



Airlines for America®

We Connect the World

September 30, 2016

Canadian Transportation Agency
15 Eddy Street
Gatineau, Quebec J8X 4B3

Re: Accessible Transportation Discussion Paper for Regulatory Modernization

Dear CTA,

Airlines for America submit these comments in response to the Canadian Transport Agency (CTA) Accessible Transportation Consultation that is proposing to revise transportation regulations that accommodate passengers with a disability. A4A members provide extensive airline passenger service to Canada and will be significantly impacted by the results of this consultation. We therefore respectfully ask that CTA carefully consider these comments before adopting final regulations.

CTA currently has two sets of accommodation regulations and six voluntary codes of practice that apply to various modes of transportation. CTA proposes to consolidate all the regulations and codes of practice into one comprehensive regulation and add recently proposed amendments from CTA's Accessibility Advisory Committee (AAC). The final regulation would apply to all modes of transportation. CTA is also contemplating in regards to air transportation that the new regulations would apply to Canadian air carriers' domestic and international operations as well as foreign air carriers operations to Canada.

In addition to consolidating existing materials into one regulation for all modes of transportation, CTA also proposes to expand accommodations beyond existing materials in several areas, including potentially adopting a "One Person, One Fare" policy, accommodating passengers with allergies, expanding the requirements for the acceptance of service animals, positioning and seating devices, curbside assistance, accessible in-flight entertainment, and additional reporting and monitoring requirements.

CTA should not apply the new regulation to foreign carriers because doing so will require carriers to comply with overlapping and conflicting regulatory schemes. As CTA notes in its proposal, the U.S. DOT Part 382 is a comprehensive accommodations regulatory scheme that carriers invest vast resources to meet and exceed. Adopting another level of Canadian accommodation regulations will needlessly complicate compliance efforts and require carriers to divert resources that are currently focused on accommodating passengers.

The CTA proposal states that it is considering applying new accommodation regulations to foreign carriers but there is no reason given for this regulatory expansion. It would help foreign carriers better understand the source of concern and address those concerns if CTA were to provide the motivation

behind expanding CTA regulations to foreign carriers. U.S. carriers have worked well with CTA in the past and in the spirit of transparency we would like to discuss potential application of CTA accommodation regulations to foreign carriers.

If CTA decides to apply its accommodations regulations to foreign carriers, which it should not, we ask that CTA recognize carrier compliance with U.S. DOT Part 382 as sufficient compliance with CTA regulations. Cross-border recognition of U.S. and Canadian accommodation requirements is not new; CTA has recently accepted compliance with U.S. DOT Part 382 accessible kiosk regulations as compliance with CTA accessible kiosk standards. See CTA Removing Communication Barriers for Travellers with Disabilities: Code of Practice, Section 1.3.¹

U.S. DOT Negotiated Rulemaking

Now is not the time to apply CTA regulations to carriers complying with U.S. DOT Part 382 because the U.S. DOT is in the midst of drafting significant accommodations regulatory changes. Earlier this year U.S. DOT began a Negotiated Rulemaking on three accommodation areas including defining a service animal, accessible inflight entertainment, and accessible lavatories on single-aisle aircraft. Industry and disability groups are currently negotiating all three of these topics with U.S. DOT moderating that discussion with recommendations due in October 2016 and a proposed regulation due six months later.

Two of the areas that CTA is considering amendments, service animals and inflight entertainment, are also the subject of U.S. DOT negotiations. The negotiations on defining service animals have been extensive and are likely to result in a significant change to current U.S. DOT accommodation requirements. The changes discussed at the Reg Neg include but are not limited to (1) restricting the species of service animals to dogs or dogs and cats; (2) modifying any documentation requirements; (3) excluding emotional support animals; (4) how service animals are carried in the cabin, and; (5) advance notification requirements. Similarly, accessible inflight entertainment negotiations have been extensive, including lengthy discussions on aircraft hardware, software, and content. Given the extensive and wide-ranging discussion that is likely to change U.S. DOT rules on service animals and inflight entertainment we ask that CTA not adopt potentially conflicting regulations that apply to foreign carriers.

Foreign Carriers Do Not Participate in CTA's Accessibility Advisory Committee

CTA states that accommodation regulatory amendments will include recommendations of the CTA Accessibility Advisory Committee, which include:

- Providing sufficient space for service animals.
- Ensuring that persons with disabilities are provided with the seating that best meets their needs.
- Recognizing that some aircraft are unable to carry mobility aids that do not fit through the door of the cargo hold. Requiring air carriers to offer an alternative flight on an aircraft that can carry

¹ <https://www.otc-cta.gc.ca/eng/removing-communication-barriers#toc-tm-5>

a person's mobility aid that is too large to be carried on the originally intended flight or to advise of other transportation arrangements for the aid.

- Providing an orientation of the aircraft for persons who are blind or partially sighted.
- Ensuring that small aids and assistive devices remain with the passenger if their use is needed during a flight.

However, foreign carriers do not participate in the CTA AAC and have not been given the AAC recommendations to provide comments. We are unable to provide comments on the AAC recommendations on the five topic areas above and ask that CTA not consider applying regulatory amendments to foreign carriers until we are given the recommendations and provided opportunity to comment.

CTA Guidelines Conflict with U.S. DOT Regulations and Should Remain Guidance

CTA code of practice documents are currently guidelines that CTA expects carriers to meet or exceed. Imposing guidelines as regulatory requirements will remove the flexibility that comes with performance standards, which allows carriers to use innovation and marketplace demands to best meet regulator goals and passenger preferences. Moving to prescriptive regulations will stifle innovation and prevent carriers from keeping up with passenger demands. Most of CTA accommodation guidelines are contained in the "Air Code."² Several Air Code sections conflict with U.S. DOT Part 382 requirements, we request that CTA not adopt the guidelines as regulations or modify several sections to incorporate performance standards and allow for carrier innovation.

The CTA Air Code includes very specific font and font size requirements in Sections 1.0.5 and 1.0.6 for signs to aid passengers, the Air Code states the sign requirements are not applicable to safety or crew signs. In order to start the regulatory evaluation process, foreign carriers will need clarification on exactly what signs in the aircraft cabin are considered "safety" or "crew" signs and which signs are defined as passenger aid signs in CTA regulations. Moving these signage guidelines into mandatory requirements will require airlines to conduct extensive research and analysis to see if aircraft serving Canada meet these signage requirements. We cannot know the impact of this regulation without further CTA clarification and we ask that these signage requirements remain guidance or not apply to foreign carriers.

The Air Code also states each class of service in the passenger cabin of an aircraft should have a number of passenger seats, other than exit row seats, which provide enough floor space for a service animal to lie down comfortably. See Air Code Section 1.5. The Air Code also advises that the service animal handler should also have sufficient leg and foot room for safety and comfort. CTA provides further guidance with specific space dimensions for small, medium, large, and extra-large dogs in its *Implementation Guide Regarding Space for Service Dogs Onboard Large Aircraft*. A regulation mandating minimum space requirements for service animals conflicts with current U.S. DOT

² <https://www.otc-cta.gc.ca/eng/code-practice-aircraft-accessibility#toc-tm-5>

requirements and U.S. DOT Reg Neg discussions. CTA should not adopt these service animal space requirements as a mandate; this material should remain guidance.

The Air Code also states that carriers should provide tactile markers to indicate seat row numbers on overhead bins or on passenger aisle seats that are within reach of passengers. See Air Code Section 1.6. Additional guidance on the size and raised height of braille tactile markers is provided in the CTA *Implementation Guide Regarding Tactile Row Markers Onboard Large Aircraft*. In addition, CTA guidance states any braille used should meet Canadian Braille Authority requirements. If the Air Code were to become a mandatory regulation, it (and the implementation guide) would conflict with U.S. DOT Part 382 requirements that are performance based and do not require braille. This CTA material should remain guidance.

The Air Code, applying to aircraft with 30 or more passenger seats, states that when a passenger makes a request in advance for an on-board wheelchair on a flight that does not have an accessible washroom, and where the design of the aircraft permits, the air carrier should ensure that there is space allocated within the passenger cabin to carry an on-board wheelchair. See Air Code Section 1.10. This standard conflicts with U.S. DOT Part 382, which requires a carrier to provide an on-board wheelchair when the passenger requests on aircraft without an accessible washroom but with 60 or more seats. See 382.65(b). It will be extremely burdensome to switch from a 60-seat standard to a 30-seat on-board wheelchair standard applicable only to Canadian service and we ask that CTA permit U.S. carriers to continue to comply with the U.S. DOT 60-seat standard.

The Air Code also states that carriers should provide at least two large print and Braille supplemental passenger briefing cards on aircraft with 14 point or larger sans serif type, use dark characters on a light background, and in Grade Two Braille that meets the standards of Braille Literacy Canada in English. CTA advises that briefing cards should advise persons with disabilities that they may request a personal individual briefing, should they require one. See Air Code Section 3.1. If the Air Code were to become a mandatory regulation requiring two briefing cards per aircraft that meet specific standards, the Air Code will conflict with U.S. DOT Part 382 because U.S. DOT Part 382 allows but does not require supplemental briefing cards. CTA should provide flexibility like U.S. DOT and allow but not require briefing cards.

CTA Should Not Impose the “One Person, One Fare” Policy on Foreign Carriers

CTA is also considering how it should best address the “one person, one fare” policy, which by CTA decision in 2008, requires Air Canada, Air Jazz, and Westjet to allow a personal care attendant traveling with a person with a disability to fly for free, if the airline requires the passenger to travel with the attendant. The 2008 CTA decision also requires that the same carriers provide an extra seat for free to those passengers who are disabled as a result of obesity and require an additional seat. The Decision does not apply to persons who are obese but not disabled as a result of their obesity.

CTA should not impose its “one person, one fare” policy on U.S. carriers because the CTA’s 2008 decision and regulatory proposal conflicts with U.S. DOT Part 382’s rules. The general rule under DOT Part 382 regulations is that each passenger must pay for their own seat. Section 382.31(b) states: “You may charge a passenger for the use of more than one seat if the passenger's size or condition (e.g., use of a

stretcher) causes him or her to occupy the space of more than one seat. This is not considered a special charge under this section.” There is one exception to this general rule, which is when a carrier determines that a passenger must travel with a safety assistant. See 382.29(c)(1). However, this “safety assistant” exception is limited only to those situations where the carrier determines the passenger requires an assistant for safety reasons, such as the passenger is in a stretcher or incubator, the passenger is unable to comprehend or respond appropriately to carrier safety instructions or the person is unable to physically assist in his or her own evacuation of the aircraft. The CTA decision uses a much broader term “personal care attendant,” which includes such tasks as feeding, taking medication or assistance with using the toilet in-flight, greatly exceeds the limited DOT “safety assistant” exception. Therefore, CTA should not apply its “one person, one fare” policy to foreign carriers because of two conflicts with U.S. DOT (1) CTA requires carriers to allow personal care attendants to fly for free, when required by an airline, whereas DOT only requires carriers to allow safety assistants to fly for free when required by the airline and (2) CTA permits passengers who are disabled as a result of obesity to obtain a second seat if needed for free, whereas U.S. DOT regulations allow carriers to charge a passenger for the use of more than one seat.

Accommodating Passengers with Allergies

CTA states it is looking into imposing regulatory requirements on transportation service providers to accommodate passengers with allergies. In doing so, CTA will consider the type of exposure – i.e.: ingestional, inhalational, and topical – and explore the feasibility of accommodation measures to address various allergens. CTA will also consider the type of accommodation that might be appropriate by mode of transportation.

As CTA acknowledges, the most challenging mode of transportation to accommodate passengers with allergies is air transportation. U.S. DOT has determined that the best method of accommodating passengers with allergies is to ensure that passengers have information they need to plan travel.³ U.S. DOT has struck the right balance between accommodating passengers with an allergy and the significant operational (and in some cases accommodation impact) to restricting or banning certain substances, food items, traces of food items, or animals from flights. CTA should not impose significantly burdensome allergy regulations on foreign carriers that conflict with U.S. DOT’s policies.

CTA Should Not Require Foreign Carriers to Publish Duplicative Complaint Statistics

CTA proposes that carriers publish multi-year accessibility plans and report on accessibility-related complaints that they receive. Accessibility plans provide an opportunity for service providers to demonstrate how they meet accessibility standards, their plans for removing existing obstacles, and strategies for preventing new ones. Complaint statistics can provide insight into obstacles that may exist and thereby inform the Agency's compliance monitoring activities. U.S. carriers already report complaint statistics to U.S. DOT, which then publishes the statistics in the monthly DOT Consumer

³ See, for example, U.S. DOT’s webpage posting carrier policies on nuts at <https://www.transportation.gov/airconsumer/nuts-airlines-policies>

Report. U.S. carriers that serve Canada have passengers with disability advisory boards that serve as the best collaborative effort for carriers to explain accessibility plans and for community leaders to provide feedback on areas that need improvement. CTA should not impose accessibility plan or complaint report requirements on U.S. carriers because advisory boards provide better advice on accessibility and U.S. DOT already publishes U.S. carrier complaint statistics.

Finally, if CTA adopts regulations that apply to foreign carriers we ask that CTA include a one-year compliance period. Foreign carriers will need time after a final regulation is published to ask clarifying questions, receive answers and change policies and procedures to comply with both U.S. DOT and CTA requirements.

We appreciate the opportunity to provide comments to CTA and we can provide additional information if necessary.

Best regards,

A handwritten signature in black ink, appearing to read "Douglas K. Mullen". The signature is fluid and cursive, with a large initial "D" and "M".

Douglas K. Mullen
Assistant General Counsel
Airlines for America