 70(H), Acceptance of service animals and (I), Acceptance of emotional support animals], and/or
- [Rule 71(H), Acceptance of service animals and (I), Acceptance of emotional support animals].

## **(A) Application**

(1) The carrier will agree to carry animals subject to the following provisions:

## **(B) General**

- (1) Advance arrangements must be made with the carrier before any animal will be accepted for carriage.
- (2) Before the animal is accepted for carriage, the passenger must make all necessary arrangements to obtain valid health and vaccination certificates, entry permits and other documents required by countries, states or territories for entry or transit. In the absence of such documentation, the animal will not be accepted for carriage.
- (3) When travel involves more than one carrier, the passenger should verify the policy of each carrier involved in the itinerary and ensure that the requirements of each carrier have been met and that each carrier is aware of and has agreed to carry the animal on its own aircraft.

## (C) Search and rescue dogs

- (1) Search and rescue dogs which are properly harnessed will be permitted in the passenger cabin of the aircraft. The animal must remain on the floor at the handler's seat.
- (2) The carrier will accept a search and rescue dog for transportation without charge.
- (3) The carrier, in consultation with the search and rescue dog's handler, will determine where the handler will be seated to ensure that adequate space is provided to the handler and the dog.

## (D) Pets

- (1) The provisions in this section are not applicable to service dogs, other service animals, emotional support animals and search and rescue animals.
- (2) The carrier will accept for carriage animals as pets such as domestic dogs, cats, rabbits, and birds, as either checked or carry-on baggage, provided the animal(s) is/are accompanied by a passenger, in compliance with the IATA Live Animal Regulations.
- (3) Animals must be contained in a clean, leak/escape proof cage or container/kennel with adequate space for the comfort of the animal. The cage or container/kennel must be approved by the carrier.

**Note to carrier:** State policy on whether there are additional charges for the carriage of animals as either checked or carry-on baggage.

- (4) Animals as checked baggage:
  - (a) The number of animals carried is limited by aircraft type.
  - (b) Due to climatic conditions, animals will not be accepted during certain periods of the year. These black-out periods will be posted on the carrier's Web site or may be ascertained by contacting the carrier.
  - (c) The maximum size for the container/kennel (length +width + height) must not exceed XXX cm/in.
  - (d) The maximum allowable weight for both the animal and container/kennel must not exceed XXX kg/XXX lbs.
  - (e) If the container/kennel exceeds the maximum size and/or maximum weight mentioned in (c) and (d) above, the passenger must make arrangements with the carrier's cargo department.
  - (f) For domestic and international transportation, pursuant to the provision of the applicable convention, once an animal is accepted for carriage as checked baggage, the carrier is liable in the event of damages arising from loss, damage and delay of an animal as specified in Rule 120, Liability – Domestic Transportation and Rule 121, Liability – International Transportation.
  - (g) **Charges: Note to carrier:** If a carrier charges to transport animals then it must set out those charges here: The charge for transportation of the animal, (other than a service animal or

search and rescue animal) and container/kennel as checked baggage will be as follows:

**Charge of transportation of animal and container/kennel**

From	To	Charge
(To be completed by carrier)		

(5) Pets in the cabin:

- (a) Only XXX animal(s) per passenger may be accepted for carriage in the passenger cabin.
- (b) The number of animals carried in the passenger cabin is limited to XXX animals per flight.
- (c) The maximum size permitted for the in-cabin animal container/kennel (length + width + height) must not exceed XXX cm/XXX in.
- (d) In determining the animals to be carried in the passenger cabin to remain under the limit per flight, priority will be given to service dogs, other service animals, and emotional support animals.
- (e) The maximum allowable weight for both the animal and in-cabin pet container/kennel must not exceed XXX kg/XXX lbs.
- (f) The in-cabin container/kennel must be stored under the seat directly in front of the passenger.
- (g) The in-cabin animal and container/kennel may be carried as part of the passenger's un-checked (carry-on) baggage allowance according to the number and size dimensions set out in Rule 55, Baggage acceptance.
- (h) The animal must remain in the container/kennel for the entire duration of the journey.
- (i) If the container/kennel exceeds the maximum size and/or maximum weight mentioned in (c) and (d) above, passengers will require to tender the animal as checked baggage.
- (j) The carrier may require a passenger with an in-cabin animal to change seats after boarding to accommodate other passengers. The carrier will reimburse seat selection fees or other additional charges related to class of service differences.
- (k) **Charges: Note to carrier:** If a carrier charges to transport animals then it must set out those charges here: The charge for transportation of an animal (except for Service Animals) and container/kennel in the passenger cabin will be as follows:

**Charge of transportation of animal and container/kennel**

From	To	Charge

From	To	Charge
(To be completed by carrier)		

## Rule 80: Administrative formalities – travel documents, customs and security

### (A) General

- (1) The passenger is responsible for obtaining all required travel documents (passports, visas, tourist cards, health certificates, or other appropriate and necessary identification) including those of any children that are accompanied by the passenger.
- (2) The passenger is responsible for complying with all laws, regulations, orders, demands, and travel requirements of countries to be flown from, into or through and also for complying with the instructions of the carriers concerned.

### (B) Travel documents

- (1) Prior to travel, the passenger must be prepared to submit for inspection to the carrier all travel documents required by the countries concerned.
- (2) The carrier will have the right to make and retain copies of the travel documents presented by the passenger.
- (3) As described in Rule 105, Refusal to transport, the carrier reserves the right to refuse transportation to any passenger who fails to present all exit, entry, health and other documents required by law, regulation, order, demand or other requirement of the countries where travel is intended or whose travel documents do not appear to be in order.
- (4) For international transportation including domestic segments on a passenger's itinerary, the carrier relies upon the information contained in [insert name of database] which may be accessed at [www.\\_\\_\\_\\_\\_](http://www._____), in order to determine whether a passenger is in possession of the travel documentation required for themselves or any animal to enter a particular country or to travel via certain countries based on their confirmed itinerary.

**Note to carrier:** The carrier may rely on third party commercial databases, such as IATA's TIMATIC, which contain information on national immigration and health requirements, including the required travel documentation for entry into or travel via certain countries, including for any animal being transported with a passenger. The carrier is entitled to rely upon the information in these databases.

- (5) Passengers are strongly encouraged to confirm any necessary legal requirements for entry into or travel via the countries on their itinerary prior to their flights and to have proof of their compliance with such regulations, including being in possession of the relevant travel documents, in advance of check-in.
- (6) The carrier will not provide passengers with information on the travel document requirements, including visa, passport, and health requirements, for entry into, exit from, or travel via the countries on their itinerary.

### **(C) Customs and security matters**

- (1) Customs and immigration officials of the various countries travelled to and via by the passenger and any animal being transported with the passenger, will have the final decision with respect to entry of passengers, or animals, and these decisions could be different than those of the carrier when it accepted the passenger or animal for transportation at the outset of their itinerary.

**Note to carrier:** If the carrier has policies in regards to any consequences to the passenger if they fail to comply with travel documentation, customs and security requirements, they must be stipulated here.

## **Rule 85: Ground transfer services**

### **(A) General**

- (1) This Rule is not applicable to transportation provided by means of bus or train for which the ticket was issued in conjunction with air transportation and where travel on those other modes of transportation are part of the contract of carriage issued by the carrier.
- (2) The carrier does not maintain, operate or provide ground transfer services between airports or between airports and city centres.
- (3) Any ground transfer service is performed by independent operators who are not and shall not be deemed to be, agents or servants of the carrier.

## **Rule 90: Delay or cancellation – outside the carrier’s control**

### **(A) Applicability**

- (1) This Rule applies to all passengers irrespective of the type of fare on which they are travelling or they have purchased.
- (2) This Rule applies in respect of a carrier when there is a delay or cancellation due to situations outside the carrier’s control. See Rule 90(C) for situations that are outside a carrier's control.
- (3) **Note to carrier:** This provision is to be included in the tariff of a Small Carrier APPR, where applicable:

Where [insert carrier name], a Small Carrier APPR, carries a passenger on behalf of a Large Carrier APPR under a commercial agreement with that carrier, it has the same obligations as a Large Carrier APPR towards that passenger that it carries.

## **(B) General**

- (1) The carrier will make all reasonable efforts to transport the passenger and their baggage at the times indicated in its timetable and according to schedule; however, flight times are not guaranteed.
- (2) Personalized documents, such as a ticket/itinerary issued by the carrier for the passenger, which are consistent with the reservation held by the passenger form part of the contract of carriage between the carrier and the passenger.
- (3) A delay or cancellation that is directly attributable to an earlier delay or cancellation that is due to situations outside the carrier's control, is considered to also be due to situations outside that carrier's control if that carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation.
- (4) The passenger who attempts to check-in after the carrier's check-in deadline or presents themselves at the boarding area after the carrier's boarding time deadline as specified under Rule 40(E), Check-in time limits, will not receive consideration per Rule 90 and will have their reservations cancelled as specified under Rule 105, Refusal to transport.
- (5) For international itineraries, irrespective of the treatment that they may have received, a passenger may invoke the provisions of the Convention regarding liability in the case of passenger delay. (See Rule 121(B)(12), Liability – international transportation, passenger delay)
- (6) For domestic itineraries, irrespective of the treatment that may have been received, a passenger may invoke the provisions of Rule 120(B)(6), Liability – domestic transportation, passenger delay.

**Note to carrier:** In respect of domestic services, the APPR apply the same rules and liability limits as those found in the Montreal Convention for lost, delayed and damaged baggage. This is reflected under Rule 120(B)(1). Rule 120(B)(1) also sets out liability provisions for death, bodily injury and passenger delay based on the obligations found in the Montreal Convention for international transportation. This is only provided as an example of carrier best practice in case the carrier wishes to harmonize these matters with the Montreal Convention as well.

- (7) In the case of delay or cancellation at the airport, the carrier will give priority to assistance to any person with a disability and to unaccompanied minors.

## **(C) Situations outside the carrier's control**

- (1) Situations outside the carrier's control, include, but are not limited to the following:
  - (a) war or political instability;
  - (b) illegal acts or sabotage;

- (c) meteorological conditions or natural disasters that make the safe operation of the aircraft impossible;
- (d) instructions from air traffic control;
- (e) a NOTAM, (Notice to Airmen), as defined in subsection 101.01(1) of the *Canadian Aviation Regulations*;
- (f) a security threat;
- (g) airport operation issues;
- (h) a medical emergency;
- (i) a collision with wildlife;
- (j) a labour disruption within the carrier or within an essential service provider such as an airport or an air navigation service provider;
- (k) a manufacturing defect in an aircraft that reduces the safety of passengers and that was identified by the manufacturer of the aircraft concerned, or by a competent authority; and
- (l) an order or instruction from an official of a state or a law enforcement agency or from a person responsible for airport security.

#### **(D) Communication with passengers — delay or cancellation outside the carrier's control**

- (1) Carrier will communicate with passengers in accordance with the provisions of Rule 97, Communication of information – cancellation, delay, tarmac delay or denial of boarding.

#### **(E) Alternate arrangements —delay or cancellation outside the carrier's control**

- (1) In case of a delay of three hours or more, if the passenger desires, or a flight cancellation, the carrier will provide alternate travel arrangements free of charge to ensure that passengers complete their itinerary as soon as feasible:

**Note to carrier:** Carriers, depending on whether they are a Large Carrier APPR or Small Carrier APPR, will select the provision applicable to them. In most cases, there is no need to include both variations of the following provisions in the tariff. A Small Carrier APPR has the same obligations as a Large Carrier APPR towards a passenger that it carries on behalf of a Large Carrier APPR under a commercial agreement with that carrier. In these cases, both provisions should be included in the Small Carrier APPR's tariff.

Carriers uncertain whether they are large or small for the purposes of the APPR may contact Agency staff.

#### **Large Carrier APPR:**

- (a) a confirmed reservation for the next available flight that is operated by the original carrier, or a carrier with which the original carrier has a commercial agreement, is travelling on any

reasonable air route from the airport at which the passenger is located to the destination that is indicated on the passenger's original ticket and departs within 48 hours of the end of the event that caused the delay or cancellation of flight,

- (b) if the carrier cannot provide a confirmed reservation that complies with subparagraph (a) (above),
  - (i) a confirmed reservation for a flight that is operated by any carrier and is travelling on any reasonable air route from the airport at which the passenger is located, or another airport that is within a reasonable distance of that airport, to the destination that is indicated on the passenger's original ticket, and
  - (ii) if the new departure is from an airport other than the one at which the passenger is located, transportation to that other airport.

#### **Small Carrier APPR:**

- (a) a confirmed reservation for the next available flight that is operated by the original carrier, or a carrier with which the original carrier has a commercial agreement, and is travelling on any reasonable air route from the same airport to the destination that is indicated on the passenger's original ticket.

#### **Comparable services**

- (2) To the extent possible, the alternate travel arrangement must provide services that are comparable to those of the original ticket, including the carrier making every reasonable effort to maintain accessible seating assignments and any other accessibility-related accommodation for persons with disabilities.

#### **Higher class of service**

- (3) If a higher class of service is booked for the passenger than was originally provided for on the passenger's original ticket, the carrier will not request supplementary payment from the passenger.

#### **Refunds**

- (4) [Insert carrier's policy on refunds]

**Note to carrier:** The APPR do not require that airlines provide refunds to passengers when flights are disrupted for reasons outside the carrier's control because the Canada Transportation Act only provided the authority to make regulations requiring that the airline ensure passengers can complete their itineraries. The ATR, however, require a carrier to state its policies for all situations in respect of refunds for services purchased but not used, whether in whole or in part, either as a result of the client's unwillingness or inability to continue or the air carrier's inability to provide the service for any reason. Carriers are encouraged to adopt policies that provide for the issuance of full refunds to passengers irrespective of the fare purchased when the carrier is unable to provide for alternate transportation acceptable to the passenger.



## **Rule 91: Delay or cancellation – within the carrier’s control and within the carrier's control but required for safety purposes**

### **(A) Applicability**

- (1) This Rule applies to all passengers irrespective of the type of fare on which they are travelling or they have purchased.
- (2) This Rule applies in respect of a carrier when there is delay or cancellation due to a situation that is within the carrier’s control and within the carrier's control but required for safety purposes. Rule 91(G) is applicable only if the delay or cancellation is within the carrier's control and is not required for safety purposes.

### **(B) General**

- (1) The carrier will make all reasonable efforts to transport the passenger and their baggage at the times indicated in its timetable and according to schedule; however, flight times are not guaranteed.
- (2) Personalized documents, such as a ticket/itinerary issued by the carrier for the passenger, which are consistent with the reservation held by the passenger form part of the contract of carriage between the carrier and the passenger.
- (3) A delay or cancellation that is directly attributable to an earlier delay or cancellation that is within the carrier’s control but is required for safety purposes, is considered to also be within that carrier’s control but required for safety purposes, if that carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation.
- (4) The passenger who attempts to check-in after the carrier’s check-in deadline or presents themselves at the boarding area after the carrier’s boarding time deadline as specified under Rule 40(E), Check-in time limits, will not receive consideration per Rule 91 and will have their reservations cancelled as specified under Rule 105, Refusal to transport.
- (5) For international itineraries, irrespective of the treatment that they may have received, a passenger may invoke the provisions of the Convention regarding liability in the case of passenger delay. (See Rule 121(B)(12), Liability – international transportation, passenger delay)
- (6) For domestic itineraries, irrespective of the treatment that may have been received, a passenger may invoke provisions such as those that are set forth in Domestic Liability – Rule 120(C)(6), Liability – domestic transportation, passenger delay.

**Note to carrier:** In respect of domestic services, the APPR apply the same rules and liability limits as those found in the Montreal Convention for lost, delayed and damaged baggage. This is reflected under Rule 120(B)(1). Rule 120(B)(1) also sets out liability provisions for death, bodily injury and passenger delay based on the obligations found in the Montreal Convention for international transportation. This is only provided as an example of carrier best practice in case the carrier wishes to harmonize these matters with the Montreal Convention as well.

**(C) Communication with passengers – delay or cancellation – within the carrier’s control and within the carrier’s control but required for safety purposes**

- (1) The carrier will communicate with passengers in accordance with the provisions of Rule 97, Communication of information – cancellation, delay, tarmac delay or denial of boarding.

**(D) Alternate arrangements – delay or cancellation – within the carrier’s control and within the carrier’s control but required for safety purposes**

- (1) In case of a delay of three hours or more, if the passenger desires, or a flight cancellation, the carrier will provide the following alternate travel arrangements free of charge to ensure that each passenger completes their itinerary as soon as feasible:

**Note to carrier:** Carriers, depending on whether they are a Large Carrier APPR or Small Carrier APPR, will select the provision applicable to them. In most cases, there is no need to include both variations of the following provisions in their tariff. A Small Carrier APPR has the same obligations as a Large Carrier APPR towards a passenger that it carries on behalf of a Large Carrier APPR under a commercial agreement with that carrier. In these cases, both provisions should be included in the Small Carrier APPR's tariff.

Carriers uncertain whether they are large or small for the purposes of the APPR may contact Agency staff.

**Large Carrier APPR:**

- (a) a confirmed reservation for the next available flight that is operated by the original carrier, or a carrier with which the original carrier has a commercial agreement, is travelling on any reasonable air route from the airport at which the passenger is located to the destination that is indicated on the passenger’s original ticket and departs within 9 hours of the departure time that is indicated on that original ticket,
- (b) a confirmed reservation for a flight that is operated by any carrier and is travelling on any reasonable air route from the airport at which the passenger is located to the destination that is indicated on the passenger’s original ticket and departs within 48 hours of the departure time that is indicated on that original ticket if the carrier cannot provide a confirmed reservation that complies with subparagraph (a), or
- (c) if the carrier cannot provide a confirmed reservation that complies with subparagraph (a) or (b) (above),
  - (i) a confirmed reservation for a flight that is operated by any carrier and is travelling on any reasonable air route from another airport that is within a reasonable distance of the airport at which the passenger is located to the destination that is indicated on the passenger’s original ticket and.
  - (ii) if the new departure is from an airport other than one at which the passenger is located, transportation to that other airport.

**Small Carrier APPR:**

- (a) a confirmed reservation for the next available flight that is operated by the original carrier, or a carrier with which the original carrier has a commercial agreement, and is travelling on any reasonable air route from the airport at which the passenger is located to the destination that is indicated on the passenger's original ticket.

## **Refund**

- (2) If the alternate travel arrangements offered, in accordance with (1) above, do not accommodate the passenger's travel needs, the carrier will
  - (a) in the case where the passenger is no longer at the point of origin that is indicated on the ticket and the travel no longer serves a purpose because of the delay or cancellation, refund the ticket, pursuant to Rule 125(B), Involuntary refunds, and provide the passenger with a confirmed reservation that is for a flight to that point of origin which accommodates the passenger's travel needs; and
  - (b) in any other case, refund the unused portion of the ticket. The amount of the refund will be calculated pursuant to Rule 125, Involuntary refunds.

## **Comparable services**

- (3) To the extent possible, the alternate travel arrangement must provide services that are comparable to those of the original ticket, including the carrier making every reasonable effort to maintain accessible seating assignments and any other accessibility-related accommodation for persons with disabilities.

## **Refund of additional services**

- (4) The carrier will refund the cost of any additional services purchased by a passenger in connection with their original ticket if
  - (a) the passenger did not receive those services on the alternate flight; or
  - (b) the passenger paid for those services a second time.

## **Higher class of service**

- (5) If the alternate travel arrangements referred to in (1) above provide for a higher class of service than the original ticket, the carrier will not request supplementary payment.

## **Lower class of service**

- (6) If the alternate travel arrangements provide for a lower class of service than the original ticket, the carrier will refund the difference in the cost of the applicable portion of the ticket.

## **Form of refund**

- (7) Refunds under this section will be made in conformity with Rule 125(B), Involuntary refunds and must be paid by the method used for the original payment and to the person who purchased the ticket or additional service.

## **(E) Standards of treatment – delay or cancellation – within the carrier’s control and within the carrier’s control but required for safety purposes**

- (1) If the passenger has been informed of the delay or of the cancellation less than 12 hours before the departure time that is indicated on their original ticket and they have waited two hours after the departure time that is indicated on their original ticket, the carrier must provide the passenger with the following treatment free of charge:
  - (a) food and drink in reasonable quantities, taking into account the length of the wait, the time of day and the location of the passenger; and
  - (b) access to a means of communication.

### **Accommodations**

- (2) If the passenger has been informed of the delay or of the cancellation less than 12 hours before the departure time that is indicated on their original ticket and if the carrier expects that the passenger will be required to wait overnight for their original flight or for a flight reserved as part of alternate travel arrangements, the carrier must offer, free of charge, hotel or other comparable accommodation that is reasonable in relation to the location of the passenger, as well as transportation to the hotel or other accommodation and back to the airport.

### **Refusing or limiting treatment**

- (3) The carrier may limit or refuse to provide a standard of treatment referred to in (1) and (2) above if providing that treatment would further delay the passenger.

## **(F) Compensation – delay or cancellation – within the carrier’s control and not required for safety purposes**

- (1) Compensation for inconvenience is only payable when the delay or cancellation is within the carrier’s control and is not required for safety purposes.
- (2) If a passenger is informed 14 days or less before the departure time on their original ticket that the arrival of their flight at the destination that was indicated on their ticket will be delayed, the carrier will provide the minimum compensation for inconvenience as follows:

**Note to carrier:** Carriers, depending on whether they are a Large Carrier APPR or Small Carrier APPR, will select the provision applicable to them. In most cases, there is no need to include both variations of the following provisions in their tariff. A Small Carrier APPR has the same obligations as a Large Carrier APPR towards a passenger that it carries on behalf of a Large Carrier APPR under a commercial agreement with that carrier. In these cases, both provisions should be included in the Small Carrier APPR’s tariff.

Carriers uncertain whether they are large or small for the purposes of the APPR may contact Agency staff.

### **Large Carrier APPR:**

- (a) \$400, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by three hours or more, but less than six hours,
- (b) \$700, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by six hours or more, but less than nine hours, or
- (c) \$1,000, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by nine hours or more;

**Small Carrier APPR:**

- (a) \$125, if the arrival of the passenger's flight at destination that is indicated on the original ticket is delayed by three hours or more, but less than six hours,
- (b) \$250, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by six hours or more, but less than nine hours, or
- (c) \$500, if the arrival of the passenger's flight at the destination on the original ticket is delayed by nine hours or more.

**Compensation in case of refund**

- (3) If the passenger's ticket is refunded in accordance with (D)(2), the carrier will provide a minimum compensation of:

**Note to carrier:** Carriers, depending on whether they are a Large Carrier APPR or Small Carrier APPR, will select the provision applicable to them. In most cases, there is no need to include both variations of the following provisions in their tariff. A Small Carrier APPR has the same obligations as a Large Carrier APPR towards a passenger that it carries on behalf of a Large Carrier APPR under a commercial agreement with that carrier. In these cases, both provisions should be included in the Small Carrier's APPR tariff.

Carriers uncertain whether they are large or small for the purposes of the APPR may contact Agency staff.

**Large Carrier APPR:**

- (a) in the case of a Large Carrier APPR, \$400,
- OR

**Small Carrier APPR:**

- (a) in the case of a Small Carrier APPR, \$125.

**Deadline to file request**

- (4) To receive the minimum compensation referred to in (2) or (3) above, a passenger must file a request for compensation with the carrier before the first anniversary of the day on which the flight delay or flight cancellation occurred.

## Deadline to Respond

- (5) The carrier will, within 30 days after the day on which it receives the request, provide the compensation or an explanation as to why compensation is not payable.

## Compensation for inconvenience

- (6) If the carrier is required by this tariff to provide compensation to a passenger, the carrier will offer it in form of money (i.e., cash, cheque, or bank transfer). However, the compensation may be offered in another form (e.g. vouchers) if:
  - (a) compensation in the other form has a greater monetary value than the minimum monetary value of the compensation that is required under the APPR;
  - (b) the passenger has been informed in writing of the monetary value of the other form of compensation;
  - (c) the other form of compensation does not expire; and
  - (d) the passenger confirms in writing that they have been informed of their right to receive monetary compensation and have chosen the other form of compensation.

## Rule 92: Tarmac delay

### (A) Applicability

- (1) This Rule applies to all passengers experiencing a tarmac delay irrespective of the type of fare on which they are travelling or they have purchased.
- (2) For international itineraries, irrespective of the treatment that they may have received, a passenger may invoke the provisions of the Convention regarding liability in the case of passenger delay. (See Rule 121(B)(12), Liability – international transportation, passenger delay)
- (3) For domestic itineraries, irrespective of the treatment that they may have received, a passenger may invoke provisions such as those that are set out in Rule 120(C)(6), Liability – domestic transportation, passenger delay.

**Note to carrier:** In respect of domestic services, the APPR apply the same rules and liability limits as those found in the Montreal Convention for lost, delayed and damaged baggage. This is reflected under Rule 120(B)(1). Rule 120(B)(1) also sets out liability provisions for death, bodily injury and passenger delay based on the obligations found in the Montreal Convention for international transportation. This is only provided as an example of carrier best practice in case the carrier wishes to harmonize these matters with the Montreal Convention as well.

### (B) General

- (1) Passengers who experienced or are experiencing a tarmac delay may, depending on the circumstances, also find relief pursuant to:
  - (a) Rule 90, Delay or cancellation- outside the carrier's control, or

- (b) Rule 91, Delay or cancellation- within the carrier's control and within the carrier's control but required for safety purposes

### **Urgent medical assistance**

- (2) If a passenger requires urgent medical assistance while the flight is delayed on the tarmac after the doors of the aircraft are closed for take-off or after the flight has landed, the carrier will facilitate access to the medical assistance.

### **Tarmac delay obligations – standards of treatment**

- (3) If a flight is delayed on the tarmac after the doors of the aircraft are closed for take-off or after the flight has landed, the carrier will provide passengers with the following treatment, free of charge:
  - (a) if the aircraft is equipped with lavatories, access to those lavatories in working order;
  - (b) proper ventilation and cooling or heating of the aircraft;
  - (c) if it is feasible to communicate with people outside of the aircraft, the means to do so; and
  - (d) food and drink, in reasonable quantities, taking into account the length of the delay, the time of day and the location of the airport.

### **Communications and information**

- (4) Once it becomes clear that the aircraft will experience a tarmac delay the carrier will communicate with passengers in accordance with the provisions of Rule 97, Communication of information – cancellation, delay, tarmac delay or denial of boarding.

## **(C) Tarmac delay (over 3 hours) carrier obligations at an airport in Canada**

### **Passenger disembarkation**

- (1) If a flight is delayed on the tarmac at an airport in Canada, the carrier will provide an opportunity for passengers to disembark:
  - (a) three hours after the aircraft doors have been closed for take-off; and
  - (b) three hours after the flight has landed, or at any earlier time if it is feasible.
- (2) **Exception:** Carrier is not required to provide an opportunity for passengers to disembark in accordance with (1) (above) if:
  - (a) it is likely that take-off will occur less than three hours and 45 minutes after the doors of the aircraft are closed for take-off or after the flight has landed, and,
  - (b) the carrier is able to continue to provide the standards of treatment referred to in (B)(3) (above).
- (3) If a passenger opts to disembark pursuant to Rule 92(C)(1) and the passenger fails to make themselves readily available for an immediate departure should that occur, the carrier:

- (a) cannot guarantee that the passenger can be re-accommodated on to the aircraft,
- (b) will treat the passenger, as appropriate, under the provisions of Rule 90, Delay or cancellation- outside the carrier's control or Rule 91, Delay or cancellation- within the carrier's control and within the carrier's control but required for safety purposes.

### **Priority disembarkation**

- (4) If the carrier allows disembarkation, it will, if it is feasible, give passengers with disabilities and their support person, service animal or emotional support animal, if any, the opportunity to leave the aircraft first.

### **Exceptions**

- (5) Rule 92(C)(1) does not apply if providing an opportunity for passengers to disembark is not possible, including if it is not possible for reasons related to safety and security or to air traffic or customs control.

## **Rule 95: Denial of boarding – outside the carrier's control**

### **(A) Applicability**

- (1) This Rule applies to all passengers irrespective of the type of fare on which they are travelling or they have purchased.
- (2) This Rule applies in respect of a carrier when there is denial of boarding due to situations outside the carrier's control. See Rule 95(C) for situations that are outside a carrier's control.
- (3) This Rule does not apply in the situation of a refusal to transport a passenger due to, for instance, health, safety or security reasons, or where the passenger has failed to follow carrier rules or instructions, has inappropriate travel documents or has failed to respect check-in time limits. To see the carrier's policies in this respect, refer to Rule 105, Refusal to transport.

### **(B) General**

- (1) The carrier will make all reasonable efforts to transport the passenger and their baggage at the times indicated in its timetable and according to schedule; however, flight times are not guaranteed.
- (2) Personalized documents, such as a ticket/itinerary issued by the carrier for the passenger, which are consistent with the reservation held by the passenger form part of the contract of carriage between the carrier and the passenger.
- (3) The passenger holding a confirmed ticketed reservation must present themselves for carriage in accordance with this tariff having complied fully with the carrier's applicable reservation, ticketing, check-in and boarding requirements within the time limits as set out in Rule 40.
- (4) The passenger who attempts to check-in after the carrier's check-in deadline or presents themselves at the boarding area after the carrier's boarding time deadline as specified under Rule



40(E), Check-in time limits, will not receive consideration per Rule 95 and will have their reservations cancelled as specified under Rule 105, Refusal to transport.

- (5) A denial of boarding that is directly attributable to an earlier delay or cancellation that is due to situations outside the carrier's control, is considered to also be due to situations outside that carrier's control if that carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation.
- (6) For international itineraries, irrespective of the treatment that they may have received, a passenger may invoke the provisions of the Convention regarding liability in the case of passenger delay. (See Rule 121(B)(12), Liability – international transportation, passenger delay)
- (7) For domestic itineraries, irrespective of the treatment that they may have received, a passenger may invoke provisions such as those that are set out in Rule 120(C)(6), Liability – domestic transportation, passenger delay

**Note to carrier:** In respect of domestic services, the APPR apply the same rules and liability limits as those found in the Montreal Convention for lost, delayed and damaged baggage. This is reflected under Rule 120(B)(1). Rule 120(B)(1) also sets out liability provisions for death, bodily injury and passenger delay based on the obligations found in the Montreal Convention for international transportation. This is only provided as an example of carrier best practice in case the carrier wishes to harmonize these matters with the Montreal Convention as well.

### **(C) Situations outside the carrier's control**

- (1) Situations outside the carrier's control, include, but are not limited to the following:
  - (a) war or political instability;
  - (b) illegal acts or sabotage;
  - (c) meteorological conditions or natural disasters that make the safe operation of the aircraft impossible;
  - (d) instructions from air traffic control;
  - (e) a NOTAM, (Notice to Airmen) as defined in subsection 101.01(1) of the *Canadian Aviation Regulations*;
  - (f) a security threat;
  - (g) airport operation issues;
  - (h) a medical emergency;
  - (i) a collision with wildlife;
  - (j) a labour disruption within the carrier or within at an essential service provider such as an airport or an air navigation service provider;
  - (k) a manufacturing defect in an aircraft that reduces the safety of passengers and that was identified by the manufacturer of the aircraft concerned, or by a competent authority; and

- (l) an order or instruction from an official of a state or a law enforcement agency or from a person responsible for airport security.

#### **(D) Communication with passengers – denial of boarding – outside the carrier’s control**

- (1) Carrier will communicate with passengers in accordance with the provisions of Rule 97, Communication of information – cancellation, delay, tarmac delay or denial of boarding.

#### **(E) Alternate arrangements – denial of boarding outside the carrier’s control**

- (1) If there is denial of boarding due to situations outside the carrier’s control, the carrier will provide alternate travel arrangements free of charge to ensure that passengers complete their itinerary as soon as feasible:

**Note to carrier:** Carriers, depending on whether they are Large Carrier APPR or Small Carrier APPR, will select the provision applicable to them. In most cases, there is no need to include both variations of the following provisions in their tariff. A Small Carrier APPR has the same obligations as a Large Carrier APPR towards a passenger that it carries on behalf of a Large Carrier APPR under a commercial agreement with that carrier. In these cases, both provisions should be included in the Small Carrier APPR's tariff.

Carriers uncertain whether they are large or small for the purposes of the APPR may contact Agency staff.

##### **Large Carrier APPR:**

- (a) a confirmed reservation for the next available flight that is operated by the original carrier, or a carrier with which the original carrier has a commercial agreement, is travelling on any reasonable air route from the airport at which the passenger is located to the destination that is indicated on the passenger’s original ticket and departs within 48 hours of the end of the event that caused the denial of boarding,
- (b) if the carrier cannot provide a confirmed reservation that complies with subparagraph (a) (above),
  - (i) a confirmed reservation for a flight that is operated by any carrier and is travelling on any reasonable air route from the airport at which the passenger is located, or another airport that is within a reasonable distance of that airport, to the destination that is indicated on the passenger’s original ticket, and
  - (ii) if the new departure is from an airport other than the one at which the passenger is located, transportation to that other airport.

##### **Small Carrier APPR:**

- (a) a confirmed reservation for the next available flight that is operated by the original carrier, or a carrier with which the original carrier has a commercial agreement, and is travelling on any reasonable air route from the same airport to the destination that is indicated on the passenger’s original ticket.

## **Comparable services**

- (2) To the extent possible, the alternate travel arrangement must provide services that are comparable to those of the original ticket, including the carrier making every reasonable effort to maintain accessible seating assignments and any other accessibility-related accommodation for persons with disabilities.

## **Higher class of service**

- (3) If a higher class of service is booked for the passenger than was originally provided for on the passenger's original ticket, the carrier will not request supplementary payment from the passenger.

## **Refunds**

- (4) [Insert carrier's policy on refunds]

**Note to carrier:** The APPR do not require that airlines provide refunds to passengers when flights are disrupted for reasons outside the carrier's control because the Canada Transportation Act only provided the authority to make regulations requiring that the airline ensure passengers can complete their itineraries. The ATR, however, require a carrier to state its policies for all situations in respect of refunds for services purchased but not used, whether in whole or in part, either as a result of the client's unwillingness or inability to continue or the air carrier's inability to provide the service for any reason. Carriers are encouraged to adopt policies that provide for the issuance of full refunds to passengers irrespective of the fare purchased when the carrier is unable to provide for alternate transportation acceptable to the passenger.

# **Rule 96: Denial of boarding – within the carrier's control and within the carrier's control but required for safety purposes**

## **(A) Applicability**

- (1) This Rule applies to all passengers irrespective of the type of fare on which they are travelling or have purchased.
- (2) This Rule applies in respect of a carrier when there is a denial of boarding due to a situation that is within the carrier's control and within the carrier's control but required for safety. (G) is only applicable if the denial of boarding is within the carrier's control and is not required for safety purposes.
- (3) This Rule does not apply in the situation of a refusal to transport a passenger due to, for instance, health, safety or security reasons, or where the passenger has failed to follow carrier rules or instructions, has inappropriate travel documents or has failed to respect check-in time limits or gate cut-off times. See Rule 105, Refusal to transport for the carrier's policies in this respect.

## **(B) General**

- (1) The carrier will make all reasonable efforts to transport the passenger and their baggage at the times indicated in its timetable and according to schedule; however, flight times are not guaranteed.
- (2) Personalized documents, such as a ticket/itinerary issued by the carrier for the passenger, which are consistent with the reservation held by the passenger form part of the contract of carriage between the carrier and the passenger.
- (3) The passenger holding a confirmed ticketed reservation must present themselves for carriage in accordance with this tariff having complied fully with the carrier's applicable reservation, ticketing, check-in and boarding requirements within the time limits set out in Rule 40.
- (4) A denial of boarding that is directly attributable to an earlier delay or cancellation that is within that carrier's control but is required for safety purposes, is considered to also be within that carrier's control but required for safety purposes if that carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation.
- (5) The passenger who attempts to check-in after the carrier's check-in deadline or presents themselves at the boarding area after the carrier's boarding time deadline as specified under Rule 40(E), Check-in time limits, will not receive consideration per Rule 96 and will have their reservations cancelled as specified under Rule 105, Refusal to transport.
- (6) For international itineraries, irrespective of the treatment that they may have received, a passenger may invoke the provisions of the Convention regarding liability in the case of passenger delay. (See Rule 121(B)(12), Liability – international transportation, passenger delay)
- (7) For domestic itineraries, irrespective of the treatment that they may have received, a passenger may invoke provisions as those that are set forth in Rule 120(C)(6), Liability – domestic transportation, passenger delay.

**Note to carrier:** In respect of domestic services, the APPR apply the same rules and liability limits as those found in the Montreal Convention for lost, delayed and damaged baggage. This is reflected under Rule 120(B)(1). Rule 120(B)(1) also sets out liability provisions for death, bodily injury and passenger delay based on the obligations found in the Montreal Convention for international transportation. This is only provided as an example of carrier best practice in case the carrier wishes to harmonize these matters with the Montreal Convention as well.

### **(C) Denial of boarding – within the carrier's control and within the carrier's control but required for safety purposes – request for volunteers**

- (1) In cases of denial of boarding within the carrier's control and within the carrier's control but required for safety purposes, the carrier will not deny boarding to a passenger unless it has asked all passengers if they are willing to give up their seat. As such, the carrier will make an announcement and ask for volunteers to relinquish their seats from among the confirmed passengers. At the same time, the carrier will announce what type of benefits passengers will be entitled to should they voluntarily relinquish their seat. The carrier will advise any passenger who expresses an interest in relinquishing their seat of the amount of compensation a passenger could receive pursuant to (G)(1) if there is a denial of boarding.

- (2) Attempts to find volunteers may take place at the check-in or boarding areas. The carrier may also seek volunteers before the passenger arrives at the airport. The carrier will continue to make this request of passengers until it obtains enough volunteers to prevent a denial of boarding or until it determines that it does not, despite its best efforts, have enough volunteers.
- (3) If the carrier offers a benefit in exchange for a passenger willingly relinquishing their seat in accordance with (1) (above) and a passenger accepts the offer, or if they negotiate a benefit acceptable to both parties, the carrier will provide the passenger with a written confirmation of that benefit before the flight departs. A passenger who willingly relinquishes their seat is not considered to be a passenger who has been subject to a denial of boarding by the carrier and as such, is not entitled to compensation pursuant to (G).

### **Passenger on aircraft**

- (4) The carrier will not deny boarding to a passenger who is already on-board the aircraft unless the denial of boarding is required for reasons of safety. However, passengers may still elect to volunteer to relinquish their seat if already on-board the aircraft in exchange for benefits agreed upon with the carrier.

### **Priority for boarding**

- (5) If denial of boarding is necessary, the carrier will give priority for boarding to passengers in the following order:
  - (a) an unaccompanied minor;
  - (b) a person with a disability and their support person, service dog or other service animal, or emotional support animal, if any;
  - (c) a passenger who is travelling with family members;
  - (d) a passenger who was previously denied boarding on the same ticket;
  - (e) all other passengers with confirmed and ticketed reservations in the order in which they presented themselves for check-in.

**Note to carrier:** (5)(e) above gives priority on the basis of check-in time. If carriers have other policies which establish boarding priorities for passengers in the case of denied boarding, e.g. fare paid, class of service, elite status, then the carrier also must set out these policies in its tariff.

### **(D) Communication with passengers – denial of boarding – within the carrier’s control and within the carrier’s control but required for safety purposes**

- (1) Carrier will communicate with passengers in accordance with the provisions of Rule 97, Communication of information – cancellation, delay, tarmac delay or denial of boarding.

### **(E) Alternate arrangements – denial of boarding – within the carrier’s control and within the carrier’s control but required for safety purposes**

- (1) In the case where there is a denial of boarding for situations within the carrier's control or within the carrier's control but required for safety purposes, the carrier will provide the following alternate travel arrangements free of charge to ensure that the passenger completes their itinerary as soon as feasible:

**Note to carrier:** Carriers, depending on whether they are a Large Carrier APPR or Small Carrier APPR, will select the provision applicable to them. In most cases, there is no need to include both variations of the following provisions in their tariff. A Small Carrier APPR has the same obligations as a Large Carrier APPR towards a passenger that it carries on behalf of a Large Carrier APPR under a commercial agreement with that carrier. In these cases, both provisions should be included in the Small Carrier APPR's tariff.

Carriers uncertain whether they are large or small for the purposes of the APPR may contact Agency staff.

### **Large Carrier APPR**

- (a) a confirmed reservation for the next available flight that is operated by the original carrier, or a carrier with which the original carrier has a commercial agreement, is travelling on any reasonable air route from the airport at which the passenger is located to the destination that is indicated on the passenger's original ticket and departs within 9 hours of the departure time that is indicated on that original ticket,
- (b) a confirmed reservation for a flight that is operated by any carrier and is travelling on any reasonable air route from the airport at which the passenger is located to the destination that is indicated on the passenger's original ticket and departs within 48 hours of the departure time that is indicated on that original ticket if the carrier cannot provide a confirmed reservation that complies with subparagraph (a), or
- (c) if the carrier cannot provide a confirmed reservation that complies with subparagraph (a) or (b) (above),
  - (i) a confirmed reservation for a flight that is operated by any carrier and is travelling on any reasonable air route from another airport that is within a reasonable distance of the airport at which the passenger is located to the destination that is indicated on the passenger's original ticket and
  - (ii) if the new departure is from an airport other than one at which the passenger is located, transportation to that other airport.

### **Small Carrier APPR**

- (a) a confirmed reservation for the next available flight that is operated by the original carrier, or a carrier with which the original carrier has a commercial agreement, and is travelling on any reasonable air route from the airport at which the passenger is located to the destination that is indicated on the passenger's original ticket.

## **Refund**

- (2) If the alternate travel arrangements offered in accordance with (F)(1) do not accommodate the passenger's travel needs, the carrier will
- (a) in the case where the passenger is no longer at the point of origin that is indicated on the ticket and the travel no longer serves a purpose because of denied boarding, refund the ticket, pursuant to Rule 125(B), Involuntary Refunds, and provide the passenger with a confirmed reservation that is for a flight to that point of origin which accommodates the passenger's travel needs; and
  - (b) in any other case, refund the unused portion of the ticket. The amount of the refund will be calculated pursuant to Rule 125(B), Involuntary refunds.

### **Comparable services**

- (3) To the extent possible, the alternate travel arrangement must provide services comparable to those of the original ticket, including the carrier making every reasonable effort to maintain accessible seating assignments and any other accessibility-related accommodation for persons with disabilities.

### **Refund of additional services**

- (4) The carrier will refund the cost of any additional services purchased by a passenger in connection with their original ticket if
- (a) the passenger did not receive those services on the alternate flight; or
  - (b) the passenger paid for those services a second time.

### **Higher class of service**

- (5) If the alternate travel arrangements referred to in (1) above provide for a higher class of service than the original ticket, the carrier will not request supplementary payment.

### **Lower class of service**

- (6) If the alternate travel arrangements provide for a lower class of service than the original ticket, the carrier will refund the difference in the cost of the applicable portion of the ticket.

### **Form of refund**

- (7) Refunds under this section will be made in conformity with Rule 125(B), Involuntary refunds and must be paid by the method used for the original payment and to the person who purchased the ticket or additional service.

## **(F) Standards of treatment – denial of boarding – within the carrier's control and within the carrier's control but required for safety purposes**

- (1) Before a passenger boards the flight reserved as an alternate travel arrangement per (E)(1), the carrier will provide them with the following treatment free of charge:

- (a) food and drink in reasonable quantities, taking into account the length of the wait, the time of day and the location of the passenger; and
- (b) access to a means of communication.

### **Accommodations**

- (2) If the carrier expects that the passenger will be required to wait overnight for a flight reserved as part of alternate travel arrangements, the air carrier must offer, free of charge, hotel or other comparable accommodation that is reasonable in relation to the location of the passenger as well as transportation to the hotel or other accommodation and back to the airport.

### **Refusing or limiting treatment**

- (3) The carrier may limit or refuse to provide a standard of treatment referred to (1) and (2) above, if providing that treatment would further delay the passenger.

## **(G) Compensation – denial of boarding – within the carrier’s control and not required for safety purposes.**

- (1) Compensation is only payable when the denial of boarding is within the carrier's control and is not required for safety purposes.

### **Compensation for denial of boarding**

- (2) If a denial of boarding that is within the carrier’s control occurs, the carrier will provide the following compensation for inconvenience to the affected passenger:
  - (a) \$900, if the arrival time of the passenger's flight at the destination that is indicated on the original ticket is delayed by less than six hours;
  - (b) \$1,800, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by six hours or more, but less than nine hours; and
  - (c) \$2,400, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by nine hours or more.

### **Payment**

- (3) The carrier will provide the compensation to the passenger as soon as it is operationally feasible, but not later than 48 hours after the denial of boarding.

### **Estimated arrival time**

- (4) If the compensation is paid before the arrival of the flight reserved as part of alternate travel arrangements made pursuant to (E)(1) above, at the destination that is indicated on their ticket, that compensation will be based on the flight's expected arrival time.

### **Written confirmation**



- (5) If it is not possible to provide the compensation before the boarding time of the flight reserved as part of alternate travel arrangements made pursuant to (E)(1) above, the carrier will provide the passenger with a written confirmation of the amount of the compensation that is owed.

### **Adjustment**

- (6) If the arrival of the passenger's flight at the destination that is indicated on their original ticket is after the time it was expected to arrive when the compensation was paid or confirmed in writing and the amount that was paid or confirmed no longer reflects the amount due in accordance with (2), the carrier will adjust the amount of the compensation.

### **Compensation for inconvenience**

- (7) If the carrier is required by (2) above to provide compensation for a denial of boarding to a passenger, the carrier will offer it in form of money (i.e. cash, cheque, or bank transfer). However, the compensation may be offered in another form (e.g. vouchers) if:
- (a) compensation in the other form has a greater monetary value than the minimum monetary value of the compensation that is required under the APPR.
  - (b) the passenger has been informed in writing of the monetary value of the other form of compensation;
  - (c) the other form compensation does not expire; and
  - (d) the passenger confirms in writing that they have been informed of their right to receive monetary compensation and have chosen the other form of compensation.

## **Rule 97 – Communication of information – cancellation, delay, tarmac delay, or denial of boarding**

### **(A) General**

- (1) In cases where one of the following applies:
- (a) Rule 90, Delay or cancellation – outside the carrier's control,
  - (b) Rule 91, Delay or cancellation – within the carrier's control and within the carrier's control but required for safety purposes,
  - (c) Rule 92, Tarmac delay,
  - (d) Rule 95, Denial of boarding – outside the carrier's control, or
  - (e) Rule 96, Denial of boarding – within the carrier's control and within the carrier's control but required for safety purposes,

pursuant to the provisions of the APPR, the carrier will provide the following information to the affected passengers:

- (i) the reason for the delay, cancellation, or denial of boarding;

- (ii) the compensation to which the passenger may be entitled for the inconvenience;
  - (iii) the standard of treatment for passengers, if any; and
  - (iv) the recourse available against the carrier, including their recourse to the Agency.
- (2) In the case of a delay, the carrier will communicate status updates every 30 minutes until a new departure time for the flight is set or alternate travel arrangements have been made for the affected passenger.
  - (3) The carrier will communicate new information to passengers as soon as feasible
  - (4) The information of paragraph (1) above will be provided by means of audible announcements. Visible announcements will be provided upon request.
  - (5) The information of paragraph (1) above will also be provided to the passenger using the available communication method that the passenger has indicated that they prefer, including a method that is compatible with adaptive technologies intended to assist persons with disabilities.

## Rule 98 – Schedule irregularities

**Note to carrier:** The APPR prescribes certain minimum obligations for carriers in situations of flight delay, tarmac delay, flight cancellation, and denied boarding as set out in Rule 90, Delay or cancellation – outside the carrier's control; Rule 91, Delay or cancellation – within the carrier's control and within the carrier's control but required for safety purposes; Rule 92, Tarmac delay; Rule 95, Denial of boarding – outside the carrier's control; Rule 96, Denial of boarding – within the carrier's control and within the carrier's control but required for safety purposes; and Rule 97, Communication of information – cancellation, delay, tarmac delay, or denial of boarding. For any situations not addressed by the APPR, the carrier must state its policies in respect of those situations in its tariff. See the ATR, paragraph 122(c) for international requirements, and paragraph 107(1)(n) for domestic requirements. Other schedule irregularities include, for example:

- Schedule changes where flight times have been changed for either an earlier or later time but do not fall within the APPR timelines;
- Change of routing, or the addition or deletion of a stop;
- Equipment changes which may increase or decrease the capacity of a flight (may or may not affect seat assignments); and
- Substitution of a different class of service.

## Rule 105: Refusal to transport

### Definitions

- (1) For the purposes of Rule 105:

**“Force majeure”** means any unforeseeable circumstances beyond the carrier’s control, the consequences of which could not have been avoided even if all due care had been exercised including, but without limitation, meteorological and geological conditions, acts of God, pandemics, strikes, riots, civil commotions, embargoes, wars, hostilities, disturbances, unsettled international conditions, shortage of fuel or facilities, or labour disputes, either actual, threatened or reported.

## **(A) Applicability**

- (1) A refusal to transport a passenger only occurs in situations when the carrier operates a flight on which the passenger had a confirmed reservation but that specific passenger is not permitted to continue their journey on that flight due to any reasons specified in the paragraphs below. Refusal to transport can occur at the start of any journey or while the passenger is en route to their destination.
- (2) Flight delay, flight cancellation and denial of boarding do not constitute a situation of refusal to transport.

## **(B) Refusal to transport – removal of passenger**

- (1) The carrier will refuse to transport, or will remove any passenger at any point, for any of the following reasons:

### **(a) Government requests and regulations and force majeure**

Whenever it is necessary or advisable to:

- (i) comply with any government regulation;
- (ii) comply with any government request for emergency transportation; or,
- (iii) address force majeure.

### **(b) Search of passenger and property**

When the passenger refuses to permit a search of their person or property for explosives or for concealed, prohibited, deadly or dangerous weapon(s) or article(s).

### **(c) Proof of identity/age**

When the passenger refuses a request to produce government-issued identification to demonstrate proof of identity.

#### **(i) Applicable only to travel within Canada:**

**Note:** The carrier is obliged to screen each passenger by looking at the passenger, and in particular the passenger’s entire face, to determine if they appear to be 18 years of age or older.

The carrier is also required to screen each passenger who appears to be 18 years of age or older by comparing the passenger, and in particular the passenger's entire face, against one piece of government-issued photo identification that shows the passenger's name, date of birth and gender; or two pieces (without photo) of government-issued identification at least one of which shows the passenger's name, date of birth and gender.

(ii) **Applicable only to travel from Canada:**

**Note:** The carrier is required to screen each passenger by looking at the passenger, and in particular the passenger's entire face, to determine if they appear to be 18 years of age or older.

The carrier is also required to screen each passenger who appears to be 18 years of age or older by comparing the passenger, and in particular the passenger's entire face, against one piece of government-issued photo identification that shows the passenger's name, date of birth and gender.

(d) **Immigration or other similar considerations**

When the passenger is to travel across any international boundary, if:

- (i) The travel documents of the passenger are not in order; or,
- (ii) For any reason the passenger's embarkation from, transit through, or entry into any country from, through, or to which the passenger desires transportation would be unlawful or would otherwise not be permitted.

(e) **Failure to comply with carrier's rules and regulations**

When the passenger fails or refuses to comply with rules and regulations of the carrier as stated in this tariff.

(f) **Passenger's condition**

- (i) When the passenger's actions or inactions prove to the carrier that their mental, intellectual or physical condition is such as to render them incapable of caring for themselves without assistance or medical treatment en route unless:
  - (A) the passenger is accompanied by a support person who will be responsible for assisting with the passenger's needs en-route such as assistance with eating, using the washroom facilities or administering medication which are beyond the range of services that are normally offered by the carrier; and,
  - (B) the passenger complies with requirements of Rule 69(B), Acceptance for carriage; Rule 70(B), Acceptance for carriage; or Rule 71(B), Acceptance for carriage.

**Exception:** The carrier will accept the determination made by or on behalf of a person with a disability as to self-reliance, except where accepting the person could jeopardize security, public health or public safety as per Rule 69(B), Acceptance for carriage; Rule 70(B), Acceptance for carriage; or Rule 71(B), Acceptance for carriage.

**Note:** If the passenger is accompanied by a support person and the passenger is refused transport, then the support person will also be refused transport and the two will be removed from the aircraft together.

- (ii) When the passenger has a contagious disease.
- (iii) When the passenger has an offensive odour.

### **Medical clearance**

- (iv) When the carrier determines, in good faith and using its reasonable discretion, that a passenger's medical or physical condition involves an unusual hazard or risk to their self or other persons (including, in the case of expectant mothers, unborn children) or property, the carrier can require the passenger to provide a medical certificate that then may be assessed by the carrier's own medical officer as a condition of the passenger's acceptance for subsequent travel. The carrier may refuse transportation to the person posing such hazard or risk.

**Note:** Pregnant passengers:

- (A) An expectant mother with a complication-free pregnancy can travel on the carrier's flights up to the XXth week of pregnancy or up to four weeks before the expected due date without a medical certificate.

**Note to carrier:** As a guide, various carriers use the 36th week of pregnancy as a cut-off point. If a carrier has a policy in respect to the carriage of a pregnant passenger, it must state its policy here.

- (B) An expectant mother who is in or beyond the XXth week of pregnancy must present a medical certificate, dated within 72 hours of the scheduled time of departure. The certificate must state that the physician has examined the patient and found them to be physically fit for travel by air and the certificate must state the estimated date of birth.

### **(g) Failure to provide a suitable escort**

When the passenger requires an escort due to a mental health condition and is under care of a psychiatric institution or in the custody of law enforcement personnel or other responsible authority and the necessary arrangements have not been made with the carrier in advance of the departure of the flight.

However, the carrier will accept escorted passengers under the following conditions when the passenger has a mental health condition and is under care of a psychiatric institution or in the custody of law enforcement personnel or other responsible authority:

- (i) Medical authority furnishes assurance, in writing, that an escorted person with a mental health condition can be transported safely.
- (ii) Only XX escorted passenger(s) will be permitted on a flight.
- (iii) Request for carriage is made at least 48 hours before scheduled departure.
- (iv) Acceptance is applicable to transportation on flights marketed and operated by [Carrier name] only.
- (v) The escort must accompany the escorted passenger at all times.
- (vi) Passenger in custody of law enforcement personnel or other responsible authority must be manacled.

## **(C) Passenger's conduct – refusal to transport – prohibited conduct and sanctions**

### **(1) Prohibited conduct**

Without limiting the generality of the preceding provisions, the following constitutes prohibited conduct where it may be necessary, in the reasonable discretion of the carrier, to take action to ensure the physical comfort or safety of the person, other passengers, and the carrier's employees; the safety of the aircraft; the unhindered performance of the crew members in their duty on-board the aircraft; or, safe and adequate flight operations:

- (a) The person, in the reasonable judgement of a responsible employee of the carrier, is under the influence of alcohol or drugs (except a patient under medical care).
- (b) The person's conduct, or condition is or has been known to be abusive, offensive, threatening, intimidating, violent or otherwise disorderly, and, in the reasonable judgement of a responsible employee of the carrier, there is a possibility that the person would cause disruption or serious impairment to the physical comfort or safety of other passengers or carrier's employees, interfere with a crew member in the performance of their duties, or otherwise jeopardize safe and adequate flight operations.
- (c) The person's conduct involves any hazard or risk to their self or other persons (including travel involving pregnant passengers or unborn children) or to property.
- (d) The person fails to observe the instructions of the aircraft crew, including instructions to stop any prohibited conduct.
- (e) The person is unable or unwilling to sit in their assigned seat with the seat belt fastened.
- (f) The person smokes or attempts to smoke in the aircraft.
- (g) The person uses or continues to use a cellular phone, a laptop computer or another electronic device on-board the aircraft after being advised to stop such use by a member of the crew.
- (h) The person is barefoot.
- (i) The person is inappropriately dressed.

- (j) The person has a prohibited article or concealed or unconcealed weapon(s). However, the carrier will carry law enforcement or armed forces personnel who meet the qualifications and conditions established under government regulations.
- (k) The person has resisted or may reasonably be believed to be capable of resisting escorts.

## (2) **Carrier response to prohibited conduct**

Where, in the exercise of its reasonable discretion, the carrier decides that the passenger has engaged in prohibited conduct described above, the carrier may impose any combination of the following sanctions:

- (a) Removal of the passenger at any point.
- (b) **Probation:** At any time, the carrier may stipulate that the passenger is to follow certain probationary conditions, such as to not engage in prohibited conduct, in order for the carrier to provide transport to the passenger. Such probationary conditions may be imposed for any length of time which, in the exercise of the carrier's reasonable discretion, is necessary to ensure the passenger continues to avoid prohibited conduct.
- (c) **Refusal to transport the passenger:** The length of this refusal to transport may range from a one-time refusal to a longer period determined at the reasonable discretion of the carrier in light of the circumstances. Such refusal will be for a period appropriate to the nature of the prohibited conduct and until the carrier is satisfied that the passenger no longer constitutes a threat to the safety of other passengers, crew or the aircraft or to the comfort of other passengers or crew; the unhindered performance of the crew members in their duty on-board the aircraft; or safe and adequate flight operations.
- (d) The following conduct will automatically result in a refusal to transport:
  - (i) The person continues to interfere with the performance of a crew member's duties despite verbal warnings by the crew to stop such behaviour.
  - (ii) The person injures a crew member or other passenger or subjects a crew member or other passenger to a credible threat of injury.
  - (iii) The person displays conduct that requires an unscheduled landing and/or the use of restraints such as ties and handcuffs.
  - (iv) The person repeats a prohibited conduct after receiving a notice of probation as mentioned in (b) above.

These remedies are without prejudice to the carrier's other rights and recourses, namely to seek recovery of any damage resulting from the prohibited conduct or as otherwise provided in the carrier's tariffs, including recourses provided in the carrier's frequent flyer program or the filing of criminal or statutory charges.

## **(D) Recourse of the passenger/limitation of liability**

- (1) In case of refusal to transport a passenger on a specific flight or removal of a passenger en route for any reason specified in the foregoing paragraphs, the carrier [carrier to insert their policies in respect of refunding of the passenger's unused ticket and to include the appropriate cross references to the correct tariff rule provisions for refunds].

**Note to carrier:** The ATR require a carrier to state its policies for all situations in respect of refunds for services purchased but not used, whether in whole or in part, either as a result of the client's unwillingness or inability to continue or the air carrier's inability to provide the service for any reason. Until such a time as further obligations in this area are established, carriers are encouraged to adopt policies that ensure no passenger is left out of pocket for the value of a cancelled flight, irrespective of the fare purchased, when the carrier is unable to provide for alternate transportation acceptable to the passenger.

- (2) Notwithstanding (1) above, passengers will be entitled to all other additional rights they may have under this tariff or elsewhere or any legal rights that international passengers may have pursuant to international conventions (e.g., the Warsaw Convention or the Montreal Convention) and related treaties.
- (3) A person who is refused carriage for a period of time or to whom a probation notice is served may provide to the carrier, in writing, the reasons why they believe they no longer pose a threat to the safety or comfort of passengers or crew, or to the safety of the aircraft. Such document may be sent to the address provided in the refusal to carry notice or the notice of probation.
- (4) The carrier will respond to the passenger within a reasonable period of time providing carrier's assessment as to whether it remains necessary to continue the ban or maintain the probation period.

## Rule 115: Tickets

### (A) General

- (1) A ticket will not be issued and the carrier will not carry the passenger unless the passenger has paid the applicable fare or has complied with all credit arrangements.
- (2) Before boarding, the passenger must present the carrier with proof that they have been issued a valid ticket for the flight. Such proof must be in the form of an itinerary/receipt, a record locator or reservation number, or boarding pass and the passenger must provide the carrier with positive identification to be entitled to transportation. The ticket will give the passenger the right to transportation only between the points of origin and ultimate destination, and on the dates, times and via the routing shown on the ticket.
- (3) Flight coupons will be honoured only in the order in which they are displayed on the passenger's ticket and stored in the carrier's database.
- (4) The ticket remains at all times the property of the carrier which issued the ticket.
- (5) The carrier does not permit the passenger to hold more than one confirmed reservation/ticket on the same departure flight/origin and destination for the same travel date.



## (B) Validity for carriage

- (1) **General:** When validated, the ticket is good for carriage from the airport of departure to the airport of ultimate destination via the route shown on the ticket, for the applicable class of service and is valid for the period of time referred to in (2) below. The passenger will be accepted for carriage on the date and flight segments for which a seat has been reserved. When flight segments are issued on an “**open ticket**” basis (see (G) below), a seat will be reserved only when the passenger makes a reservation request with the carrier. The carrier’s agreement to accept a reservation request is subject to the availability of space. The place and date of issue are then indicated on the ticket.
- (2) **Period of Validity:** Generally, the period of validity for transportation will be one year from the date on which transportation commences at the point of origin designated on the original ticket, or, if no portion of the ticket is used, one year from the date of issuance of the original ticket. However, certain fares may have different periods of validity. If this is the case, the specific rules associated with the fare will take precedence.
- (3) **Computation of the ticket validity:** When computing the ticket validity i.e., the minimum/maximum stays and any other calendar periods set out in the ticket, the first day to be counted will be the day following the date that transportation commenced or that the ticket was issued.
- (4) **Expiration of validity:** Tickets expire at midnight on the last day of validity based on where the ticket was issued.

## (C) Extension of ticket validity

- (1) **Carrier’s operations:** If a passenger is prevented from travelling within the period of validity of their ticket because the carrier:
  - (a) cancels the flight upon which the passenger holds confirmed space;
  - (b) omits a scheduled stop, provided this is the passenger’s place of departure, place of ultimate destination, or place of stopover;
  - (c) fails to operate a flight reasonably according to schedule;
  - (d) causes the passenger to miss a connection;
  - (e) substitutes a different class of service; or
  - (f) is unable to provide previously confirmed space;

the carrier will, without collecting any additional fare, extend the validity of the passenger’s ticket until the passenger can continue their travel on the first flight where space is available. Validity can only be extended up to XXX days.

- (2) **Medical reason:** If the passenger is unable to commence travel due to medical reasons, the carrier will extend the period of validity beyond the original validity expiry date for a maximum of XXX. A ticket can only be extended once and the extension must be requested within XXX days

Sample tariff — containing rules applicable to scheduled services for the transportation of passengers and their baggage between points ... prior to the expiry date of the original ticket validity. The medical reason must be certified in writing by a physician specifying that the passenger is prevented from commencing their journey before their original ticket expires.

## **(D) Waiver minimum/maximum stay provision**

### **(1) In the event of death of a family member not accompanying the passenger**

If the passenger holding a special fare ticket returns prior to the expiry of the minimum stay requirement because of the death of an immediate family member not accompanying the passenger, the passenger will be entitled to a refund of the additional amounts paid for transportation on the carrier's services in order to return early. However, no refund will be permitted unless the passenger produces a death certificate confirming that the death of the family member occurred after the commencement of travel.

### **(2) In the event of a passenger's death – provisions for accompanying passengers**

#### **(a) Extension of ticket validity (beyond 1 year) for normal fares and waiver of the maximum stay requirements of special fares**

The carrier will extend the ticket validity for passengers who are either members of the immediate family of the deceased passenger or are other persons actually accompanying the deceased passenger for up to XXX days beyond the original ticket validity expiry date or XXX days after the date of death of the passenger, whichever date occurs first.

A death certificate or a copy, duly executed by the competent authorities in the country in which the death occurred, must be presented at the time of re-ticketing. A competent authority is a person designated to issue a death certificate by the applicable laws of the country concerned.

If the death certificate is not available at the time the passengers are to travel, or, if the carrier has reason to doubt the validity of such certificate, passengers will be accommodated only upon payment of the fare applicable for the transportation used, and a request for refund may be filed with the carrier. Upon receipt of the request for refund and all supporting documents, the carrier will determine the validity of the request and, if valid, will refund the difference between the total fare paid by the passengers and the amount the passengers would have paid under the provision of this Rule.

#### **(b) Waiver of minimum stay requirements – special fares**

In the event of the death of a passenger en route, the minimum stay and group travel requirements with regard to special fares will be waived for passengers who are either members of the immediate family of the deceased passenger or are other persons actually accompanying the deceased person.

Passengers who have had their minimum stay requirement waived will only be accommodated in the class of service originally ticketed.

A death certificate or a copy, duly executed by the competent authorities, in the country in which the death occurred must be presented at the time of re-ticketing. A competent authority is a person designated to issue a death certificate by the applicable laws of the country concerned.

If the death certificate is not available at the time the passengers are to travel, or, if the carrier has reason to doubt the validity of such certificate, passengers will be accommodated only upon payment of the fare applicable to the transportation used, and a request for refund may be filed with the carrier. Upon receipt of the request for refund and all supporting documents, the carrier will determine the validity of the request and, if valid, will refund the difference between the total fare paid by the passengers and the amount the passengers would have paid under the provision of this Rule.

### **(3) Medical reasons and illness**

#### **(a) Ticket extension:**

In the case of Normal fares, if, after the passenger commences travel and is prevented from travelling within the period of validity of the ticket because of illness, the carrier will extend the period of validity of the passenger's ticket until the date when the passenger becomes fit to travel according to a medical certificate. Should space not be available when the passenger becomes fit to travel, the carrier will re-accommodate the passenger on the first flight on which space is available. In all cases, travel will be in the same class of service which the passenger had originally paid to travel from the point where the journey is resumed. However, when the remaining flight coupons of the ticket involve one or more stopovers, the validity of the ticket will not be extended for more than XXX months from the date shown on the medical certificate. In these circumstances, the carrier will also extend the period of validity of the tickets of persons travelling with the incapacitated passenger.

In the case of Special fare tickets, the carrier will extend the validity of the tickets until the date of the first available flight after the passenger becomes fit to travel according to the medical certificate, but not more than XXX days beyond the date when the passenger becomes fit to travel.

#### **(b) Waiver of the minimum stay requirement for special fares:**

In the event of illness, [carrier to stipulate their policies in this regard].

### **(E) Upgrading (changing from a lower to a higher fare ticket)**

- (1) Before travel commences, a passenger may upgrade to a fare of higher value to travel to any of the carrier's destinations in the world provided travel is in accordance with (3) below.
- (2) Penalties and additional charges are waived when a fare is upgraded in accordance with (1) above.
- (3) Passengers upgrading in accordance with (1) above, may do so provided:
  - (a) Ticketing and advance purchase requirements of the new fare have been met;

(b) Travel is via [Carrier name];

(c) Reservations have been booked in the appropriate class of service of the new fare; and

(d) The difference in fares has been paid.

- (4) After departure, the passenger holding a ticket for return, circle trip or open jaw travel may upgrade the total fare in accordance with the rules of the fare paid.
- (5) The original fare paid (including all additional charges) will be used as a full credit towards the fare for the upgraded journey.
- (6) In the event travel at the new fare is subsequently changed and/or cancelled, the higher fee(s) for either the originally purchased or new fare shall be assessed.
- (7) **Exception:** For travel which has been upgraded to a fare type which has no associated fees, changes may be made without additional charge; however, the cancellation fee from the original fare will be applied to the new upgraded fare.

## (F) Flights in sequence

- (1) Flights appearing on the passenger's itinerary/receipt and in the carrier's database must be used in sequence from the place of departure as shown on the passenger's ticket. Each flight coupon will be accepted for transportation in the class of service on the date and flight for which space has been reserved.

## (G) Open tickets

- (1) If a ticket or a flight coupon is issued without a specific seat on a flight being reserved in the carrier's reservation system, i.e. left open, space may be later reserved subject to the tariff conditions of the purchased fare and provided space is available on the flight requested.

## (H) Transferability/non-transferability

- (1) [Insert policy]

**Note to carrier:** The carrier must set out its policies with respect to the transferability of airline tickets and whether another person can use a ticket which was issued in the name of another person.

## (I) Lost tickets

- (1) [Insert policy]

**Note to carrier:** If the carrier issues paper tickets, it must include provisions that are set out in this tariff which address issues such as lost tickets, indemnity bonds, etc.

# Part IV – After travel

## **Rule 120: Liability of the carrier for loss, damage to or delay of baggage, passenger delay or death or bodily injury – domestic transportation**

**Applicable to transportation solely within Canada, but excludes domestic segments carried as part of an international journey.**

**Note to carrier:** The domestic provisions below have been extensively amended from the last version of this Sample Tariff. The Montreal Convention sets the maximum liability for damages for baggage lost, damaged or delayed during international transportation at 1,288 special drawing rights (approximately \$2,350CAD). In the context of domestic transportation, the APPR apply the same rules and liability limits for lost, delayed and damaged baggage. The amounts that are set out herein took effect on December 28th, 2019.

The APPR do not apply the same rules and liability limits for passenger delay, death and bodily injury as the ones in the Montreal Convention for international transportation. Nonetheless, they are being provided here as an example of carrier best practices in case the carrier wishes to harmonize these matters with the Montreal Convention (or international) regime as well. The amounts payable are left to the carrier to determine.

### **(A) Successive carriers**

- (1) Transportation to be performed under one ticket or under a ticket issued with any conjunction ticket by several successive carriers will be regarded as single operation.

### **(B) Laws and provisions applicable**

**Liability in the case of destruction or loss of, damage to, or delay of checked and unchecked baggage.**

- (1) The carrier is liable for damages sustained in the case of destruction or loss of, damage to, or delay of checked and unchecked baggage, as provided in the following paragraphs:
  - (a) Except as provided below, the liability of the carrier is limited to 1,288 Special Drawing Rights (approximately \$2,350CAD) for each passenger in the case of destruction, loss, damage, or delay of baggage, whether checked or unchecked.
  - (b) Unless the passenger proves otherwise, unchecked baggage, including personal items, shall be considered to be the property of the passenger in possession of the baggage at the time of embarkation.
  - (c) The passenger may make a special declaration that their baggage has a higher value than the carrier's maximum liability. If the passenger does so, then the passenger must make this declaration to the carrier at the time of check-in and, if required by the carrier, shall as per Rule 55(F), Excess value declaration charge, pay the supplementary charge to allow for additional liability coverage in the case of destruction, loss, damage or delay of their checked baggage.

**Exception:** The carrier is not liable for the declared amount if it can prove that it is greater than the passenger's actual interest in delivery at destination.

**Note to carrier:** The carrier may wish to stipulate the maximum declared value it is prepared to accept. If an excess value declaration charge is applicable, it should be set out in Rule 55(F).

- (d) In the case of unchecked baggage, the carrier is liable only to the extent the damage resulted from its fault, or that of its servants or agents.
- (e) The carrier is liable for the damage sustained in case of destruction or loss of, or damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on-board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. Further, the carrier's liability for the destruction, loss, damage or delay of baggage is subject to the same terms, limitations and defences as those that are set forth in the Montreal Convention in the context of International transportation.
- (f) Notwithstanding the normal carrier liability as contained in this rule, the limit of liability will be waived for claims involving the loss of, damage to, or delay in delivery of mobility aids, when such items have been accepted as checked baggage or otherwise. In the event that a mobility aid is lost or damaged, compensation is to be based on the cost of the repair or replacement value of the mobility aid. See (3) and (4) below.
- (g) Notwithstanding the normal carrier liability as contained in this rule, the limit of liability will be waived for claims involving the injury or death of service dogs, other service animals and emotional support animals. In the event of injury or death of such an animal, compensation is to be based on the cost of the treatment or replacement value of the animal. See (5) below.
- (h) The carrier reserves all defences and limitations available in the context of international transportation under the Montreal Convention, including, but not limited to, the defence of Article 19 of the Montreal Convention, and the exoneration defence of Article 20 of the Montreal Convention. The limits of liability shall not apply in cases described in Article 22(5) of the Montreal Convention.

### **Refund of baggage fees**

- (2) Carrier will refund to the passenger any fees paid for the transportation of the baggage that was delayed, damaged or lost.

### **Mobility aids**

**Note to carrier:** Carrier to choose from (3) or (4) below based on its declaration in Rule 5(G)(2) above.

### **Large Carrier ATPDR**

- (3) In the event that a mobility aid of a person travelling with the aid is damaged, destroyed or lost, or is not made available to the person at their time of arrival at their destination, the carrier will without delay and at the carrier's own expense:
- (a) provide the person with a temporary replacement mobility aid that meets their needs in relation to their mobility and that they are permitted to use until their mobility aid is returned to them or is repaired or replaced or until they are reimbursed by the carrier for the loss of the mobility aid;
  - (b) reimburse the person for any expenses they have incurred because the mobility aid was damaged, destroyed or lost or because it was not made available to them at the time of their arrival at their destination;
  - (c) in the case of a damaged mobility aid, arrange for the repair of the mobility aid and promptly return it to the person or, in the case of a damaged mobility aid that cannot be adequately repaired,
    - (i) replace the damaged mobility aid with the same model of mobility aid or, if the same model is not available, a model that has equivalent features and qualities as the damaged mobility aid and that meets the person's needs in relation to their mobility, or
    - (ii) reimburse the person for the full replacement cost of the mobility aid; and
  - (d) in the case of a destroyed mobility aid or a mobility aid that is not made available to the person at the time of their arrival at their destination and that is not returned to them within 96 hours after that arrival,
    - (i) replace the destroyed or lost mobility aid with the same model of mobility aid or, if the same model is not available, a model that has equivalent features and qualities as the destroyed or lost mobility aid and that meets the person's needs in relation to their mobility, or
    - (ii) reimburse the person for the full replacement cost of the mobility aid.

### **Small Carrier Non-ATPDR**

- (4) In the event that a mobility aid of a person with a disability is lost or damaged:
- (a) The air carrier will immediately provide a suitable temporary replacement without charge;
  - (b) If a damaged aid can be repaired, in addition to (a) above, the air carrier will arrange, at its expense, for the prompt and adequate repair of the aid and return it to the passenger as soon as possible;
  - (c) If a damaged aid cannot be repaired or is lost and cannot be located within 96 hours following the passenger's arrival, the carrier will, in addition to (a) above, replace it with an equivalent aid satisfactory to the passenger, or reimburse the passenger for the replacement cost of the aid.

### **Service dogs, other service animals and emotional support animals**

- (5) Should injury or death of a service dog, other service animal or emotional support animal result from the fault or negligence of the carrier, the carrier will undertake to provide, expeditiously and at its own expense, medical care for or replacement of the service dog, other service animal, or emotional support animal.

**Note to carrier:** The policies in this provision must align with the policies set out in Rule 69(H), Acceptance of service dogs and 69(I), Acceptance of other service animals and emotional support animals; Rule 70(H), Acceptance of service animals and 70(I), Acceptance of emotional support animals; and Rule 71(H), Acceptance of service animals and 71(I), Acceptance of emotional support animals.

### **Liability in the case of passenger delay**

- (6) The carrier shall be liable for damage occasioned by delay in the carriage of passengers by air, as provided in the following paragraphs:

- (a) The carrier shall not be liable if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage, or that it was impossible for it or them to take such measures.
- (b) Damages occasioned by delay are subject to any limitation or defence recognized by a Court with proper jurisdiction over a claim and also subject to the following terms, limitations and defences established by the carrier:

[Carrier to complete]

- (c) The liability of the Carrier for damage caused by delay is limited to \$XXXXXX CAD per passenger. The limits of liability do not apply in cases described below:

[Carrier to complete]

### **Liability in the case of death or bodily injury of a passenger**

- (7) The carrier shall be liable for recoverable compensatory damages sustained in the case of death or bodily injury of a passenger, as provided in the following paragraphs:

- (a) The carrier shall not be able to exclude or limit its liability for damages not exceeding \$XXXXXXXX for each passenger.
- (b) The carrier shall not be liable for damages to the extent that they exceed \$XXXXXXXX for each passenger if the carrier proves that:
- (i) Such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or
- (ii) Such damage was solely due to the negligence or other wrongful act or omission of a third party.
- (c) The carrier reserves all other defences and limitations available to it recognized by a Court with proper jurisdiction over a claim.



- (d) With respect to third parties, the carrier reserves all rights of recourse against any other person, including, without limitation, rights of contribution and indemnity.

The carrier agrees that, subject to applicable law, recoverable compensatory damages for such claims may be determined by reference to the laws of the country of the domicile or country of permanent residence of the passenger.

- (8) In cases of bodily injury or death, the carrier shall make an advance payment where the carrier determines it is necessary to meet the immediate economic needs of, and hardship suffered by, a passenger as provided in the following paragraphs:
- (a) Unless a dispute arises over the identity of the person to whom an advance payment shall be made, the carrier shall, without delay, make the advance payment to the passenger in an amount or amounts determined by the carrier in its sole discretion. In the event of death of a passenger, the amount of the advance payment shall not be less than \$XX,XXX, which shall be paid to a representative of the passenger's next of kin eligible to receive such advance payment as determined by the carrier in its sole discretion.
  - (b) The carrier shall make the advance payment as an advance against the carrier's liability under this tariff. An advance payment shall not constitute recognition of liability. An advance payment shall be offset against, or deducted from the payment of, any settlement or judgment with respect to any claim for compensation on behalf of the passenger.
  - (c) The carrier, in making an advance payment to any claim, does not waive any rights, defences, or limitations available to it, nor shall acceptance of an advance payment constitute a release of any claim, whatsoever, by any person.
  - (d) The carrier, in making an advance payment, preserves its right to seek contribution or indemnity from any other person for such payment, which shall not be deemed to be a voluntary contribution or contractual payment on the part of the carrier.
- (9) The carrier may recover an advance payment from any person where it is proven that the carrier is not liable for any damage sustained by the passenger, or where it is proven that the person was not entitled to receive the payment, or where and to the extent that it is proven that the person who received the advance payment caused, or contributed to, the damage.
- (10) In no cases shall the carrier's liability exceed the actual loss suffered by the passenger. All claims are subject to proof of amount of loss.

### **(C) Time limitations on claims and actions**

- (1) Subject to applicable laws, an action for damages must be brought within two years from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.
- (2) A complaint to the carrier must be made in writing to the carrier within seven days from the date of receipt in the case of damage to baggage, and within 21 days from the date on which the baggage has been placed at the passenger's disposal, in the case of delay.

- (3) Claims may be subject to proof of amount of loss; passengers may be asked to substantiate their claims.

## **(D) Notices**

- (1) The carrier will provide each passenger on a domestic itinerary with the following written notice:

### **Advice to domestic passengers on carrier liability**

With respect to damages related to baggage, on domestic flights, the APPR apply the same rules and liability limits as those of the Montreal Convention which may limit the liability of the carrier in respect of destruction or loss of, or damage to, baggage, and for delay of baggage.

## **Rule 121: Liability of the carrier for loss, damage to or delay of baggage, passenger delay or death or bodily injury – international transportation**

**Applicable to international transportation to and from Canada and includes domestic segments of an international journey.**

**Note to carrier:** The amounts of the liability limits set out in Rule 121 herein reflect the new revised amounts contained in the Montreal Convention that took effect on December 28th, 2019.

## **(A) Successive carriers**

- (1) Transportation to be performed under one ticket or under a ticket issued with any conjunction ticket by several successive carriers will be regarded as single operation.

## **(B) Laws and provisions applicable**

**Liability in the case of destruction or loss of, damage to, or delay of checked and unchecked baggage.**

- (1) The carrier is liable for damages sustained in the case of destruction or loss of, damage to, or delay of checked and unchecked baggage, as provided in the following paragraphs:
  - (a) Except as provided below, the liability of the carrier is limited to 1,288 Special Drawing Rights (approximately \$ 2,350 CAD) for each passenger in the case of destruction, loss, damage, or delay of baggage, whether checked or unchecked, under the Warsaw Convention or the Montreal Convention, whichever may apply.
  - (b) Unless the passenger proves otherwise, unchecked baggage, including personal items, shall be considered to be the property of the passenger in possession of the baggage at the time of embarkation.
  - (c) The passenger may make a special declaration that their baggage has a higher value than the carrier's maximum liability. If the passenger does so, then the passenger must make this declaration to the carrier at the time of check-in and, if required by the carrier, shall as per

Rule 55(F), Excess Value Declaration Charge, pay the supplementary charge to allow for additional liability coverage in the case of destruction, loss, damage or delay of their checked baggage.

**Note:** This provision is not applicable to a person's mobility aid. (For tariff provisions related to the carriage of mobility aids, see (3) – (7) below).

**Exception:** The carrier is not liable for the declared amount if it can prove that it is greater than the passenger's actual interest in delivery at destination.

In the case of transportation under the Warsaw Convention, no supplementary sum shall apply unless the declared amount exceeds 19 Special Drawing Rights per kilogram of the total recorded weight of the checked baggage at the time the baggage is handed to the carrier.

**Note to carrier:** The carrier may wish to stipulate the maximum declared value it is prepared to accept. If an excess value declaration charge is applicable, it should be set out in Rule 55(F).

- (d) In the case of unchecked baggage, the carrier is liable only to the extent the damage resulted from its fault, or that of its servants or agents.
- (e) The carrier is liable for the damage sustained in case of destruction or loss of, or damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on-board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. Further, the carrier's liability for the destruction, loss, damage or delay of baggage is subject to the terms, limitations and defences set forth in the Warsaw Convention and the Montreal Convention, whichever may apply, in addition to any limitation of defence recognized by a Court with proper jurisdiction over claim.
- (f) The carrier reserves all defences and limitations under the Warsaw Convention and the Montreal Convention, whichever may apply to such claims including, but not limited to, the defence of Article 20 of the Warsaw Convention and Article 19 of the Montreal Convention, and the exoneration defence of Article 21 of the Warsaw Convention and Article 20 of the Montreal Convention, except that the carrier shall not invoke Article 22(2) and 22(3) of the Warsaw Convention in a manner inconsistent with paragraph (1) above. The limits of liability shall not apply in cases described in Article 25 of the Warsaw Convention or Article 22(5) of the Montreal Convention, whichever may apply.

### **Refund of baggage fees**

- (2) Carrier will refund to the passenger any fees paid for the transportation of the baggage that was delayed, damaged or lost.

### **Mobility aids**

**Note to carrier:** Carrier to choose from (3) or (4) below based on its declaration in Rule 5(G)(2) above.

### **Large Carrier ATPDR**

- (3) In the event that a mobility aid of a person travelling with the aid is damaged, destroyed or lost, or is not made available to the person at their time of arrival at their destination, the carrier will without delay and at the carrier's own expense:
- (a) provide the person with a temporary replacement mobility aid that meets their needs in relation to their mobility and that they are permitted to use until their mobility aid is returned to them or is repaired or replaced or until they are reimbursed by the carrier for the loss of the mobility aid;
  - (b) reimburse the person for any expenses they have incurred because the mobility aid was damaged, destroyed or lost or because it was not made available to them at the time of their arrival at their destination;
  - (c) in the case of a damaged mobility aid, arrange for the repair of the mobility aid and promptly return it to the person or, in the case of a damaged mobility aid that cannot be adequately repaired,
    - (i) replace the damaged mobility aid with the same model of mobility aid or, if the same model is not available, a model that has equivalent features and qualities as the damaged mobility aid and that meets the person's needs in relation to their mobility, or
    - (ii) reimburse the person for the full replacement cost of the mobility aid; and
  - (d) in the case of a destroyed mobility aid or a mobility aid that is not made available to the person at the time of their arrival at their destination and that is not returned to them within 96 hours after that arrival,
    - (i) replace the destroyed or lost mobility aid with the same model of mobility aid or, if the same model is not available, a model that has equivalent features and qualities as the destroyed or lost mobility aid and that meets the person's needs in relation to their mobility, or
    - (ii) reimburse the person for the full replacement cost of the mobility aid.
- (4) If a person with a disability who uses a mobility aid makes a reservation for transportation on an international service, the air carrier will advise the person of the option to make a special declaration of interest, under Article 22(2) of the Montreal Convention or under Article 22(2) of the Warsaw Convention, that sets out the monetary value of the mobility aid and a description of its identifying features.
- (5) The carrier will permit a person with a disability to make the special declaration of interest, at no additional charge to the person, at any time before the mobility aid is removed by the carrier for storage in the aircraft's baggage compartment.

- (6) In respect of limits of liability for mobility aids in this rule, pursuant to Article 25 of the Montreal Convention or under Article 22(1) of the Warsaw Convention, the carrier stipulates [that the contract of carriage shall be subject to higher limits of liability than those provided for in the applicable Convention.] or [that there are no limits of liability whatsoever.]

**Note to carrier:** Carriers are strongly encouraged to use a waiver as provided for in (6).

### **Small Carrier Non-ATPDR**

- (7) In the event that a mobility aid of a person with a disability is lost or damaged:
- (a) The air carrier will immediately provide a suitable temporary replacement without charge;
  - (b) If a damaged aid can be repaired, in addition to (a) above, the air carrier will arrange, at its expense, for the prompt and adequate repair of the aid and return it to the passenger as soon as possible;
  - (c) If a damaged aid cannot be repaired or is lost and cannot be located within 96 hours following the passenger's arrival, the carrier will in addition to (a) above:
    - (i) replace it with an equivalent aid satisfactory to the passenger, or
    - (ii) reimburse the passenger for the replacement cost of the aid, subject to the application of the Warsaw or Montreal Convention, whichever is applicable, and any special declaration of interest completed and made with the carrier by the passenger with a disability.

**Note to carrier:** Carriers are encouraged to provide a person with a disability travelling with a mobility aid the option to make a special declaration of interest, under Article 22(2) of the Montreal Convention or under Article 22(2) of the Warsaw Convention, that sets out the monetary value of the mobility aid and a description of its identifying features.

### **Service dogs, other service animals and emotional support animals**

- (8) If a person with a disability who uses a service dog, other service animal, or emotional support animal makes a reservation for transportation on an international service, the air carrier will advise the person of the option to make a special declaration of interest, under Article 22(2) of the Montreal Convention or under Article 22(2) of the Warsaw Convention, that sets out the monetary value of the animal.

**Note to carrier:** Select either (9) or (10) below depending on your policy. Carriers are strongly encouraged to use a waiver as provided for in (10).

- (9) The carrier will permit a person with a disability to make the special declaration of interest, at no additional charge to the person, at any time before the service dog, other service animal or emotional support animal is carried by the carrier.
- (10) In respect of limits of liability for service dogs, other service animals and emotional support animals in this rule, pursuant to Article 25 of the Montreal Convention or under Article 22(1) of the Warsaw Convention, the carrier will stipulate [that the contract of carriage shall be subject to

higher limits of liability than those provided for in the applicable Convention.] or [that there are no limits of liability whatsoever.]

- (11) Should injury or death of a service dog, other service animal, or emotional support animal result from the fault or negligence of the carrier, the carrier will undertake to provide expeditiously, and at its own expense, medical care for or replacement of the service dog, other service animal or emotional support animal.

### **Liability in the case of passenger delay**

- (12) The carrier shall be liable for damage occasioned by delay in the carriage of passengers by air, as provided in the following paragraphs:
- (a) The carrier shall not be liable if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage, or that it was impossible for it or them to take such measures.
  - (b) Damages occasioned by delay are subject to the terms, limitations and defences set forth in the Warsaw Convention and the Montreal Convention, whichever may apply, in addition to any limitation or defence recognized by a Court with proper jurisdiction over a claim.
  - (c) The carrier reserves all defences and limitations available under the Warsaw Convention or the Montreal Convention, whichever may apply to claims for damage occasioned by delay, including, but not limited to, the exoneration defence of Article 21 of the Warsaw Convention and Article 20 of the Montreal Convention. Under the Montreal Convention, the liability of the carrier for damage caused by delay is limited to 5,346 Special Drawing Rights per passenger. The limits of liability shall not apply in cases described in Article 25 of the Warsaw Convention or Article 22(5) of the Montreal Convention, whichever may apply.

### **Liability in the case of death or bodily injury of a passenger**

- (13) The carrier shall be liable under Article 17 of the Warsaw Convention or the Montreal Convention, whichever may apply, for recoverable compensatory damages sustained in the case of death or bodily injury of a passenger, as provided in the following paragraphs:
- (a) The carrier shall not be able to exclude or limit its liability for damages not exceeding 128,821 Special Drawing Rights for each passenger.
  - (b) The carrier shall not be liable for damages to the extent that they exceed 128,821 Special Drawing Rights for each passenger if the carrier proves that:
    - (i) Such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or
    - (ii) Such damage was solely due to the negligence or other wrongful act or omission of a third party.
  - (c) The carrier reserves all other defences and limitations available under the Warsaw Convention or the Montreal Convention, whichever may apply, to such claims including, but not limited to, the exoneration defence of Article 21 of the Warsaw Convention and Article 20

of the Montreal Convention, except that the carrier shall not invoke Articles 20 and 22(1) of the Warsaw Convention in a manner inconsistent with paragraphs (1) and (2) above.

- (d) With respect to third parties, the carrier reserves all rights of recourse against any other person, including, without limitation, rights of contribution and indemnity.

The carrier agrees that, subject to applicable law, recoverable compensatory damages for such claims may be determined by reference to the laws of the country of the domicile or country of permanent residence of the passenger.

- (14) In cases of bodily injury or death, the carrier shall make an advance payment where the carrier determines it is necessary to meet the immediate economic needs of, and hardship suffered by, a passenger as provided in the following paragraphs:

- (a) Unless a dispute arises over the identity of the person to whom an advance payment shall be made, the carrier shall, without delay, make the advance payment to the passenger in an amount or amounts determined by the carrier in its sole discretion. In the event of death of a passenger, the amount of the advance payment shall not be less than 16,000 Special Drawing Rights, which shall be paid to a representative of the passenger's next of kin eligible to receive such advance payment as determined by the carrier in its sole discretion.
- (b) The carrier shall make the advance payment as an advance against the carrier's liability under the Warsaw Convention, or the Montreal Convention, whichever may apply. An advance payment shall not constitute recognition of liability. An advance payment shall be offset against, or deducted from the payment of, any settlement or judgment with respect to any claim for compensation on behalf of the passenger.
- (c) The carrier, in making an advance payment, does not waive any rights, defences, or limitations available under the Warsaw Convention, or the Montreal Convention, whichever may apply, to any claim, nor shall acceptance of an advance payment constitute a release of any claim, whatsoever, by any person.
- (d) The carrier, in making an advance payment, preserves its right to seek contribution or indemnity from any other person for such payment, which shall not be deemed to be a voluntary contribution or contractual payment on the part of the carrier.
- (e) The carrier may recover an advance payment from any person where it is proven that the carrier is not liable for any damage sustained by the passenger, or where it is proven that the person was not entitled to receive the payment, or where and to the extent that it is proven that the person who received the advance payment caused, or contributed to, the damage.

### **(C) Time limitations on claims and actions**

- (1) Under the Warsaw Convention and the Montreal Convention, whichever may apply, an action for damages must be brought within two years from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

- (2) A complaint to the carrier must be made in writing to the carrier within 7 days from the date of receipt in the case of damage to baggage, and 21 days in the case of delay from which the baggage has been placed at the passenger's disposal.
- (3) Claims may be subject to proof of amount of loss and passengers may be asked to substantiate their claims.

## (D) Notices

- (1) The carrier will provide each passenger whose transportation is governed by the Warsaw Convention or the Montreal Convention with the following notice:

### **Advice to International Passengers on Carrier Liability**

Passengers on a journey involving an ultimate destination or a stop in a country other than the country of departure are advised that international treaties known as the Montreal Convention, or its predecessor, the Warsaw Convention, including its amendments, may apply to the entire journey, including any portion thereof within a country. For such passengers, the treaty, including special contracts of carriage embodied in applicable tariffs, governs and may limit the liability of the carrier in respect of death or injury to passengers, and for destruction or loss of, or damage to, baggage, and for delay of passengers and baggage.

**Note to carrier:** Both the US and EU have specific notice language that they require be reproduced by the carrier pursuant to their own regulations. Carriers are responsible for obtaining the most recent versions of such notices from the relevant government authorities.

- (2) Mobility aids are considered as baggage for transportation on an international service for purposes of limits of liability. The air carrier will advise the person of the option to make a special declaration of interest, under Article 22(2) of the Montreal Convention or under Article 22(2) of the Warsaw Convention, that sets out the monetary value of the mobility aid and a description of its identifying features.
- (3) The carrier will offer at no additional charge to a person with a disability the option to make the special declaration of interest, at any time before the mobility aid is removed by the carrier for storage in the aircraft's baggage compartment.

## Rule 125: Refunds

### (A) General

- (1) The passenger must present to the carrier or its authorized agent the unused flight coupons of a ticket, an itinerary/receipt, a record locator, or a reservation number as satisfactory proof that the passenger has unused portions of a ticket which are eligible for refund.
- (2) The carrier will make a refund to the person who purchased the ticket.
- (3) If, at the time of ticket purchase, the purchaser designates another person to whom the refund shall be made, then the refund will be made to the person so designated. To do so, the purchaser



must contact the carrier directly.

- (4) In any instance where refunds are appropriate, the carrier will process requests in a timely manner and refund the fare in the original form of payment. The carrier will process refund requests within XX business days for credit card purchases and within XX business days for cash or cheque transactions.

## **(B) Involuntary refunds**

- (1) Involuntary refunds are not subject to any restrictions contained in the applicable fare rule.
- (2) If no portion of the ticket has been used, the refund will be the full amount of the fare and charges paid, in case of a:
  - (a) delay or cancellation – within the carrier’s control and within the carrier's control but required for safety purposes (as governed by Rule 91, Delay or cancellation – within the carrier's control and within the carrier's control but required for safety purposes); or,
  - (b) denial of boarding – within the carrier’s control and within the carrier's control but required for safety purposes (as governed by Rule 96, Denial of boarding – within the carrier's control and within the carrier's control but required for safety purposes); or
  - (c) [insert other situations where an involuntary refund is applicable].
- (3) If a portion of the ticket has been used, the carrier will refund the unused portion of the ticket, prorated based on mileage in the case of a:
  - (a) delay or cancellation – within the carrier’s control and within the carrier's control but required for safety purposes (as governed by Rule 91, Delay or cancellation – within the carrier's control and within the carrier's control but required for safety purposes); or,
  - (b) denial of boarding – within the carrier’s control and within the carrier's control but required for safety purposes (as governed by Rule 96, Denial of boarding – within the carrier's control and within the carrier's control but required for safety purposes); or
  - (c) [insert other situations where an involuntary refund is applicable].
- (4) The involuntary refund of tickets shall be made in the currency used to issue the ticket. However, Canadian dollar refunds or refunds in another currency, if possible, may be made at the request of the passenger, provided a refund in such currency is not prohibited by local government foreign exchange control regulations.

**Note to carrier:** The APPR do not require that airlines provide refunds to passengers when flights are disrupted for reasons outside the carrier's control because the Canada Transportation Act only provided the authority to make regulations requiring that the airline ensure passengers can complete their itineraries. The ATR, however, require a carrier to state its policies for all situations in respect of refunds for services purchased but not used, whether in whole or in part, either as a result of the client’s unwillingness or inability to continue or the air carrier’s inability to provide the service for any reason. Until such a time as further obligations in this area are established, carriers are encouraged to adopt policies that ensure no passenger is left out of pocket for the

value of a cancelled flight, irrespective of the fare purchased, when the carrier is unable to provide for alternate transportation acceptable to the passenger in situations covered by Rule 90, Delay or cancellation – outside the carrier’s control and Rule 95, Denial of boarding – outside the carrier’s control, or in the case of Rule 105, Refusal to transport.

### **(C) Voluntary refunds**

- (1) Voluntary refunds will be based on the applicable fare at the time of ticket issuance, and the refund will be made in accordance with any restrictions contained in the applicable fare rule.
- (2) Voluntary refunds will be made only by the carrier which originally issued the ticket or its authorized agent.
- (3) If no portion of a ticket has been used, the refund will be full amount of the fare paid less any cancellation fee and/or service charge based on the fare purchased by the passenger.
- (4) If a portion of the ticket has been used, the refund will be an amount equal to the difference between the fare paid and the applicable fare for travel between the points for which the ticket has been used, less any cancellation fee and/or service charge based on the fare purchased by the passenger.
- (5) Voluntary refund of tickets shall be made in the currency used to issue the ticket. However, Canadian dollar refunds or refunds in another currency, if possible, may be made at the request of the passenger, provided a refund in such currency is not prohibited by local government foreign exchange control regulations.
- (6) Non-refundable tickets can be exchanged for a future ticket for up to one year from the ticket issue date as long as the reservation is cancelled on or before the first travel date on the ticket.

### **(D) Time limit for requesting a refund**

- (1) The passenger has [Insert period of time] after the expiration of ticket validity to request a refund for goods and services purchased but not used.
- (2) For a service charge of \$XXX CAD, a partially used ticket may be refunded more than one month after the expiry date shown on the ticket but not later than one year from the date of issuance of the original ticket.
- (3) For a service charge of \$XXX CAD, an unused ticket may be refunded more than one month after the expiry date shown on the ticket but not later than two years from the date of issuance of the original ticket.

### **(E) Refunds in the case of death**

When transportation is cancelled as a result of the death of the passenger, a member of the immediate family or travelling companion, the refund will apply as follows:

- (1) Refunds in the case of death are not subject to any restrictions contained in the applicable fare rules.

- (2) If no portion of a ticket has been used, the amount of refund will be equal to the fare and charges paid.
- (3) If a portion of the ticket has been used, the refund will be equal to the difference between the fare paid and the applicable fare for travel between the points for which the ticket has been used and will not be subject to any cancellation fee and/or service charge.
- (4) Refunds will only be made upon presentation of the unused coupon(s) and death certificate, or a copy duly executed by the competent authorities (i.e. those designated to issue a death certificate by the applicable laws of the country concerned), in the country in which the death occurred.
- (5) In the case of death of the passenger, the refund will be made to the estate of the passenger.

## (F) Jury duty

- (1) In the event the passenger is called to jury duty or subpoenaed, a full refund will apply upon presentation of jury summons or subpoena. No other document will be accepted.


## (G) Refusal to refund

- (1) The carrier may refuse to refund the passenger's ticket if that ticket is presented for refund after its validity has expired.
- (2) For tickets involving international transportation, certain countries limit the amount of time the passenger may stay in a particular country without a visa or other official government documentation granting permission to stay for an extended period of time. As long as the passenger is able to prove that they have received government permission to remain in the country or is departing the country on another carrier or by other means of transport, they shall be provided with a refund for any unused coupon(s).

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Exhibit E of the Affidavit of Meredith Desnoyers  
affirmed on July 14, 2021

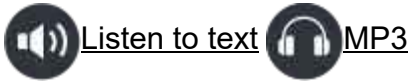
A handwritten signature in blue ink, reading "Elysia Van Zeyl". The signature is written in a cursive style with a large initial "E".

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Elysia Van Zeyl (LSUC #53499H)



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# Flight Delays and Cancellations: A Guide

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## 1. Introduction

This is a guide explaining passenger rights and airline obligations if there is a flight delay or cancellation. These apply to flights to, from and within Canada, including connecting flights. The airline operating the affected flight is responsible for meeting obligations to the passenger. The guide describes the different types of flight delays and cancellations and how an airline's obligations are different, depending on their level of control over the situation.

This guide also provides tips for managing common flight delay or cancellation situations. These are meant to help both airlines and passengers understand what factors the Canadian Transportation Agency (CTA) would consider if a passenger complained to the CTA about a disrupted flight.

This is not a legal document. The explanations and definitions it provides are for general guidance purposes only. Airline obligations related to flight delays and cancellations can be found in the [Air Passenger Protection Regulations \(APPR\)](#) and [Annex A](#) of this guide. In case of differences between this guide and legislation or regulations, the legislation and regulations prevail.

## 2. Types of flight delays and cancellations

When a flight is delayed or cancelled (including before the day of travel), an airline has minimum obligations to passengers that could include standards of treatment, rebooking or refunds, and up to \$1,000 in compensation for inconvenience. Their obligations depend on whether the disruption is within the control of the airline, within the airline's control but required for safety, or outside its control. These situations are described briefly below. More detail, including how to treat the impacts of a flight disruption on other flights, is included in [Types and Categories of Flight Disruption: A Guide](#).

### Within the airline's control

Situations within an airline's control usually happen because of commercial decisions an airline makes in its day-to-day operations. These could include staff issues, aircraft preparation activities, and decisions to consolidate flights because of low demand.

Disruptions due to routine and scheduled maintenance (including any work to address issues found during that maintenance) are also considered within the airline's control.

### Within the airline's control, but required for safety

In this category, "required for safety" means "required by law to reduce risk to passengers." Generally, these are situations in which an airline must delay or cancel a flight to follow rules put in place to make sure the flight and people on board are safe. These rules include the *Canadian Aviation Regulations* and its standards.

### Outside the airline's control

This category covers flight delays and cancellations over which the airline does not have control. These could include security incidents, medical emergencies, bad weather, or orders from applicable authorities.

#### Additional information:

In the event of a delay on the tarmac, airlines have all the obligations outlined in this guide, depending on their level of control over the situation, as well as other, specific obligations. For more detail, see [Tarmac Delay Standards of Treatment and Disembarkation: A Guide](#).

### 3. Obligations: Situations within the airline's control

An airline operating a flight that is delayed or cancelled for reasons **within its control** must do the following for the affected passengers:

- Provide minimum standards of treatment;
- Offer alternate travel arrangements or a refund;
- Pay compensation for inconvenience; and
- Communicate key information.

#### Standards of Treatment

When there is a flight disruption, the operating airline must provide the amenities described below to passengers at the airport, if the passengers:

- were informed of the disruption less than 12 hours before the original departure time; and
- have waited two hours since the original departure time.

#### Reasonable amount of food and drink

Airlines must provide reasonable amounts of food and drink, free of charge. They should take into account the following factors when determining the quantity and timing:

- Length of delay/time of day: Airlines should consider the length of the disruption and the time of day it occurred in deciding how much food to provide and when. For example, serving water and a snack (like a granola bar) could meet the food and drink obligation for a short delay in the middle of the afternoon, but it would be reasonable to expect more food at typical meal times or after a lengthy wait.
- Location of airport: Where the disruption takes place may affect the type and range of food and drink options. For example, options may be more limited in Canada's North and remote areas.

#### Access to means of communication

Airlines must give passengers access to communication, free of charge. How they do this depends on the circumstances. For example, they could provide access to Wi-Fi, have phones available at the gate for passengers to use, or provide a pre-paid calling card.

#### Overnight accommodation

When a passenger will have to wait overnight for their flight, the airline must offer them hotel or other comparable accommodation. This must:

- Be free of charge to the passenger;
- Be reasonable, considering the passenger's location; and

- Include transportation to, and from, the accommodation.

### **Example**

A passenger's 2:00 pm flight has been cancelled at their point of departure in a remote location. The airline has made new travel arrangements for the passenger on a flight early the following morning.

When arranging the overnight stay for this passenger, the airline should first discuss with the passenger whether accommodations are needed. For example, if the passenger lives near the airport, it may be more convenient for them to stay at their home, in which case, the airline must simply cover their transportation home and back to the airport the next day.

If the passenger does need accommodation, the arrangements the airline makes will depend on the availability of accommodations. The airline is expected to make every reasonable effort to book hotel accommodations for the passenger. In certain circumstances (for example, in a remote community), it may not be possible to book accommodations within a reasonable distance of the airport (to ensure the passenger can make it back to the airport the next morning).

### **Refusing or limiting the standard of treatment**

An airline may only limit or refuse to provide the standards of treatment if doing so would further delay the passenger. For example, if a flight has been delayed for two hours, but boarding is expected to start within 30 minutes, offering passengers airport food vouchers may prevent timely boarding. In this case, offering water and a simple snack may be reasonable.

### **Alternate travel arrangements and refunds**

Airlines must always ensure that passengers whose flight has been disrupted complete their journey – either on the original flight or through alternate travel arrangements. The aim must be to get passengers to their final destination airport as soon as possible.

The requirement to provide alternate travel arrangements applies when a flight is cancelled and for flight delays of three hours or more. This could be achieved in the following ways:

- The operating airline makes alternate travel arrangements for all affected passengers, with the option for the passenger to refuse the new arrangements; or
- The operating airline offers alternate travel arrangements to each affected passenger and makes those new arrangements for any passenger who accepts.

In either case, the passenger may choose to continue to wait for their original flight instead, or to cancel their travel and receive a refund, if applicable.

Large and small airlines have different obligations for making alternate travel arrangements.

#### **About large and small airlines**

An airline's tariff must say whether it is a large or small airline.



An airline is a **large airline** if it transported at least two million passengers during each of the past two years. This includes all passengers carried throughout the airline's entire network. Otherwise, the airline is a **small airline**.

A small airline transporting passengers on behalf of a large airline under a commercial agreement (like a code share or a block space agreement) will have to follow the large airline obligations for those passengers.

**Tip for passengers:** If there is a commercial arrangement in place, the passenger's ticket or itinerary will show which two airlines are involved. The first two letters of the flight number are the unique two-letter code of the airline that sold the ticket to the passenger (for example, AC142 is an Air Canada flight, while WS450 is a WestJet flight). The ticket or itinerary should also say which airline is operating the flight on behalf of the first.

## Large Airlines

Large airlines must book the passenger on the next available flight that is operated by them, or an airline with which they have a commercial agreement. The new flight:

- May take any reasonable route out of the same airport to the passenger's final destination; and
- Must depart within nine hours of the departure time on the passenger's original ticket.

If the airline cannot meet this obligation, they must book the passenger, as soon as possible, on a flight operated by any airline on any reasonable route out of the same airport to the passenger's destination. This may mean buying a ticket for the passenger on a competing airline.

If the airline cannot provide the reservation from the same airport within 48 hours of the original departure time, the airline must book the passenger as soon as possible from a nearby airport. They will also have to transport the passenger to that airport, free of charge.

### Reasonable Route: Example

A large airline is making alternate travel arrangements for passengers whose direct flight from Punta Cana to Vancouver was cancelled. In determining options, the airline must consider whether the available flights take reasonable routes.

The first available option involves two connections – in Toronto and Edmonton – and would have the passengers reaching their destination 28 hours later than indicated on their original ticket. This may not be considered a reasonable option, because the length of time and multiple connections would further inconvenience the passengers (especially given they had originally booked a direct flight).

In this case, a direct flight leaving a little later than the first option would likely be considered the more reasonable option.

## Small Airlines

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

### **Comparable conditions and services**

To the extent possible, airlines must provide alternate travel arrangements comparable to the ones the passenger originally purchased in terms of:

- the class of service; and
- added services the passenger purchased.

If the arrangements mean the passenger will be travelling in a higher class of service than originally purchased, the airline must not ask for an additional payment. If the passenger will be travelling in a lower class of service, the airline must refund the difference in cost for the applicable portion of the original ticket.

The airline must also provide a refund for any added services the passenger purchased but did not receive on the alternate flight or added services they had to pay for a second time.

For example, if the passenger prepaid for a meal and a meal was not available on the alternate flight, or the passenger had to buy the meal again, the airline is obligated to refund the cost of that prepaid meal.

### **Diversions**

If a flight is diverted to a different airport than the one on the passenger's original ticket, the airline (large or small) must transport the passenger to the airport on the ticket unless the passenger chooses not to accept that transportation. If the diversion is to another airport in the same city, the airline may have to provide shuttles or taxis to the original destination airport on the ticket.

### **Refund**

If an airline (large or small) offers alternate travel arrangements but these do not meet a passenger's needs, the passenger is entitled to a refund. If the passenger's trip no longer serves its purpose because of the disruption, and the passenger is no longer at their point of origin (for example, if they are at a connecting point in their multi-leg ticket), then the airline must book the passenger on a flight back to their point of origin and refund the entire ticket (as if no part of the trip had been made).

In any other case, when the alternate travel arrangements do not meet a passenger's travel needs, the operating airline must refund the passenger for the unused portion of the ticket.

Airlines must make refunds to the person who purchased the ticket in the same form of payment the ticket or additional service was purchased.

## Compensation

Airlines should give passengers as much notice as possible that their flight will be delayed or cancelled. If an airline informs the passengers 14 days or less before their original departure time, they will have to compensate the passengers for the inconvenience of the disruption. The amount of compensation depends on how late the passenger arrives at the final destination, compared to the arrival time on their original itinerary.

Large airlines must pay:

- \$400 if the passenger arrives three hours or more hours late, but less than six hours;
- \$700 if the passenger arrives six or more hours late, but less than nine hours; and
- \$1,000 if the passenger arrives nine or more hours late.

Small airlines must pay:

- \$125 if the passenger arrives three or more hours, but less than six hours;
- \$250 if the passenger arrives six or more hours late, but less than nine hours; and
- \$500 if the passenger arrives nine or more hours late.

Passengers who choose to take a ticket refund instead of alternate travel arrangements must still be compensated for inconvenience. Large airlines must pay them \$400 and small airlines, \$125.

A passenger can only receive compensation for inconvenience under the APPR if they have not already received compensation for the same delay or cancellation under other air passenger protection rules in another jurisdiction. Passengers have the right to seek compensation under the regime of their choice – airlines cannot refuse to compensate a passenger simply because that passenger would also be eligible under another jurisdiction's rules. Airlines are encouraged to track claims submitted to them under other rules to make sure the passenger receives compensation for inconvenience once.

## Responding to a claim

A passenger has one year to make a compensation claim with the airline from the date the flight delay or cancellation happened. The airline has 30 days to respond by issuing a payment or saying why it believes compensation is not owed.

The airline must offer compensation in a monetary form. This can include cash, cheque, bank drafts, and electronic bank transfers.

An airline may offer another form of compensation, such as vouchers, but only if:

- it tells the passenger the monetary amount they are entitled to;
- it tells the passenger in writing the value of the other form of compensation it is offering;
- the other form is greater in value than the monetary amount the passenger is entitled to;
- the other form of compensation has no expiry date; and

- the passenger confirms in writing they know that monetary compensation is available, but they choose the other form of compensation.

The compensation airlines provide must be equal to these amounts in Canadian dollars, but airlines may make the payment in other currencies. If a passenger requests compensation in a particular currency, airlines are encouraged to accommodate them, if possible. It is recognized that it may not be feasible to offer all currencies. Airlines should convert currencies using the Bankers' Buying Rate of Exchange from the day of the disruption.

The compensation must be paid to the passenger who experienced the disruption, regardless of who paid for their ticket.

## Making a claim using representation

If a passenger would like to have a third party represent them in making a claim with an airline, the passenger should check the airline's policies and procedures in this area. Some airlines may, for example, ask for proof that the passenger has given the other party permission to represent them.

### Tip for passengers

In addition to the minimum compensation for inconvenience described in this guide, a passenger who is delayed while travelling internationally may also be entitled to make a claim under the Montreal or Warsaw Convention for any damages – for example, expenses – that happened because of the delay. It is recommended that passengers first make these claims with the airline in writing. There is a 2-year time limit for any court action to claim damages.

## Communicating with Passengers

Airlines have specific communication obligations when they cancel or delay a flight. The airline operating the disrupted flight must give passengers key information, including the reason for the delay or cancellation, available compensation, standards of treatment, and their rights and options for making a complaint – including to the CTA.

During flight delays, airlines must also provide regular flight status updates until a new departure time or flight arrangement has been confirmed.

All communication must be available in a format that is accessible to persons with disabilities.

### Communication Guide:

Airlines' communications obligations in the event of a flight delay or cancellation are described in greater detail in *Communicating Key Information to Passengers: A Guide*. This guide includes expectations regarding when and how to communicate this information.

## 4. Obligations: Situations within the airline's control, but required for safety

If an airline delays or cancels a flight for reasons within its control, but required for safety, it does not have to compensate passengers. However, the airline must meet the other obligations described in "Situations within the airline's control", above.

## 5. Obligations: Situations outside the airline's control

If an airline delays or cancels a flight for reasons outside its control, it does not have to compensate affected passengers, and the minimum standards of treatment do not apply. However, the airline must follow the communication requirements described in Situations within the airline's control, above. It must also make alternate travel arrangements for passengers as follows.

### Alternate travel arrangements

In situations outside its control, the airline operating the flight must ensure that the passengers complete their journey. If a flight is cancelled or once a flight delay has reached **three** hours, the airline must offer to make alternate travel arrangements for passengers free of charge. The aim is to get passengers to their destination as soon as possible.

### Large Airlines

Large airlines must book passengers on the next available flight operated by them or an airline with which they have a commercial agreement. The new flight:

- May take any reasonable route from the airport where the passenger is located to the passenger's destination; and
- Must depart within 48 hours of the end of the event that caused the delay or cancellation.

If the airline cannot meet this obligation, they must book the passenger as soon as possible on a flight operated by any airline on any reasonable route out of the same airport to the passenger's destination. This may mean buying a ticket for the passenger on a competing airline.

If the airline cannot provide this reservation on a flight from the same airport, the airline must book the passenger as soon as possible on a flight from a nearby airport and transport the passenger to that airport, free of charge.

### Small Airlines

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

## Refunds

There is no refund requirement for flight delays or cancellations outside the airline's control. If an airline's tariff allows passengers to seek a full or partial refund, the airline must provide this refund.

## 6. Complaints to the CTA

If a person's travel has been disrupted and they believe that the airline did not meet the obligations in its tariff or the APPR, they can make a complaint to the CTA. The CTA can help resolve complaints about air travel within, to and from Canada. The CTA's role is to make sure that airlines apply their terms and conditions of carriage set out in their tariffs, follow the *Air Passenger Protection Regulations*, and that both passengers and airlines have met their respective responsibilities.

The traveller may choose to have a lawyer or another party act for them in the CTA dispute resolution process. If the traveller chooses a representative that is not a lawyer (not a member of the bar of a province), the CTA will ask the traveller for certain information and a signed statement giving the third party permission to act for them.

### Additional notes:

If a passenger brings forward a complaint to the CTA regarding flight disruption obligations, the airline will have to demonstrate which category the delay or cancellation falls into, and how the airline met its obligations.

It is recommended that airlines document the circumstances causing the flight delay or cancellation, the treatment and compensation they provided affected passengers, and how they communicated with them.

An airline's tariff, which sets out its terms and conditions, cannot offer less than the Canadian rules require. If an airline chooses, their tariff may offer passengers terms that go beyond the minimum requirements.

## Annex A: Legislative and Regulatory References

### *Canada Transportation Act*

**86.11 (1)** The Agency shall, after consulting with the Minister, make regulations in relation to flights to, from and within Canada, including connecting flights,

(a) respecting the carrier's obligation to make terms and conditions of carriage and information regarding any recourse available against the carrier, as specified in the regulations, readily available to passengers in language that is simple, clear and concise;

(b) respecting the carrier's obligations in the case of flight delay, flight cancellation or denial of boarding, including

- (i) 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,
- (ii) the minimum standards of treatment of passengers that the carrier is required to meet when the delay, cancellation or denial of boarding is within the carrier's control, but is required for safety purposes, including in situations of mechanical malfunctions,
- (iii) the carrier's obligation to ensure that passengers complete their itinerary when the delay, cancellation or denial of boarding is due to situations outside the carrier's control, such as natural phenomena and security events

## ***Air Passenger Protection Regulations***

### **Obligations — situations outside carrier's control**

**10 (1)** This section applies to a carrier when there is delay, cancellation or denial of boarding due to situations outside the carrier's control, including but not limited to the following:

- (a) war or political instability;
- (b) illegal acts or sabotage;
- (c) meteorological conditions or natural disasters that make the safe operation of the aircraft impossible;
- (d) instructions from air traffic control;
- (e) a *NOTAM*, as defined in subsection 101.01(1) of the *Canadian Aviation Regulations*;
- (f) a security threat;
- (g) airport operation issues;
- (h) a medical emergency;
- (i) a collision with wildlife;
- (j) a labour disruption within the carrier or within an essential service provider such as an airport or an air navigation service provider;
- (k) a manufacturing defect in an aircraft that reduces the safety of passengers and that was identified by the manufacturer of the aircraft concerned, or by a competent authority; and
- (l) an order or instruction from an official of a state or a law enforcement agency or from a person responsible for airport security.

### **Earlier flight disruption**

**(2)** A delay, cancellation or denial of boarding that is directly attributable to an earlier delay or cancellation that is due to situations outside the carrier's control, is considered to also be due to situations outside that carrier's control if that carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation.

## Obligations

**(3)** When there is delay, cancellation or denial of boarding due to situations outside the carrier's control, it must

- (a) provide passengers with the information set out in section 13;
- (b) in the case of a delay of three hours or more, provide alternate travel arrangements, in the manner set out in section 18, to a passenger who desires such arrangements; and
- (c) in the case of a cancellation or a denial of boarding, provide alternate travel arrangements in the manner set out in section 18.

## Obligations when required for safety purposes

**11 (1)** Subject to subsection 10(2), this section applies to a carrier when there is delay, cancellation or denial of boarding that is within the carrier's control but is required for safety purposes.

## Earlier flight disruption

**(2)** A delay, cancellation or denial of boarding that is directly attributable to an earlier delay or cancellation that is within that carrier's control but is required for safety purposes, is considered to also be within that carrier's control but required for safety purposes if that carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation.

## Delay

**(3)** In the case of a delay, the carrier must

- (a) provide passengers with the information set out in section 13;
- (b) if a passenger is informed of the delay less than 12 hours before the departure time that is indicated on their original ticket, provide the standard of treatment set out in section 14; and
- (c) if the delay is a delay of three hours or more, provide alternate travel arrangements or a refund, in the manner set out in section 17, to a passenger who desires such arrangements.

## Cancellation

**(4)** In the case of a cancellation, the carrier must

- (a) provide passengers with the information set out in section 13;
- (b) if a passenger is informed of the cancellation less than 12 hours before the departure time that is indicated on their original ticket, provide the standard of treatment set out in section 14; and



(c) provide alternate travel arrangements or a refund, in the manner set out in section 17.

## Obligations when within carrier's control

**12 (1)** Subject to subsection 10(2), this section applies to a carrier when there is delay, cancellation or denial of boarding that is within the carrier's control but is not referred to in subsections 11(1) or (2).

### Delay

**(2)** In the case of a delay, the carrier must

- (a) provide passengers with the information set out in section 13;
- (b) if a passenger is informed of the delay less than 12 hours before the departure time that is indicated on their original ticket, provide them with the standard of treatment set out in section 14;
- (c) if the delay is a delay of three hours or more, provide alternate travel arrangements or a refund, in the manner set out in section 17, to a passenger who desires such arrangements; and
- (d) if a passenger is informed 14 days or less before the departure time on their original ticket that the arrival of their flight at the destination that is indicated on that original ticket will be delayed, provide the minimum compensation for inconvenience in the manner set out in section 19.

### Cancellation

**(3)** In the case of a cancellation, the carrier must

- (a) provide passengers with the information set out in section 13;
- (b) if a passenger is informed of the cancellation less than 12 hours before the departure time that is indicated on their original ticket, provide the standard of treatment set out in section 14;
- (c) provide alternate travel arrangements or a refund, in the manner set out in section 17; and
- (d) if a passenger is informed 14 days or less before the original departure time that the arrival of their flight at the destination that is indicated on their ticket will be delayed, provide the minimum compensation for inconvenience in the manner set out in section 19.

## Information — cancellation, delay, denial of boarding

**13 (1)** A carrier must provide the following information to the passengers who are affected by a cancellation, delay or a denial of boarding:

- (a) the reason for the delay, cancellation or denial of boarding;
- (b) the compensation to which the passenger may be entitled for the inconvenience;
- (c) the standard of treatment for passengers, if any; and
- (d) the recourse available against the carrier, including their recourse to the Agency.

## **Communication every 30 minutes**

(2) In the case of a delay, the carrier must communicate status updates to passengers every 30 minutes until a new departure time for the flight is set or alternate travel arrangements have been made for the affected passenger.

## **New information**

(3) The carrier must communicate to passengers any new information as soon as feasible.

## **Audible and visible announcement**

(4) The information referred to in subsection (1) must be provided by means of audible announcements and, upon request, by means of visible announcements.

## **Method of communication**

(5) The information referred to in subsection (1) must also be provided to the passenger using the available communication method that they have indicated that they prefer, including a method that is compatible with adaptive technologies intended to assist persons with disabilities.

## **Standards of treatment**

**14 (1)** If paragraph 11(3)(b) or (4)(b) or 12(2)(b) or (3)(b) applies to a carrier, and a passenger has waited two hours after the departure time that is indicated on their original ticket, the carrier must provide the passenger with the following treatment free of charge:

(a) food and drink in reasonable quantities, taking into account the length of the wait, the time of day and the location of the passenger; and

(b) access to a means of communication.

## **Accommodations**

(2) If paragraph 11(3)(b) or (4)(b) or 12(2)(b) or (3)(b) applies to a carrier and the carrier expects that the passenger will be required to wait overnight for their original flight or for a flight reserved as part of alternate travel arrangements, the air carrier must offer, free of charge, hotel or other comparable accommodation that is reasonable in relation to the location of the passenger, as well as transportation to the hotel or other accommodation and back to the airport.

## **Refusing or limiting treatment**

(3) The carrier may limit or refuse to provide a standard of treatment referred to in subsection (1) or (2) if providing that treatment would further delay the passenger.

## **Alternate arrangements — within carrier's control**

**17 (1)** If paragraph 11(3)(c), (4)(c) or (5)(c) or 12(2)(c), (3)(c) or (4)(c) applies to a carrier, it must provide the following alternate travel arrangements free of charge to ensure that passengers complete their itinerary as soon as feasible:

(a) in the case of a large carrier,

(i) a confirmed reservation for the next available flight that is operated by the original carrier, or a carrier with which the original carrier has a commercial agreement, is travelling on any reasonable air route from the airport at which the passenger is located to the destination that is indicated on the passenger's original ticket and departs within nine hours of the departure time that is indicated on that original ticket,

(ii) a confirmed reservation for a flight that is operated by any carrier and is travelling on any reasonable air route from the airport at which the passenger is located to the destination that is indicated on the passenger's original ticket and departs within 48 hours of the departure time that is indicated on that original ticket if the carrier cannot provide a confirmed reservation that complies with subparagraph (i), or

(iii) transportation to another airport that is within a reasonable distance of the airport at which the passenger is located and a confirmed reservation for a flight that is operated by any carrier and is travelling on any reasonable air route from that other airport to the destination that is indicated on the passenger's original ticket, if the carrier cannot provide a confirmed reservation that complies with subparagraphs (i) or (ii); and

(b) in the case of a small carrier, a confirmed reservation for the next available flight that is operated by the original carrier, or a carrier with which the original carrier has a commercial agreement, and is travelling on any reasonable air route from the airport at which the passenger is located to the destination that is indicated on the passenger's original ticket.

## Refund

**(2)** If the alternate travel arrangements offered in accordance with subsection (1) do not accommodate the passenger's travel needs, the carrier must

(a) in the case where the passenger is no longer at the point of origin that is indicated on the ticket and the travel no longer serves a purpose because of the delay, cancellation or denial of boarding, refund the ticket and provide the passenger with a confirmed reservation that

(i) is for a flight to that point of origin, and

(ii) accommodates the passenger's travel needs; and

(b) in any other case, refund the unused portion of the ticket.

## Comparable services

**(3)** To the extent possible, the alternate travel arrangements must provide services that are comparable to those of the original ticket.

## Refund of additional services

**(4)** A carrier must refund the cost of any additional services purchased by a passenger in connection with their original ticket if

- (a) the passenger did not receive those services on the alternate flight; or
- (b) the passenger paid for those services a second time.

## Higher class of service

**(5)** If the alternate travel arrangements provide for a higher class of service than the original ticket, the carrier must not request supplementary payment.

## Lower class of service

**(6)** If the alternate travel arrangements provide for a lower class of service than the original ticket, the carrier must refund the difference in the cost of the applicable portion of the ticket.

## Method used for refund

**(7)** Refunds under this section must be paid by the method used for the original payment and to the person who purchased the ticket or additional service.

## Alternate arrangements — outside carrier's control

**18 (1)** If paragraph 10(3)(b) or (c) applies to a carrier, it must provide the following alternate travel arrangements free of charge to ensure that passengers complete their itinerary as soon as feasible:

- (a) in the case of a large carrier,
  - (i) a confirmed reservation for the next available flight that is operated by the original carrier, or a carrier with which the original carrier has a commercial agreement, is travelling on any reasonable air route from the airport at which the passenger is located to the destination that is indicated on the passenger's original ticket and departs within 48 hours of the end of the event that caused the delay, cancellation or denial of boarding,
  - (ii) if the carrier cannot provide a confirmed reservation that complies with subparagraph (i),
    - (A) a confirmed reservation for a flight that is operated by any carrier and is travelling on any reasonable air route from the airport at which the passenger is located, or another airport that is within a reasonable distance of that airport, to the destination that is indicated on the passenger's original ticket, and
    - (B) if the new departure is from an airport other than the one at which the passenger is located, transportation to that other airport; and
- (b) in the case of a small carrier, a confirmed reservation for the next available flight that is operated by the original carrier, or a carrier with which the original carrier has a commercial agreement, and is travelling on any reasonable air route from the same airport to the destination that is indicated on the

passenger's original ticket.

## **Comparable services**

**(2)** To the extent possible, the alternate travel arrangements must provide services that are comparable to those of the original ticket.

## **Higher class of service**

**(3)** If the alternate travel arrangements provide for a higher class of service than the original ticket, the carrier must not request supplementary payment.

## **Compensation for delay or cancellation**

**19 (1)** If paragraph 12(2)(d) or (3)(d) applies to a carrier, it must provide the following minimum compensation:

(a) in the case of a large carrier,

(i) \$400, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by three hours or more, but less than six hours,

(ii) \$700, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by six hours or more, but less than nine hours, or

(iii) \$1,000, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by nine hours or more; and

(b) in the case of a small carrier,

(i) \$125, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by three hours or more, but less than six hours,

(ii) \$250, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by six hours or more, but less than nine hours, or

(iii) \$500, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by nine hours or more.

## **Compensation in case of refund**

**(2)** If paragraph 12(2)(c) or (3)(c) applies to a carrier and the passenger's ticket is refunded in accordance with subsection 17(2), the carrier must provide a minimum compensation of

(a) \$400, in the case of a large carrier; and

(b) \$125, in the case of a small carrier.

## **Deadline to file request**

**(3)** To receive the minimum compensation referred to in paragraph (1) or (2), a passenger must file a request for compensation with the carrier before the first anniversary of the day on which the flight delay or flight cancellation occurred.

### **Deadline to respond**


**(4)** The carrier must, within 30 days after the day on which it receives the request, provide the compensation or an explanation as to why compensation is not payable.

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Exhibit F of the Affidavit of Meredith Desnoyers  
affirmed on July 14, 2021

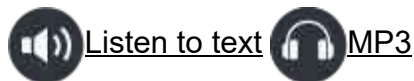
A handwritten signature in blue ink, reading "Elysia Van Zeyl". The signature is written in a cursive style with a large initial "E".

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Elysia Van Zeyl (LSUC #53499H)



[Home](#) → [Accessible transportation](#)



# Accessible travel in the context of COVID-19

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The CTA's vision is to make Canada's national transportation system the most accessible in the world. This vision guides our work, including during this global pandemic.

COVID-19 has caused major impacts on travel. As operations gradually resume, it is important to ensure that accessibility considerations are fully taken into account in the planning and changes to services.

Here are some tips for transportation service providers and persons with disabilities to keep in mind during these challenging times.

## Transportation service providers

When offering travel services to persons with disabilities, transportation service providers must:

- Meet their obligations under Part V of the [Canada Transportation Act](#) to identify, remove barriers and prevent new barriers to the access of persons with disabilities to the federal transportation network;
- Comply with applicable provisions of the new [Accessible Transportation for Persons with Disabilities Regulations](#) <sup>1</sup>; and
- Take steps to ensure the needs of persons with disabilities are met. For example
  - The need for personnel to wear masks might negatively impact communication with some passengers. They should make alternative methods of communication available, such as pre-printed signs to convey standardized information, and pen and paper.

In addition, transportation service providers are encouraged to:

- Provide up to date information on their website about what to expect when travelling, including COVID-19 related measures; and
- Have a comprehensive plan for services that may involve close proximity, physical contact or touching a passenger's personal belongings to ensure the safety of both staff and passengers (e.g. baggage assistance, wheelchair transfers, and handling mobility aids).

## Persons with disabilities

A few simple preparations will make your travel easier and more enjoyable. When traveling, you are encouraged to:



- Plan ahead. Notify your transportation service provider of your needs and any services you might require ahead of time (at least 48 hours);
- When notifying your provider, ask them to advise you of the COVID-19 related measures and protocols they are following as these might have an impact on the services you require;
- If possible, check in online in advance of arrival to avoid touching kiosks or interacting with more personnel than necessary;
- If you have particular communication needs, you might wish to bring your own pen and paper or alternative communication system; and
- Ask in advance how personnel will be handling services that may require physical contact such as guiding or wheelchair transfers, or touching your personal items such as baggage or mobility aids.

## Guidance from the National Research Council of Canada (NRC)

The NRC, with the support of the CTA and Transport Canada, has developed expert guidance that sets out best practices for transportation service providers and travel tips for persons with disabilities during COVID-19.

The NRC developed this guidance with the input of persons with disabilities and transportation service providers.

The guidance, [Best Practices for Accessible Travel in the Context of COVID-19](#), covers best practices relating to:

- physical distancing and navigation;
- mask use;
- sanitization and hand washing; and
- communicating information

For more information on the pandemic consult the Government of Canada's [Coronavirus disease \(COVID-19\): Outbreak update](#).

## Related links

- [Accessible transportation complaints helpline](#)
- [Accessible transportation guides](#)
- [Accessibility standards](#)
- [Training videos: How to assist persons with disabilities](#)
- [Best practices for providing assistance to customers with disabilities: A resource tool](#)


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## Notes

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Most provisions of the ATPDR have been in force since June 25, 2020. As planned, other provisions are being phased-in over two years completing in 2022.

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**Date modified:**  
2020-09-08

**FEDERAL COURT OF APPEAL**

BETWEEN:

**AIR PASSENGER RIGHTS**

Applicant

- and -

**THE ATTORNEY GENERAL OF CANADA**

Respondent

---

**WRITTEN REPRESENTATIONS OF THE MOVING PARTY,  
CANADIAN TRANSPORTATION AGENCY  
(MOTION FOR LEAVE TO INTERVENE)**

**Pursuant to Rules 109 and 369 of the *Federal Courts Rules***

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**FEDERAL COURT OF APPEAL**

BETWEEN:

**AIR PASSENGER RIGHTS**

Applicant

- and -

**THE ATTORNEY GENERAL OF CANADA**

Respondent

**WRITTEN REPRESENTATIONS OF THE MOVING PARTY,  
CANADIAN TRANSPORTATION AGENCY  
(MOTION TO INTERVENE)**

**Pursuant to Rules 109 and 369 of the *Federal Courts Rules***

**PART I – OVERVIEW & STATEMENT OF FACTS**

**A. Overview**

1. These are the written representations of the Canadian Transportation Agency ("Agency") in support of its motion for an Order pursuant to Rule 109 of the *Federal Courts Rules* ("*Rules*"),<sup>1</sup> to be added as an intervener in this proceeding.
  
2. Of central importance in this proceeding is the legal characterization and significance of a page published on the Agency's website titled "Statement on Vouchers" ("Statement on Vouchers") and accompanying information page (collectively referred to hereafter as "the Publications"). While the Publications do not have the hallmarks of an Agency order, the legal questions raised in this proceeding are whether they are tantamount to an advance ruling

<sup>1</sup> [SOR/98-106](#) [*Rules*].

or Agency order; and whether Agency Members should be precluded from hearing future cases on the basis of a reasonable apprehension of bias.

3. In this proceeding, the Agency seeks to intervene to explain its specialized regulatory and adjudicative mandate with respect to air transportation under Part II of the *Canada Transportation Act*,<sup>2</sup> ("CTA"). As part of this explanation, the Agency will address the publication of resource, informational and guidance material intended for the public and stakeholders and this material's place in the exercise of the Agency's overall mandate. In so doing, the Agency proposes to provide a small but representative sample of such material for illustrative purposes.
4. As an intervener, the Agency would not defend the substance of the impugned Publications or address whether the allegations of bias made by Air Passenger Rights ("APR") are well founded. However, the Agency respectfully submits that the Court may be assisted in its evaluation of the nature and significance of these Publications if provided with contextual information about the Agency's air transportation mandate and its practice of publishing resource, informational and guidance material. The Agency submits that it is best placed to speak to these issues and has an interest in the outcome of the proceeding because the Court's decision may broadly impact the Agency's practices in this area.

## **B. Statement of Facts**

### **The Agency**

5. The Agency is an independent, quasi-judicial tribunal and regulator. It has a broad mandate in respect of transportation matters under the legislative authority of Parliament.

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<sup>2</sup> [SC 1996, c 10](#) [CTA].

6. The Agency performs two key functions. First, in its role as a quasi-judicial, expert tribunal, it is tasked with resolving commercial and consumer transportation-related disputes, including air travel complaints. It operates like a court when exercising this function. Second, it is a regulator and develops and applies ground rules that establish the rights and responsibilities of transportation service providers and users, and that level the playing field among competitors. As part of its regulatory function, the Agency makes determinations relating to matters such as the issuance of licences and permits within the ambit of the authority granted to it by Parliament.<sup>3</sup> Tools used by the Agency in the exercise of its mandate include regulations, guidelines, codes of practice, interpretation notes, adjudicative decisions, and the provision of information.<sup>4</sup>
7. The CTA is highly specialized regulatory legislation with a strong policy focus.<sup>5</sup> Canada's National Transportation Policy is set out in section 5 of the CTA. It highlights the objective of ensuring a competitive, economic and efficient transportation system.
8. The Supreme Court of Canada has stated that "the Agency is expected to bring its transportation policy knowledge and experience to bear on its interpretations of its assigned statutory mandate."<sup>6</sup> The Federal Court of Appeal has also confirmed that the Agency

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<sup>3</sup> *Lukács v Canada (Transportation Agency)*, [2014 FCA 76](#) at paras [50-52](#) [*Lukacs v CTA*].

<sup>4</sup> Canadian Transportation Agency's "Organization and Mandate" (archived on March 30, 2020), Exhibit G of the affidavit of Gábor Lukács affirmed January 3, 2021, Motion Record of the Moving Party, Air Passenger Rights, Motion Pursuant to Rules 41 and 318 of the *Federal Courts Rules*, dated January 3, 2021 at Volume 1, Tab 2G at 51-59.

<sup>5</sup> *Council of Canadians with Disabilities v VIA Rail*, [2007 SCC 15](#) at para [98](#).

<sup>6</sup> *Ibid* at para [98](#).



legitimately draws upon its regulatory experience, its knowledge of the industry and its expertise in the transportation sector when interpreting legislation within its mandate.<sup>7</sup>

### **The Statement on Vouchers**

9. APR seeks judicial review of the Publications, which appeared as pages on the Agency's website. The Statement on Vouchers was published on March 25, 2020 in response to widespread domestic and international flight cancellations prompted by the COVID-19 pandemic.

10. The allegations in this proceeding revolve primarily around the characterization and significance to be attributed to the following portion of the Statement on Vouchers:

While any specific situation brought before the CTA will be examined on its merits, the CTA believes that, generally speaking, an appropriate approach in the current context could be for airlines to provide affected passengers with vouchers or credits for future travel, as long as these vouchers or credits do not expire in an unreasonably short period of time (24 months would be considered reasonable in most cases).<sup>8</sup>

11. APR argues that the Publications are tantamount to an unsolicited advance ruling and create a reasonable apprehension of bias that Agency Members will not deal fairly with passenger complaints seeking refunds due to pandemic-related flight cancellations.

## **PART II – STATEMENT OF THE POINTS IN ISSUE**

12. At issue is whether the Agency should be granted status as an intervener in this matter and if so, under what terms.

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<sup>7</sup> *Canadian National Railway Company v Emerson Milling Inc. et al.*, [2017 FCA 79](#) at para [73](#).

<sup>8</sup> Canadian Transportation Agency, [Statement on Vouchers](#) dated March 23, 2020, Exhibit L of the affidavit of Gábor Lukács affirmed January 3, 2021, Motion Record of the Moving Party, Air Passenger Rights, Motion Pursuant to Rules 41 and 318 of the *Federal Courts Rules*, dated January 3, 2021 at Volume 1, Tab 2L, at 82-84 [*Statement on Vouchers*].

### PART III – STATEMENT OF SUBMISSIONS

#### A. The Agency's proposed intervention under Rule 109 of the *Federal Courts Rules*

13. The Agency requests leave to intervene in this proceeding to provide a memorandum of fact and law of no more than 15 pages, accompanied by a brief affidavit, and to make oral submissions on the content of its memorandum at the hearing of the judicial review application.

14. The memorandum, affidavit and oral submissions would be limited to the following:

- The Agency would describe the scope of its mandate with respect to air transportation, including the regulatory and adjudicative functions assigned to it under the CTA and associated regulations. Specifically, the Agency would explain the scope of its regulatory mandate with respect to air carrier tariffs in domestic and international carriage. The Agency would also explain its mandate with respect to air travel complaints, namely that its jurisdiction is to determine whether (a) a carrier has applied its tariff provisions, including the provisions of the *Air Passenger Protection Regulations*,<sup>9</sup> which are deemed by law to form part of a carrier's tariff, or (b) whether a tariff provision is unreasonable or unjustly discriminatory and should be amended.
- The Agency would provide a small sample of the various informational, resource and guidance tools it has issued with respect to the air transportation mode. The explanations provided by the Agency in respect of this material would address its purpose in the overall exercise of the Agency's mandate.

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<sup>9</sup> [SOR/2019-150](#).

15. The Agency's affidavit would present the following sample of material available on the Agency's website:

- (1) The Interline Baggage Rules for Canada Interpretation Note, which provides information and guidance to clarify to air carriers and their agents, and inform the travelling public, how baggage rules should be applied (for both checked and unchecked baggage) for interline and code-share travel;<sup>10</sup>
- (2) The Notice to Industry: Applications for Exemptions from Section 59 of the *Canada Transportation Act*, which provides details regarding the considerations the Agency will use when determining whether to give an exemption from the requirement to have a license when selling, causing to be sold or publicly offering for sale in Canada an air service;<sup>11</sup>
- (3) The Guide to Canadian Ownership and Control in Fact for Air Transportation, which explains how the legal requirement for an air licence holder to be "Canadian" as defined in the Act is to be interpreted and applied;<sup>12</sup> and
- (4) The Sample Tariff containing rules applicable to scheduled services for the transportation of passengers and their baggage between points in Canada and points inside and outside Canada, which provides sample tariff provisions for air carriers;<sup>13</sup> and
- (5) Flight Delays and Cancellations: A Guide, which describes passenger rights and carriers obligations in case of delayed or cancelled flights.<sup>14</sup>

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<sup>10</sup> Canadian Transportation Agency, "Interline Baggage Rules for Canada: Interpretation Note" (02 October 2015), online: *Canadian Transportation Agency* <<https://otc-cta.gc.ca/eng/publication/interline-baggage-rules-canada-interpretation-note>>; Exhibit A of the affidavit of Meredith Desnoyers, affirmed July 14, 2021 [*Desnoyers Affidavit*].

<sup>11</sup> Canadian Transportation Agency, "Notice to Industry: Applications for Exemptions from Section 59 of the Canada Transportation Act" (27 March 2013), online: *Canadian Transportation Agency* <<https://otc-cta.gc.ca/eng/publication/notice-industry-applications-exemptions-section-59-canada-transportation-act-sc-1996-c>>; Exhibit B of the *Desnoyers Affidavit*.

<sup>12</sup> Canadian Transportation Agency, "Guide to Canadian Ownership and Control in Fact for Air Transportation", online: *Canadian Transportation Agency* <[https://otc-cta.gc.ca/sites/default/files/new\\_guide\\_to\\_canadian\\_ownership\\_requirement\\_and\\_control\\_in\\_fact\\_.pdf](https://otc-cta.gc.ca/sites/default/files/new_guide_to_canadian_ownership_requirement_and_control_in_fact_.pdf)>; Exhibit C of the *Desnoyers Affidavit*.

<sup>13</sup> Canadian Transportation Agency, "Sample Tariff — containing rules applicable to scheduled services for the transportation of passengers and their baggage between points in Canada and points inside and outside Canada," online: *Canadian Transportation Agency* <[Sample tariff — containing rules applicable to scheduled services for the transportation of passengers and their baggage between points in Canada and points inside and outside Canada | Canadian Transportation Agency \(otc-cta.gc.ca\)](https://otc-cta.gc.ca/eng/publication/sample-tariff-containing-rules-applicable-to-scheduled-services-for-the-transportation-of-passengers-and-their-baggage-between-points-in-canada-and-points-inside-and-outside-canada)>; Exhibit D of the *Desnoyers Affidavit*.

<sup>14</sup> Canadian Transportation Agency, "Flight Delays and Cancellations: A Guide," online: *Canadian Transportation Agency*, <[Flight Delays and Cancellations: A Guide | Canadian Transportation Agency \(otc-cta.gc.ca\)](https://otc-cta.gc.ca/eng/publication/flight-delays-and-cancellations-a-guide)>, Exhibit E of the *Desnoyers Affidavit*.

(6) Accessible travel in the context of Covid-19, which provides tips for transportation service providers and persons with disabilities during the pandemic.<sup>15</sup>

16. In presenting to the Court this sample of material, the publication dates of which range from 2013 to 2021, the Agency does not propose to make submissions on the substance addressed in each document as this would unnecessarily broaden the scope of the proceeding. The Agency notes that the first three documents in the above list have already been cited in this proceeding, namely in the Agency's submissions responding to APR's motion for interlocutory injunctive relief.<sup>16</sup> The Sample Tariff and Flight Delay and Cancellation documents are specific to the topic of air carrier tariffs and flight cancellations, which is the area of the Agency's mandate that is at issue in this proceeding. The final publication relates to accessible transportation and is included to illustrate the range of publications issued by the Agency. To the extent that specific passages will be cited, they will be limited to excerpts communicating the non-binding nature of the material.

17. The Agency submits that its intervention will assist the Court in understanding the prescribed scope of its mandate in adjudicating air travel complaints and the breadth and practice of publishing material on its website for the public and stakeholders.

18. At issue in this proceeding is the nature of the Statement on Vouchers, and specifically whether it represents an advance ruling or is tantamount to an Agency order that (a) is amenable to judicial review, and (b) gives rise to a reasonable apprehension of bias. The

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<sup>15</sup> Canadian Transportation Agency, "Accessible travel in the context of Covid-19," online: *Canadian Transportation Agency*, < [Accessible travel in the context of COVID-19 | Canadian Transportation Agency \(cta.gc.ca\)](https://www.cta.gc.ca)>, Exhibit F of the *Desnoyers Affidavit*.

<sup>16</sup> Canadian Transportation Agency, Memorandum of Fact and Law of the Respondent, Motion for Mandatory Interlocutory Injunction dated April 29, 2020 at para 8; Affidavit of Meredith Desnoyers, affirmed April 28, 2020 at paras 3-5 [*April 2020 Desnoyers Affidavit*]; Exhibits B, C and D of *April 2020 Desnoyers Affidavit*.

Agency will neither address the substance of the impugned Publications, nor whether the test for reasonable apprehension of bias is met in this case. Instead, the Agency respectfully submits that its intervention would permit the Court to situate the legal issue concerning the nature of the impugned Publications within the broader context of the Agency's functions and powers under the CTA.

**The appropriateness of the Agency's participation in this proceeding**

19. Before addressing the test applicable for granting intervener status, the Agency acknowledges that this motion raises overarching considerations around the appropriateness of tribunal participation in judicial review proceedings generally, and the Agency's participation in this proceeding in particular given the allegations of bias raised.

20. The Supreme Court of Canada has recognized that a tribunal's participation in the review of its decisions raises two fundamental issues: the importance of having a fully informed understanding of the issues before the court, and the importance of maintaining tribunal impartiality.<sup>17</sup>

21. Tribunals have traditionally been permitted to make submissions with respect to jurisdictional questions.<sup>18</sup> The Supreme Court of Canada has also recognized that a tribunal may assist a reviewing court because of its expertise and familiarity with the relevant administrative scheme, and because it can explain the factual and legal realities of the

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<sup>17</sup> *Ontario (Energy Board) v Ontario Power Generation Inc.*, [2015 SCC 44](#) at para [48](#).

<sup>18</sup> *Ibid* at para [42](#).

specialized field in which it works. Because such submissions are specialized, they may be harder for other parties to present.<sup>19</sup>

22. The submissions the Agency proposes to make go to its specialized jurisdiction in respect of air transportation, and the practice of issuing informational and resource tools as well as guidance material in the exercise of its mandate. The Agency respectfully submits that these limited subjects are jurisdictional in nature and go to its familiarity with the administrative scheme. The Agency submits that these topics, when addressed in general terms, fall within the scope of appropriate tribunal participation in the context of a judicial review proceeding.

#### **The test for granting intervener status**

23. The governing case on motions for intervention is *Rothmans, Benson & Hedges Inc. v Canada (Attorney General)*<sup>20</sup> as confirmed in *Sport Maska v Bauer Hockey Corp.*<sup>21</sup>

24. In *Rothmans*, this Court listed the following considerations for whether intervener status should be granted:

- i. Is the proposed intervener directly affected by the outcome?
- ii. Does there exist a justiciable issue and a veritable public interest?
- iii. Is there an apparent lack of any other reasonable or efficient means to submit the question to the Court?
- iv. Is the position of the proposed intervener adequately defended by one of the parties to the case?
- v. Are the interest of justice better served by the intervention of the proposed third party?
- vi. Can the Court hear and decide the cause on its merits without the proposed intervener?

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<sup>19</sup> *Ibid* at para [53](#).

<sup>20</sup> *Rothmans, Benson & Hedges Inc. v Canada (Attorney General)*, [1989] FCJ No 446 [*Rothmans*].

<sup>21</sup> *Sport Maska v Bauer Hockey Corp.*, [2016 FCA 44](#) at para [37](#) [*Sport Maska*].

25. As further stated in *Sport Maska*, the criteria for intervention "must remain flexible because every intervention application is different, i.e. different facts, different legal issues and different contexts."<sup>22</sup>

26. The Agency respectfully submits that it has satisfied each of the elements of the test for intervention established in *Rothmans*.<sup>23</sup>

**i. Is the Agency Directly Affected by the Outcome?**

27. It goes without saying that the Agency will be directly affected by the outcome of this proceeding insofar as its own actions are being reviewed. The Court's order may impact the validity of the impugned Publications, and the assignment of Agency Members to hear air travel complaints concerning refund requests arising from COVID-19 flight cancellations.

28. However, this is not what motivates the Agency's motion. Instead, the Agency submits that it has a genuine interest in this proceeding because at issue are core elements of the Agency's specialized mandate and its practice of providing information, resources tools and guidance to the public and stakeholders.

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<sup>22</sup> *Ibid* at para [42](#).

<sup>23</sup> *Rothmans*, *supra* note 20; *Pictou Landing First Nation v Canada (Attorney General)*, [2014 FCA 21](#) [*Pictou Landing*] at para [9](#).

29. This Court has held that:

In asserting a genuine interest, there must be a link between the issue to be decided and the mandate and objectives of the party seeking to intervene. The source of the genuine interest must be identified and it should be clear from the submissions what animates the intervention. Sometimes, a genuine interest is established through the expertise or experience the intervener brings to the issue. Sometimes it is established through the unique perspective it has on the issues.<sup>24</sup>

30. In its capacity as a regulatory and quasi-judicial body, the Agency makes determinations within the limits prescribed by Parliament. It also publishes material relating to air carrier obligations and passenger rights. The Agency has a unique perspective, distinct from that of the parties, to bring to the question of how it exercises its adjudicative and regulatory mandates, and the purpose of the material that it publishes on its website. This Court's decision may impact the Agency's practices in the future and accordingly, the Agency seeks to ensure that this perspective is presented to the Court.

**ii. Does there exist a justiciable issue and a veritable public interest?**

31. The application for judicial review has survived a motion to strike, and thus, Justice Webb has already ruled that there is a justiciable issue raised in this case.<sup>25</sup>

32. What is more, the Agency submits that there is a veritable public interest component in this proceeding as questions around the amenability of tribunal statements to judicial review and the power and scope of a tribunal's ability to issue material that it characterizes as non-binding are public law questions.

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<sup>24</sup> *Gordillo v Canada (Attorney General)*, [2020 FCA 198](#) at para [12](#) [*Gordillo*].

<sup>25</sup> *Air Passenger Rights v Canada (Transportation Agency)*, [2020 FCA 155](#) at paras [32](#), [34](#).



33. The Court's understanding of the nature of Agency publications has implications not only for the Agency, but also for the numerous entities that are regulated by the Agency and those that benefit from material published by the Agency. Thus, there is a considerable public dimension to this Court's examination of the legal issues raised in this proceeding.

**iii. Is there an apparent lack of any other reasonable or efficient means to submit the question to the Court?**

34. By Order of Justice Gleason dated June 4, 2021, the Agency was removed as respondent in this proceeding. In removing the Agency as respondent, Justice Gleason indicated that the Agency could make a motion to intervene.<sup>26</sup>

35. The Agency submits that the contextual information it seeks to address in its capacity as intervener represents the most reasonable and efficient means by which to provide specialized submissions to the Court about the Agency's mandate and practices. The Agency is best-placed to provide these submissions for the Court's consideration and for the parties' comment.

**iv. Is the position of the Agency adequately defended by one of the parties to the case?**

36. The Agency respectfully submits that this factor may not squarely apply in the circumstances of this case. As the tribunal whose actions are being reviewed, the Agency is not seeking to defend its position in the absence of a party that is willing or able to do so. Instead, the Agency seeks to intervene to ensure that contextual information about its jurisdiction and mandate in air transportation are presented to the Court. Given its knowledge and experience,

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<sup>26</sup> *Air Passenger Rights v Canada (Attorney General)*, [2021 FCA 112](#) at para [16](#).

the Agency submits that it is uniquely positioned to explain its own understanding of that jurisdiction and mandate.

37. The Attorney General of Canada, in his capacity as respondent, has indicated that he "could assist the Court by reviewing the allegations of bias against the Agency, and that by doing so he would act as an independent defender of the rule of law."<sup>27</sup> For its part, APR may present a position on the Agency's jurisdiction and mandate which may not be reflective of the Agency's own understanding.

38. In these circumstances, the Agency respectfully submits that presenting its perspective of its jurisdiction and approach to the fulfillment of its mandate may contribute to a fuller understanding of the legal questions that will be addressed by the parties in this case. The Agency submits that this is relevant contextual information that would help inform the Court's evaluation of the Publications and determination of the legal issues.

**v. Are the interest of justice better served by the intervention of the Agency?**

39. This Court has called the interest of justice factor the "controlling consideration" in determining whether to grant leave to intervene. The Court has emphasized that under this factor, the particular circumstances of the case can be considered, both from a procedural and substantive perspective:

[18] As noted, the controlling consideration is whether the interests of justice are better served by allowing the intervention. It is under this factor that the Court can address "the particular facts and circumstances of the case in respect of which intervention is sought" (*Sport Maska Inc.* at paras [39 and 42](#)). The relevant considerations can be both substantive and procedural. They are not exhaustive and will vary from case to case. They can include whether the moving party intends to work within the current proceedings,

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<sup>27</sup> Written submissions of the Attorney General of Canada regarding the proper respondent, March 22, 2021 at para 20.

whether they intend to add anything to the evidentiary record (*Tsleil-Waututh Nation* at para. 49), whether they were involved in earlier proceedings, whether the issues before the Court have a public dimension which can be illuminated by the perspectives offered by the interveners, whether any terms should be attached to the intervention (*Prophet River First Nation* at para. 6), whether the intervention was timely or whether it will delay the hearing and prejudice the parties.<sup>28</sup>

40. The Agency respectfully submits that its proposed intervention serves the interests of justice because its role in relation to air transportation and air travel complaints is specialized and relevant to the proceeding; and it has a well-developed practice of issuing information, resource and guidance material to the public and stakeholders in the exercise of its mandate. Accordingly, the Agency's submissions may prevent the legal issues from being considered in isolation or without relevant context.
41. While the proposed intervention would admittedly add to the evidentiary record of the proceeding by introducing material issued by the Agency, these additions serve the limited purpose of demonstrating the prevalence of Agency informational, resource and guidance material. As a mitigating consideration, and as noted above, three out of the six publications proposed for submission have already been filed by the Agency while it acted as respondent.
42. The Agency notes that the proceeding remains in its early stages; the motion for disclosure of tribunal materials is pending and the parties have not filed their affidavits or memoranda. Under these circumstances, the Agency submits that its intervention would not be likely to delay the hearing or prejudice any parties.
43. The Agency submits that the proposed intervention is not inconsistent with the imperatives in section 3 of the *Rules*, namely securing "the just, most expeditious and least expensive

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<sup>28</sup> *Gordillo*, *supra* note 24 at para 18.

determination of every proceeding on its merits". Finally, the Agency submits that its participation in this proceeding is not likely to unduly complicate or prolong the proceeding, as it was already previously involved in the file and thus is aware of its issues and judicial history.

**vi. Can the Court hear and decide the cause on its merits without the proposed intervener?**

44. At paragraph 9 of *Pictou Landing*, Justice Stratas observed that "almost always, the Court can hear and decide a case without a proposed intervener. The most salient question is whether the intervener will bring further, different and valuable insights and perspectives that will assist the Court in determining the matter".<sup>29</sup>

45. The Agency submits that its intervention would bring "further, different and valuable insights" that will help the Court in determining the legal issues raised in this proceeding. As an independent and expert quasi-judicial tribunal and regulator, the Agency brings with it a perspective and insight that is different from either of the parties to this proceeding, including a broader and more contextual knowledge of the CTA. The Agency submits that its insight would serve a useful purpose and is distinct from what may be provided by the parties.

**B. Costs**

46. Generally, an administrative body like the Agency will neither be entitled to nor be ordered to pay costs, at least when there has been no misconduct on its part. Where the body has

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<sup>29</sup> *Pictou Landing*, *supra* note 23 at para 9.

acted in good faith and conscientiously throughout, the reviewing tribunal will not ordinarily impose costs.<sup>30</sup>

47. It is submitted that the Agency has acted in good faith in bringing this motion. The Agency does not seek costs and asks that, in the circumstances, costs not be awarded against it.

#### **PART IV – ORDER SOUGHT**

48. The Agency respectfully requests that this Honourable Court grant the following:

- (a) an Order granting the Agency leave to intervene pursuant to Rule 109 of the *Federal Courts Rules*, and amending the style of cause to reflect the same;
- (b) an Order permitting the Agency to file a Memorandum of Fact and Law of no more than 15 pages and affidavit at any time the Court considers appropriate, such as: the filing of an affidavit within 15 days after the Respondent's affidavit(s) and exhibit(s) are filed; and the filing of a Memorandum of Fact and Law within 15 days after the Respondent's Record is filed;
- (c) an Order that the Agency be served with all materials filed by the parties;
- (d) an Order that the Agency be consulted on hearing dates and be provided the right to make oral submissions before the Court; and
- (e) such further and other relief as this Court may deem just.

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<sup>30</sup> *Lang v British Columbia (Superintendent of Motor Vehicles)*, [2005 BCCA 244](#) at para 47 citing Brown and Evans, *Judicial Review of Administrative Action in Canada* (Toronto: Canvasback, 1998).

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at Gatineau, in the Province of Quebec, this 15<sup>th</sup> day of July, 2021.



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## PART V – LIST OF AUTHORITIES

### A. Appendix A – Statutes and Regulations

*Canada Transportation Act*, [SC 1996, c 10](#), ss [5](#).

*Federal Courts Rules*, [SOR/98-106](#), ss [3](#), [109](#), [369](#).

### B. Appendix B – Case Law

*Air Passenger Rights v Canada (Attorney General)*, [2021 FCA 112](#)

*Air Passenger Rights v Canada (Transportation Agency)*, [2020 FCA 155](#)

*Canadian National Railway Company v Emerson Milling Inc. et al.*, [2017 FCA 79](#)

*Council of Canadians with Disabilities v VIA Rail Canada Inc.*, [2007 SCC 15](#)

*Gordillo v Canada (Attorney General)*, [2020 FCA 198](#)

*Lang v British Columbia (Superintendent of Motor Vehicles)*, [2005 BCCA 244](#)

*Lukács v Canada (Transportation Agency)*, [2014 FCA 76](#)

*Ontario (Energy Board) v Ontario Power Generation Inc.*, [2015 SCC 44](#)

*Pictou Landing First Nation v Canada (Attorney General)*, [2014 FCA 21](#)

*Rothmans, Benson & Hedges Inc. v Canada (Attorney General)*, [1989] FCJ No. 446

*Sport Maska Inc. v Bauer Hockey Corp*, [2016 FCA 44](#)