



February 28, 2020

**VIA FEDEX AND E-MAIL**

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**Subject: Phase II of the *Accessible Transportation for Persons with Disabilities Regulations (ATPDR)*.**

Dear Ms. Jones:

National Railroad Passenger Corporation (Amtrak) respectfully submits these comments and data in response to your communications on December 3, 2019 and January 14, 2020, inviting Amtrak to provide feedback and information in response to the Canadian Transportation Agency's (CTA) Consultation Paper on Phase II of its *Accessible Transportation for Persons with Disabilities Regulations (ATPDR)*.

CTA explained its goal in promulgating the ATPDR is the protection of the fundamental right of persons with disabilities to accessible transportation services. Amtrak is committed to providing accessible travel services to persons with disabilities and has devoted substantial resources to ensuring its facilities and trains are accessible. Amtrak has also developed robust policies and delivers regular training to its staff to ensure customers with disabilities are properly accommodated and receive excellent customer service.

Phase II of the ATPDR includes three (3) objectives that relate to Amtrak, which the CTA has classified as a Large Transportation Provider:

1. Determine whether to apply the One-Person, One Fare (1P1F) requirement to international travel;
2. Determine whether to require the transportation of emotional support animals and service animals other than dogs; and
3. Establish specific regulations regarding timing and format for the new planning and reporting obligations for transportation providers under the *Accessible Canada Act (ACA)* (Accessibility Plans, Feedback Processes, and Progress Reports).

As Amtrak previously stated in its comments on the ATPDR, and as further explained below, it is unnecessary to subject Amtrak to these regulations, as it already complies with extensive United States (U.S.) accessibility laws and regulations. To the extent the CTA proposes rules that differ from U.S. law, complying with both sets of rules would be operationally burdensome, confusing for



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passengers and Amtrak personnel, and in some cases, unworkable unless Amtrak changes its policies and procedures for its operations in the U.S. as well (which is, of course, outside the jurisdiction of the CTA). Moreover, these different rules would provide only marginal benefits (considering that Amtrak already provides similar accommodations) for very few customers, representing a tiny fraction of Amtrak's customers and Canadian rail passengers.

### Amtrak's Operations in Canada

Amtrak's operations in Canada represent a very small percentage of Amtrak's total passenger miles, revenue, and passenger trips. By way of example, between October 1, 2019 and December 31, 2019, there were 62,982 customer trips that included some travel in Canada. This represented 0.6 percent of the total 10.9 million trips taken during the same three (3) month period. There are three (3) Amtrak routes that include travel segments into Canada. They are the Adirondack, the Cascades and the Maple Leaf.

- The Adirondack originates in New York City and serves 16 other stations in the State of New York before entering Canada. The Adirondack serves only two stations in Canada: St. Lambert and Montreal, Quebec;
- The Cascades serves 19 stations in Oregon and Washington, and one stop in Canada: Vancouver, British Columbia; and
- The Maple Leaf originates in New York City and serves 14 other stations in the State of New York before stopping in Niagara, Ontario. Via Rail Canada operates the train between Niagara and Toronto, Ontario.

Unlike other travel modes serving Canada, such as air, which typically have a single point of origin and a single point of destination, each Amtrak train route that serves Canada includes more than a dozen interim stations. This means that there are many different potential origin/destination combinations for each route. In fact, some passengers who travel on these routes travel entirely within the U.S. Fares for these routes will be different depending on the origin and destination stations and a variety of other factors. As described further below, this makes the CTA's proposed regulation of Amtrak's fare and service animal policies within Canada much more complex and impractical than in the context of other travel modes.

### One-Person, One-Fare (1P1F) Proposal

As noted above, and as the CTA is aware, Amtrak is required to comply with a comprehensive set of U.S. laws and regulations regarding accessible travel services, as the U.S. has had accessibility laws and regulations in place for over forty years. *See* the Rehabilitation Act of 1973 (Rehab Act) and the Americans with Disabilities Act of 1990 (ADA).

U.S. law does not require Amtrak to provide free travel or accommodations to a person accompanying a customer with a disability, even if that person is needed in order to provide support services. Similarly, U.S. law does not require Amtrak to provide a second seat free of charge to a customer with a disability under other circumstances.



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Regardless, Amtrak offers several discounts and accommodations at no charge for individuals with disabilities. Current discounts include up to a fifty (50) percent reduced fare for customers with disabilities and a fifty (50) percent reduced fare for children with disabilities in addition to Amtrak's standard ten (10) percent children's fare discount. Amtrak also has a standard ten (10) percent companion discount for a person traveling with a customer with a disability. There is no requirement that the companion be needed to provide support services, nor is any special documentation required for the companion discount.

When a person with a disability requires a second seat because of their disability, for example, because they have a large service animal or need additional space for medical equipment, Amtrak accommodates these requests at no charge.

Based on Amtrak's current discount and accommodation policies, we respectfully suggest that the CTA's proposed 1PIF rule is not needed in order to provide fair and equitable train fares to its customers with disabilities. Moreover, because Amtrak is not permitted, under U.S. law, to seek details about its customer's disabilities, nor does it currently have procedures in place for requesting and evaluating such documentation, it cannot verify whether a customer with a disability is traveling with a person who is needed to provide personal care services, or simply an ordinary companion. Therefore, in order to comply with the 1PIF rule, Amtrak would have to provide a second free seat to anyone traveling with a person with a disability, which is beyond the intended scope of the rule. Finally, due to the complexity of Amtrak's fare structures and reservations systems, those systems would require substantial technology development in order to implement this rule, since it would apply only to those portions of travel in Canada, and not to the segments that are within the U.S. The alternative, providing free travel to the companion for the entire trip, would mean the proposed regulation would have effect not only in Canada, but also for rail segments within the U.S., which is beyond the jurisdiction of the CTA.<sup>1</sup>

#### Transportation of Service Animals and Pets

The CTA has solicited input as to whether transportation providers should be required to accept emotional support animals (ESAs) in addition to service animals. The CTA cites the sentiment among some travelers that current restrictions for the transportation of ESAs create an undue barrier to their mobility. Travelers who support the carriage of ESAs have advocated the elimination of any distinction between service animals and ESAs.

The CTA identified several industry concerns related to the carriage of ESAs. One overarching concern is that some ESAs pose a threat to the health and safety of other travelers and crew members. They may also disrupt the safe and efficient operation of services. ESAs may act aggressively toward passengers, staff, and trained service animals. ESAs may have hygiene issues

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<sup>1</sup> Somewhat analogous here is Article 6 of the 1995 bilateral "Air Transport Agreement Between the Government of Canada and the Government of the United States of America," which states neither government shall take unilateral action to prevent an airline from establishing fares and associated fees for international air transportation between the U.S. and Canada. The same principle should apply to Amtrak, which would otherwise be subject to inconsistent regulations that would result in different pricing modules for international segments of passenger rail travel.



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and may not demonstrate the ability to relieve themselves in a sanitary manner. Transportation providers have also expressed concerns over potential fraud, as some travelers try to misrepresent pets as service animals or ESAs.

In recent years, many U.S. states have responded to concerns over the misrepresentation of service animals by enacting laws that prohibit the willful misrepresentation of a service animal or service animal in training, with most violations punishable by fine or misdemeanor. In California for instance, it is a misdemeanor to falsify and knowingly claim to be the owner or trainer of a service animal. The offense is punishable up to six months of incarceration and/or a fine of up to \$1,000.00. (Cal. Penal Code 365.7)

The U.S. Department of Transportation (DOT) has recognized the challenges commercial airlines face with the transportation of ESAs. On January 22, 2020, DOT published a Notice of Proposed Rule Making (NPRM) for amendments to the Department's Air Carrier Access Act (ACAA) that would allow commercial airlines to restrict the transportation of any animal other than a trained service animal, which would be limited to dogs. (Proposed DOT Regulations to Chapt. 14 CFR Part 382, Nondiscrimination based on Disability in Air Travel). The DOT also recognized that its current definition of a service animal, which includes "any guide dog, signal dog, or *other animal* individually trained to work or perform tasks for an individual with a disability..." is inconsistent with the Department of Justice (DOJ) definition that a service animal is limited to a trained dog. (28 CFR Part 36.104). The DOJ regulations apply to places of public accommodation that are not covered by the DOT regulations.

Amtrak policy does not restrict service animals to dogs (though dogs are by far the most common service animal we accommodate). We have found, however, that without a clear rule about which specific animals are permitted, it is difficult for crewmembers to make on-the-spot judgment calls about the credibility of a given claim that an animal is a trained service animal. This is especially difficult with animals that are not typically considered trainable (e.g., cats, rabbits and birds). Therefore, Amtrak would support a rule that limited the definition of service animals to dogs. With respect to CTA's inquiry about rules that would be "criteria-based," our position is that such rules would be difficult to implement consistently.

Because Amtrak does not recognize a special category of ESAs, any animal that is not trained to perform a task would fall under Amtrak's Pet Policy. Pets are permitted to travel on Amtrak for a small fee only if the requirements of Amtrak's Pet Policy are satisfied. Pets must remain entirely inside a closed, approved hard or soft sided, leak-proof carrier that is no larger than 19x14x10.5 inches. The pet must be at least eight (8) weeks old, be odorless, harmless, not disruptive, and require no attention during travel, and the passenger must ensure the pet is up to date on all vaccinations and accept liability for their pet by signing a Pet Release and Indemnification Agreement. Amtrak does not allow transportation of pets to Canada.

Amtrak does not support an expansion of Canadian rules to require Amtrak to carry ESAs. As described above, ESAs are not trained and are more likely to be disruptive and create safety risks for other passengers, crewmembers and service animals.



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Moreover, such a regulation would differ from applicable U.S. laws and Amtrak policy. Amtrak does not allow ESAs other than under the Pet Policy. Therefore, Amtrak would have to adopt separate policies and practices for the very limited service that Amtrak provides within Canada, and the policy would change at the border. Any passenger traveling past the first U.S. stop would be precluded from continuing with their ESA and be immediately subject to Amtrak's Pet Policy. This would be operationally burdensome, confusing for personnel and customers, and would not provide for meaningful travel.

#### Accessibility Plans, Feedback Processes, and Progress Reports

The ACA requires transportation providers to publish accessibility plans in consultation with persons with disabilities, as well as progress reports on those plans. Accessibility plans must address policies, practices, services, and the identification and removal of barriers to individuals with disabilities. The ACA also requires transportation providers to establish a process for receiving and responding to feedback on accessibility plans, accessibility plan implementation, and barriers encountered.

The DOT is designated under the ADA as generally responsible for compliance and regulatory activities relating to transportation in the U.S. 42 U.S.C. § 12133; 28 C.F.R. § 35.190(b)(8). DOT's sub-agency, the Federal Railroad Administration (FRA), oversees Amtrak and administers federal financial assistance to Amtrak. FRA is tasked with overseeing Amtrak's capital projects and reviewing Amtrak's compliance with the ADA. In addition, the ADA authorizes the Department of Justice (DOJ) to retain jurisdiction to investigate complaints, and DOJ, in fact, has exercised that authority. *See* 28 C.F.R. Part 35, Subpart F.

Amtrak has worked with the DOT, FRA, DOJ, and Amtrak Office of the Inspector General (OIG) to ensure continued progress and compliance with ADA requirements. Amtrak senior leaders regularly meet with FRA staff to provide progress reports on Amtrak's delivery of programs and services for customers with disabilities. Amtrak's progress reports include updates on station renovations, modifications to rolling stock, policy changes, and customer service enhancements. The reports Amtrak produces for its regulatory partners and in support of Amtrak's community outreach programs are available to the public pursuant to the U.S. Freedom of Information Act (FOIA), Title 5 U.S.C. § 552.

Amtrak also has a robust community outreach program with a variety of advocacy groups that represent persons with disabilities. Amtrak senior managers and executives meet with advocacy groups at least once a quarter to discuss accessibility plans, the prevention and remediation of any barriers, and any operational concerns or other feedback from the groups. Moreover, any customer can submit feedback or inquiries to Amtrak regarding accessibility via telephone, TTY, U.S. mail or web form.

Because Amtrak already engages in a number of planning, reporting and feedback activities that serve to apprise the public of substantially the same issues that would be covered by the ACA reporting rules, Amtrak posits that it is not necessary and would be unduly burdensome to require it to comply with any specific different rules about content and format.



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Cost-Benefit Analysis Questions

On January 14, 2020, the CTA requested Amtrak to respond to a list of cost-benefit analysis questions designed to assist the Agency with its required Regulatory Impact Analysis. Amtrak's responses are attached as an addendum to this letter.

Thank you for the opportunity to provide input on these matters. Should you have any questions regarding these comments, please contact me at 202-906-2171 or [rabink@amtrak.com](mailto:rabink@amtrak.com).

Sincerely,

A handwritten signature in black ink that reads "Keren Rabin/sm". The signature is written in a cursive, flowing style.

Keren Rabin  
Deputy General Counsel  
National Railroad Passenger Corporation

Attachment