
Barrier Free Canada

December 01, 2020

Attention: Ms. Marcia Jones

Dirigeante principale, Stratégies/Chief Strategy Officer

Office des transports du Canada/Canadian Transportation Agency

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Dear Ms. Jones:

Per your letter dated November 16, 2020, the Canadian Transportation Agency (Agency) is seeking input on requests by transportation service providers for further delay to the coming-into-force of certain provisions of the Accessible Transportation for Persons with Disabilities Regulations (ATPDR), due to the ongoing impacts of the COVID-19 pandemic.

We understand certain provisions are being phased in over the next two years, in order to provide transportation service providers with additional time to comply and that the Agency has also provided some targeted flexibility for transportation service providers in light

of the COVID-19 pandemic, however we believe it is essential this is balanced with the needs of persons with disabilities who have lived with these barriers for many years.

The following is feedback from Barrier Free Canada (BFC) regarding these requests.

Section 9 – website requirements.

9 A transportation service provider must ensure that every website that it owns, operates or controls and that is made available to the public — including any mobile site that contains other platforms, such as applications — meets the requirements for a Level AA conformance that are set out in the Web Content Accessibility Guidelines.

While we can understand the material impact COVID-19 has had on available resources for the transportation service providers, W3C AA standard has been in place for a number of years and we believe it is not an undue hardship to ensure this standard is in place for the service provider’s website on the published deadline and no later than January 1, 2021.

As a minimum, the essential elements of the website, and associated mobile applications, that allow a person with visual disability to independently search availability, select flights, request minimum reasonable accommodations for their specific needs, book and pay for their flights, check-in, select seating, and secure any other fundamental services that are available to all persons, must be fully accessible.

While we could entertain some delay on things like perhaps the PDF version of annual reports, and other non-essential content, all content on the website that describes the carrier's products and services must be fully accessible by the prescribed deadline.

Subsection 10(2) – public announcements for safety or security.

Public announcement — safety or security

(2) If a transportation service provider makes any public announcement relating to safety or security inside a terminal, they must make that announcement in an audio and visual format.

Again, we understand the resource constraints in place due to the negative impact of COVID-19, however transportation service providers have been aware of this requirement nearly a year before COVID-19 hit. We can also appreciate the added complexity of needing to work with terminal operators in some cases but again these requirements have been in place for some time and technologies have advanced to allow key messages from the carriers to be provided in both visual and audible formats and these technologies should be fully utilized to facilitate satisfying this requirement as well.

As a minimum by the published deadline, carriers must be able to provide the requested format upon request. It must be understood that the highest number of complaints from persons with disabilities comes from feeling uncared for, abandoned, or from a failure to meet expectations. Providing announcements broadly in both formats addresses many of these issues globally and it is in the carrier's best interest to achieve this outcome. If unable, they need

to provide a detailed plan as to when they can achieve compliance and provide a description of the measures to be put in place until compliance is achieved that meets the intent of these requirements.

Sections 15 to 23 – training requirements.

Application

15 A transportation service provider must ensure that members of personnel receive the training that is required under sections 16 to 19.

BFC is of the position that many of the requirements captured in this section were already contained in the voluntary codes that carriers have been living with for many years and thus would be expected to be largely compliant already.

We can understand the impact of COVID-19 has placed constraints on the resources available to deliver training through traditional in-person formats, always the preferred approach particularly for sensitivity training and for programs related to persons with disabilities, however the ability to conduct training virtually has also never been made so readily available, also thanks to COVID-19.

We believe there are ways to address any deficiencies and overcome constraints imposed by COVID-19 through the use of on-line training and specific modules designed to address any enhancements required to comply with the requirements identified in this section with minimal cost impact to the carrier.

Any deferral of compliance would be subject to providing a detailed description of the alternate formats to be used to meet the intent of the requirements to which the carrier would be equally held accountable for and subject to enforcement for any incidents of non-compliance with their stated program.

Section 58 – written confirmation of services.

Written confirmation of services

58 If a carrier is required by this Part to provide a service to a person with a disability, the carrier must, without delay, indicate in the record of a person's travel reservation the services that the carrier will provide to the person and include a written confirmation of the services in the itinerary that is issued to the person and, if a service is confirmed only after the itinerary is issued, the carrier must, without delay, provide a written confirmation of the service.

Like the training requirements, the CTA has long required carriers to provide written confirmation of requested services to persons with disabilities. This is not a new requirement and carriers have made significant progress in achieving this outcome recognizing this confirmation serves both parties in terms of providing the needed clarity to manage expectations and reduce customer service failures.

Within carrier proprietary systems, this technology often already exists for confirmations of bookings and the dispatching of itineraries as well as notifications for irregular operations in near real time. This suggests the ability to provide written notification is

feasible today and any deferral for these systems would be largely unjustified.

It is understood the additional complexities for non-proprietary systems, such as travel agents, global distribution systems, and partner carriers for example, would require further development and deferrals could be considered for these on a case by case basis providing a detailed plan and timeline to compliance is provided.

Furthermore, in all cases, a comprehensive program must be described demonstrating a best effort to provide written confirmations upon request until such time as compliance is achieved.

Section 59 – retention of electronic copies.

Retention of electronic copies

59 If, on the request of a carrier, a person with a disability provides the carrier with information, including personal health information, in relation to a request for a service referred to in this Part, the carrier must offer to retain an electronic copy of that information for a period of at least three years for the purpose of permitting the carrier to use that information if the person makes another request for a service.

BFC recognizes retaining personal and medical records for an extended period, potentially requiring additional system development and measures to be put in place to ensure the integrity and privacy of such data, could be a justification for a deferral.

That said, while deferrals could be considered on a case by case basis, where a detailed action plane and timeline to compliance is provided, the carrier must still demonstrate a willingness and ability to comply with the intent of the requirement which is to minimize the administrative burden on persons with disabilities whose conditions are unlikely to change for the foreseeable future.

In these cases, where it can be reasonably demonstrated, carriers should retain approvals for accommodations for the required 3 year period where no further applications or document submission is required for the 3 year period unless the person's condition materially changes in which case the onus is on the person with a disability to disclose such change to ensure the accommodations provided remain the most appropriate for the persons' specific needs.

Section 216 – curbside assistance.

Assistance for persons with disabilities

216 (1) A terminal operator must, on the request of a person with a disability, provide the following services to the person without delay:

- (a) assisting the person with their baggage or assisting with a wheelchair, including by providing a wheelchair if needed by the person;
- (b) assisting the person to proceed between the general public area and the curbside zone; and

(c) assisting the person to proceed between the curbside zone and the check-in area or, if there is no check-in area, between the curbside zone and a representative of a carrier.

BFC recognizes this is likely a terminal operator's request for deferral given this is a net new requirement for them.

That said, any deferral would require the terminal operator to demonstrate the ability to provide the service on request while they work towards a formal plan and firm timeline to compliance.

Air carriers have provided these services from check-in to baggage carousel on arrival and would be invaluable resources to draw upon to facilitate terminal operators in establishing policies and procedures to provide curbside assistance to persons with disabilities.

Air carriers already have well established protocols in place for the transfer of persons with disabilities between various points within the terminal including transitions through customs clearing areas, and again this knowledge and experience should greatly facilitate the transitions between carriers and terminal operators for the provision of these services.

Subsections 227(1), (2) and (3) – provisions related to designated relief areas on the non-secure side of terminals.

Designated relief area

227 (1) A designated area for service dogs to relieve themselves must

(a) be identified by tactile and Braille signage; and

(b) be cleaned and maintained on a regular basis.

Signage

(2) The terminal must have signage that indicates the direction to follow in order to access a designated relief area for service dogs.

Designated relief area outside terminal

(3) A terminal must have a designated area for service dogs to relieve themselves that is located outside of the terminal and that a person with a disability may reach from the terminal by means of a path of travel that is accessible to persons with disabilities.

Like the website requirements, these obligations have been in place for some time and it is not unreasonable to expect these areas to have been in development for some time already.

Respecting the same resource constraints to be possible due to COVID-19 for terminal operators as well it is understandable on a case by case basis some terminal operators may require additional time to ensure full compliance and like carriers the expectation is these operators provide detailed plans and timelines to full compliance and provide a clear description of the interim measures in place until that time to meet the intent of the regulations.

While the preparation of new signage is expected as part of this compliance, the means and procedures to produce and disseminate the required signage should already be a well established process

and further deferrals on the provision of signage once the required areas are established should not be necessary.

With respect to the requests for delays to the provisions with the targeted phase-in deadline of 2021 or 2022:

Section 10 – public announcements.

Public announcements inside terminals

10 (1) A carrier must ensure that any public announcement relating to a departure or a gate or track assignment that is made for passengers waiting at a boarding area inside a terminal is made in an audio format and in a visual format.

We believe this has already been addressed above in Subsection 10(2) – public announcements for safety or security. Once these protocols are established it would be reasonable to expect these same procedures and technologies would be applied for all public announcements at the same time.

If system development beyond what is required for 10(2) is required, a detailed plan and timeline to compliance would be required along with a description for interim measures to be implemented to meet the intent of the regulations.

Section 11 – automated self-service kiosks

Automated self-service kiosks

11 (1) If a transportation service provider owns, operates or controls the hardware components of an automated self-service kiosk that is available for public use in a terminal, or owns, operates

or controls the software components of such a kiosk, the transportation service provider must ensure that the hardware components or the software components, as the case may be, meet the requirements set out in clauses 1.4 and 3 to 7 and Annexes B and C, excluding the notes accompanying those clauses, of the National Standard of Canada CAN/CSA-B651.2-07 (R2017), entitled Accessible design for self-service interactive devices, published in January 2007 by the Canadian Standards Association, as amended from time to time.

Requirements

(2) If a transportation service provider owns, operates or controls the hardware components of an automated self-service kiosk referred to in subsection (1), the transportation service provider must ensure that the kiosk is visually and tactilely discernible by an International Symbol of Access that is affixed to the front of it.

Temporary application

12 For a period of two years beginning on the day on which this section comes into force, if a transportation service provider owns, operates or controls the hardware components of an automated self-service kiosk that is available for public use in a terminal and meets the requirements of section 11, that kiosk must be marked with signage that specifies that persons with disabilities have priority access.

Assistance with use of self-service kiosks

13 A transportation service provider must, on the request of a person with a disability, assist the person, without delay, to use any automated self-service kiosk referred to in section 11.

Accessible self-service kiosks

14 (1) A transportation service provider must ensure that any automated self-service kiosk referred to in section 11 is in good working order and is properly maintained.

Repairs

(2) If the automated self-service kiosk is not in good working order, the transportation service provider must ensure that it is repaired as soon as possible and, until it is repaired, the transportation service provider must provide the following services to a person with a disability:

- (a) directing the person to the nearest working automated self-service kiosk that offers the same service as that provided by the kiosk that is not in good working order and, on the request of the person, assisting the person in using that kiosk; or
- (b) permitting the person to advance to the front of the line at a counter where they will be provided the same service as that provided by the automated self-service kiosk that is not in good working order.

Arguably COVID-19 has made the use and need for kiosks and touchless technologies even more important and essential both for

the service providers and for the traveling public, including persons with disabilities.

Prior to the impact of COVID-19, advances in accessible kiosk technologies and their deployment were well under way and were very much part of universal design to maximize inclusivity and it could be argued the rate of enhancements to applicable technologies has only been accelerated with the impact of COVID-19.

BFC argues there is no need for further delays from the prescribed timelines given the service providers themselves may seek on-time or even earlier compliance in their best interests to serve all their passengers and users.

Section 223 – requirements for lift, ramp or stairs.

Lift, ramp or stairs — requirements

223 A lift, ramp or stairs that are used at a terminal for the boarding or disembarkation of persons with disabilities must meet the requirements for a lift, ramp or stairs, as the case may be, that are set out in section 69, section 70 or subsection 71(1).

Given the current trend of ‘build back better’ BFC sees the impact of COVID 19 as an opportunity to introduce measures to achieve this requirement during this ‘reset’ of industry allowing for essentially ‘greenfield’ options to meet these requirements given the volume of redundant assets and facilities and given this short term reduction in passenger volume.

Recognizing the commensurate drop in revenues for many service providers, perhaps there is an opportunity to repurpose assets and facilities to achieve compliance by the required deadline using innovative technologies and industry best practices that were otherwise deemed impractical due to the significant investment in existing infrastructure.

BFC is more than willing to work with service providers on assessing alternate solutions to achieving compliance in efficient and cost-effective solutions.

Section 225 – requirements for wheelchair.

Wheelchairs

225 (1) A terminal must have wheelchairs available for use by passengers in a number that is sufficient to accommodate the number of persons with disabilities who are likely to use them at any one time.

Like section 223 above, this is an opportunity to re-allocate assets and look to innovative technologies to achieve compliance during this period of unprecedented low passenger volumes.

BFC encourages terminal operators to reach out to air carriers who may have well established policies, procedures and assets available for the provisioning of these services to work collaboratively to ensure compliance is achieved within the prescribed timeframe.

Subsection 227(4) – designated relief areas on the secure side of terminals.

Designated relief area

Direct access from restricted area

(4) A terminal must have a designated area for service dogs to relieve themselves that a person with a disability may reach, from the area of the terminal into which access is strictly controlled, by means of a path of travel that is accessible to persons with disabilities and that does not require the person to exit and re-enter that area.

Relief areas, both in the general public areas and in the restricted areas are not new requirements and it has been the expectation and industry best practice to provide these areas for several years.

Like Section 223 above, this impact of COVID-19 also provides an opportunity to reassess areas that could be re-purposed to achieve compliance within the prescribed timeframes.

The material reduction in passenger traffic allows for a reassessment of how existing infrastructure is being utilized and there may be opportunities to take a new look at ways and means to meet this obligation within the existing facilities.

BFC is more than happy to work with terminal operators to discuss new approaches to achieving compliance in this area.

In conclusion, BFC thanks the Agency for this opportunity to provide input on this matter.

BFC acknowledges that accessible transportation is a human right.

BFC fully supports the requirement that transportation service providers have a positive obligation to ensure that persons with disabilities have equal access to their services.

That obligation is only eased in circumstances where the steps required to achieve equal access would cause undue hardship to those service providers.

It is BFC's position that the measures required for compliance do not in and of themselves present an undue hardship and in all cases any deferrals granted are conditional upon submission of a detailed action plan and timeline to compliance and a comprehensive description of the measures to be implemented immediately to ensure compliance with the intent of the requirements until the permanent, more sustainable solution is implemented.

Submission to be sent to OTC.CETA-CEAT.CTA@otc-cta.gc.ca