



Canadian
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Agency

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Discussion paper: Accessible Transportation Guidelines for Medium and Small Transportation Service Providers

Canadian Transportation Agency

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1. Introduction

The Canadian Transportation Agency (CTA) is developing new accessible transportation guidelines for [medium and small](#) transportation service providers (TSPs). These guidelines will set out what is expected of TSPs in meeting their human rights obligations to travellers with disabilities under Part V of the [Canada Transportation Act](#) (the Act).

We would like to hear from persons with disabilities, TSPs and members of the public and other interested stakeholders on what should be included in these guidelines. COVID-19 has severe impacts on both the transportation sector and persons with disabilities. Now is a critical time to make sure accessibility is considered at all steps of travel and factored into current and future operations.

The CTA's objective is to have guidelines in place in 2021. We will use the guidelines as a basis for developing binding regulations for medium and small TSPs. The goal is to have regulations in place in 2022.

2. Background

The CTA is an independent, quasi-judicial tribunal and regulator. We have the mandate to protect the fundamental human right of persons with disabilities to accessible transportation services. Our vision is for Canada's national transportation system to be the most accessible in the world.

Under Part V of the Act, all TSPs in the federal transportation network are required to ensure, up to the point of undue hardship, that barriers to persons with disabilities are removed. These persons must have equal access to the federal transportation network. Upon complaint, the CTA can order a TSP – whether large, medium or small – to take corrective action and pay compensation

to a traveller with a disability. The CTA has the authority to order different types of corrective action. For example, the CTA could order:

- An airline to make adjustments to boarding or seating policies;
- A terminal to provide information in an accessible format such as large print; or
- A passenger railway to make alterations to equipment.

The CTA recently developed the [*Accessible Transportation for Persons with Disabilities Regulations*](#) (ATPDR). These new regulations set out comprehensive standards to help large TSPs meet their human rights obligations under Part V of the Act. Most provisions of these regulations came into force on June 25, 2020.

With some exceptions, the ATPDR cover large airlines, passenger railway companies, marine carriers (ferries) and bus operators in the federal transportation network, as well as the terminals in Canada that serve them (see [Annex A](#)). Some provisions of the ATPDR also apply to the Canada Border Services Agency (CBSA) and the Canadian Air Transport Security Authority (CATSA). Together, these regulated entities are referred to as "large TSPs."

The ATPDR cover all steps of the travel experience, establishing minimum requirements for large TSPs on:

- Communications (e.g., booking and reservation),
- Services (e.g., baggage assistance),
- Accessible equipment,
- Personnel training, and,

- Security and border screening.

These regulations are up-to-date and enforceable through Administrative Monetary Penalties (AMPs) of up to \$250,000 per violation.

The ATPDR represent an important step towards universal accessibility. But there is more work to be done. In particular, these regulations do not cover small TSPs. And some TSPs – referred to as "medium TSPs" in this discussion paper – will likely fall out of the scope of the ATPDR. This is due to a significant reduction in the number of customers they serve as a result of COVID-19.

Without clear and comprehensive standards, it is not always clear to industry or travellers what to expect. This uncertainty creates frustration for travellers with disabilities. Barriers to travel can result, at times, in experiences of humiliation, pain and suffering and also raise the risk of complaints and disputes for TSPs. Finally, the lack of standards causes an uneven playing field between TSPs that are proactive and making investments to deliver the most accessible transportation possible – versus those that are not.

Some existing regulations and voluntary codes of practice apply to small TSPs. And some of these will also apply to some medium TSPs that will fall outside the scope of the ATPDR. Part VII of the [Air Transportation Regulations](#) applies to some airlines. And the [Personnel Training for the Assistance of Persons with Disabilities Regulations](#) apply to many TSPs. They are also encouraged to follow the CTA's [voluntary codes of practice and guidelines](#).

But these regulations and codes are not as up-to-date and comprehensive as the ATPDR. For example, they do not cover emerging issues such as severe allergies. The codes of practice were developed many years ago. They have become outdated in some respects, reflecting technologies or practices no longer in use.

We held a [public consultations](#) from December 2019 to February 2020 on extending the ATPDR to apply to small TSPs. At that time, the issue of TSPs falling out of scope of the ATPDR, due to the impacts of a pandemic, was not contemplated.

The consultation results show that more discussions and analyses need to occur before finalizing comprehensive and binding standards for small TSPs. But that doesn't mean we should refrain from taking concrete steps towards greater accessibility in the meantime. And now is a critical time to consider accessibility across the transportation network.

The consequences of the COVID-19 pandemic have been serious for all Canadians. The transportation industry has been especially hard hit by social distancing requirements and travel restrictions. Despite the difficulties the transportation sector faces, it is as important as ever to integrate accessibility in TSP policies, operations, equipment and infrastructure.

As industry gradually recovers from the pandemic's effects, the rethinking of how transportation services are delivered is an opportunity to implement universal design principles and give a larger percentage of the population the ability to travel.

Making sure travel is accessible is both critical to respect the fundamental rights of persons with disabilities and good business sense.

3. Medium and Small TSPs

Medium and small TSPs are a diverse group that have a broad variety of characteristics and operating environments (see [Annex B](#)). They include, for example:

- Northern airports, along with airports in sizeable cities across Canada;
- Northern, regional and remote airlines and, depending on the impacts of COVID-19 on their passenger volumes, airlines that cross international borders;
- Bus operators that cross a provincial border;
- Small ferry operators; and
- Tourist passenger railways of differing sizes.

Medium Transportation Service Providers

For the purposes of this discussion paper, "Medium" TSPs are those that are currently subject to the ATPDR in 2020 but will soon fall out of scope because of dropping passenger volumes related to the COVID-19 pandemic. These TSPs will most likely include airports and may include airlines facing severe operational and financial disruptions due to the pandemic that are struggling to remain viable.

Small Transportation Service Providers

"Small" TSPs are those that were never covered by the ATPDR. Like their larger counterparts, some of these TSPs may be dealing with financial and operational challenges flowing from COVID-19. In addition, they may face particular infrastructure constraints and other operating realities.

For example:

- Some operate small airplanes, buses, trains and ferries. The cargo holds, doors and washrooms may in certain instances be too small for some wheelchairs and other mobility aids. In some cases there may be no

washroom at all. The aisles may be too narrow for onboard wheelchairs. The weight capacities may be insufficient for the transportation of larger mobility aids. There might be insufficient space for larger service dogs at the feet of their owners.

- Their equipment may be relatively old, manufactured at a time when there were fewer – or different – technical standards for accessibility.
- They have fewer or no staff on the ground or in transit. For example, the pilot of an aircraft in Canada's North may not have flight attendants to offer in-flight services and few office staff to review complex requests.
- In the North, they face the economic and logistical challenges of serving small numbers of people across a vast territory, serious infrastructure constraints, and harsh weather conditions.
- In the air sector, runways in northern and remote areas may be short and unpaved, limiting the size and weight of planes that can land. There may also be unreliable internet access, limiting the information that airlines and airports can give to travellers.

Many provisions of the ATPDR – such as assistance with check in, boarding and baggage retrieval – may be straightforward for small TSPs to implement. Other provisions may not be relevant. For example, self-service kiosks may not exist in some airports in remote locations. So the need to upgrade self-service kiosks would not be applicable in these settings.

In light of unique operating realities, some provisions may require adjustments or simply may not be feasible. For example, in some circumstances the ATPDR require airlines to offer alternative flights if they cannot transport a mobility aid. Small airlines flying out of a remote area often have a limited fleet and may not be able to offer such alternatives.

Many of Canada's small TSPs have developed innovative practices to deliver accessible transportation. These include offering services such as curbside assistance, accessible safety briefings, and extra seating for travellers with disabilities. Some also provide critical transportation services to Canadians in remote areas who need to travel to larger centres for health care, many of whom are travellers with disabilities.

As part of our consultation process, the CTA wants to hear not only about challenges, but also what is working well. This will help shape the development of feasible guidelines in accessible travel.

4. What We've Heard So Far

During our consultation from December 2019 to February 2020, the CTA received valuable input from the community of persons with disabilities, TSPs, the public, and other interested stakeholders. On November 26, 2020, the CTA released its [What We Heard Report](#), summarizing the input received.

In our [consultation document](#), we asked three questions regarding the extent to which the ATPDR could be applied to small TSPs. The following is a summary of the responses that we received.

Potential Modifications to ATPDR Requirements

The first of these questions asked: In extending the ATPDR to small TSPs, what modifications to regulatory requirements, if any, are needed?

Community of persons with disabilities

- Noted that TSPs' operational realities should not be used to justify blanket regulatory exemptions to accessibility requirements; and

- Recommended that a consultative committee of the CTA be formed to consider exemptions from these requirements, using criteria for reasonable accommodation.

Industry

- Suggested that regulations should not require them to retrofit, particularly where the size of equipment is an issue;
- Noted limitations due to weight, balance, gauge, constraints on cargo space, doors and equipment for small carriers, emphasizing the importance of limited resources and infrastructure; and
- Recommended that small carriers be permitted to decline the acceptance or provision of service, as long as they make best efforts to assist travellers with disabilities in making alternative travel arrangements.

Members of the public

- Acknowledged that structural constraints may limit small TSPs from providing some accessibility services;
- Suggested that fleets and the experience at terminals should be readily accessible; and
- Noted that flights in the North should be accessible to everyone and avoid barriers that lead to discrimination against persons with disabilities.

Appropriate Time Frame

The second question in the consultation document asked: What would be the appropriate time frame for small TSPs to come into compliance with

requirements (e.g., 1, 2 or 3 years)? Do any requirements in particular require more time?

Community of persons with disabilities

- Recommended 1-2 years at maximum;
- Suggested that much of the ATPDR implementation is attainable now for small carriers; and
- Raised concerns that delayed application of the ATPDR would perpetuate barriers for persons with disabilities.

Industry

- Generally advocated for 2-3 years at minimum; and
- Raised concerns about the cost of retrofits to fleets or facilities.

Members of the public

- Indicated that 1 year should be a maximum;
- Stated that a burden should not be imposed on some carriers without their having the means to properly adapt; and
- Suggested that federal funding should be used to bridge gaps.

Special Challenges

The third and final set of questions was: Are there any special accessibility-related challenges with small operators in any mode of travel in the federal network (airlines, tourist railway companies, bus operators, ferry operators) and the

terminals that serve them, particularly in remote or northern areas of Canada?
What solutions would help address these challenges?

Community of persons with disabilities

- Suggested using limited and specific exemptions to adjust for operational realities in the North and remote locations on a case-by-case basis only where necessary and without limiting the duty to accommodate;
- Recommended that such exemptions for small TSPs should be supported by evidence and that TSPs should be required to justify such barriers; and
- Stressed the importance of providing effective information so that travellers with disabilities will know which accommodations they can and cannot expect.

Industry

- Emphasized that specific challenges apply for small operators, particularly in the North and remote areas;
- Suggested using a flexible approach, given limitations to resources and infrastructure, as well as low demand for accessible services in some areas;
- Encouraged government investment in infrastructure – particularly in the North – that will benefit not only travellers facing accessibility challenges, but all travellers in these communities; and
- Asked that the CTA thoroughly examine the feasibility of accessibility-related provisions with airport operators and service providers.

Members of the public

- Raised concerns that people with functional limitations have been waiting a long time for accessibility, and that progress towards full equality should not be delayed.

5. Initial Proposals for Guidelines

The CTA has developed some initial proposals for guidelines on accessibility. These are based on:

- The ATPDR and long-established regulations and codes of practice,
- Feedback from our initial round of consultations, and
- Principles established through adjudicative decisions.

Initial Proposals for Medium Transportation Service Providers

As noted above, medium TSPs are those that are currently subject to the ATPDR, but that will soon fall out of scope due to dropping passenger volumes.

The CTA's expectation is that medium TSPs will continue to provide the full range of communications, training and services required by the ATPDR. These TSPs have been covered by the ATPDR and should have invested to come into compliance. They should be able to continue to offer the same level of accessibility even if they no longer meet the thresholds for regulatory coverage.

The CTA has already considered the impacts of COVID-19 for all TSPs now covered by the ATPDR. The CTA issued an order delaying the coming into force for a

handful of more technically or operationally complex provisions. The delay until January 1, 2021 should give TSPs more time for successful implementation.

Given the severity of the impact of the pandemic on the transportation industry, however, the CTA remains open to hearing concerns on specific issues raised by medium TSPs, in conjunction with input from persons with disabilities.

Initial Proposals for Small Transportation Service Providers

The CTA expects that the guidelines will encourage small TSPs to implement policies and practices comparable to those required by the ATPDR for large TSPs. It is possible that some adjustments may be needed to take account of the specific operational realities of carriers. For example, adjustments for TSPs that serve more regional and remote travellers, particularly in the North.

Based on input received so far, some examples that may be sensible to consider for small TSPs include modifications to the following sections of the ATPDR:

Communications (Sec. 5)

Rather than expecting that small TSPs develop an accessible website – when they may not even have a website at all – small TSPs could be requested to publish services they provide to persons with disabilities in another accessible format, such as large print.

Training (Sec. 23(2))

Rather than expecting each small TSP to directly consult with persons with disabilities in the development of their training programs, instead suggest that small carriers may use second-hand training programs – as a core or as a complement – to their own organizational training program on accessibility. For example, programs could be developed by regional transportation associations or

developed by organizations representing groups of people with disabilities, rather than requiring each small TSP to develop their own training program.

Services (Sec. 48(b))

Rather than expecting small carriers to make arrangements for alternative trips, recommend that small carriers provide alternative trips only if mobility aids can be transported and if alternative trips are available.

Services (Sec. 59)

Not expect small carriers to follow the ATPDR standard on retaining electronic copies of personal health information, as this may result in an extensive and costly IT solution to meet legislative privacy requirements.

Terminals (Sec. 227)

Only recommend that small terminals have at least one service dog relief area, rather than one both outside and inside the secure area of the terminal.

6. We Want to Hear from You

The CTA is seeking input on the following questions. Please feel free to respond to the question(s) that are relevant or most appropriate to you.

Questions for TSPs

1. For medium TSPs – which are currently expected to be in compliance with the ATPDR – please explain what specific provisions, if any, may be difficult to continue implementing if and when your customer volumes drop below those that trigger coverage by the ATPDR. Please provide clear substantiation for your position, taking into account the requirement under

Part V of the Act to remove barriers to travel by persons with disabilities and to accommodate their disability-related needs up to the point of undue hardship.

2. For small TSPs, please explain what technical and operational challenges might make it difficult to implement provisions of the ATPDR. What specific areas or provisions of the ATPDR are a challenge? What alternatives can be offered to be able to reach the same outcome in terms of the level of accessibility?

Questions for all interested stakeholders

1. What practices are working well to deliver accessibility with Canada's small TSPs? Are there any practices that might be considered as a model for other TSPs?
2. What further suggestions do you have for the accessible transportation guidelines applicable to medium and small TSPs?

Submission Process

Please note that all submissions must be sent to consultations@otc-cta.gc.ca by March 31 2021. They will be considered public documents and will be posted on the CTA's website in the official language in which they were received, along with the name of the individual or organization that submitted them.

If your submission contains information that you believe should be treated as confidential, two versions of your documents must be filed:

1. A public version of the document in which the confidential information is not included, and

2. A confidential version of the document in which:
 - each page is marked "contains confidential information" at the top; and
 - the confidential information that was not included in the public version is identified on each page by highlighting or other means.

All submissions are subject to the *Access to Information Act* and *Privacy Act*. Provisions of these Acts may or may not allow for the information claimed as confidential to be kept out of the public domain if a request for its release is filed.

In addition, the CTA will accept American Sign Language or Quebec Sign Language submissions by video. Please send an email to consultations@otc-cta.gc.ca with the subject line "Video". We will contact you to coordinate your submission, including any submissions that are confidential.

7. Next Steps

The CTA will prepare proposed guidelines based on the input received.

There will be an opportunity for all interested stakeholders and members of the public to review and comment on these draft guidelines before they are finalized in 2021.

While not legally binding in the same way as a regulation, the guidelines will send a signal of the minimum actions generally expected of TSPs.

After final guidelines have been published, the CTA will move forward with developing proposed regulations. There will, of course, be another opportunity to review and comment upon any proposed regulations. Our goal is to have final regulations in place in 2022.

8. Annex A – Large Transportation Service Providers

Canada's federal transportation network includes airlines; passenger railway companies and buses that cross a federal or provincial border; ferries that travel from province to province or from Canada to a foreign country; the terminals that serve them; the CBSA; and the CATSA.

Under Part V of the [Canada Transportation Act](#), TSPs in the federal transportation network are required to provide accessible services to persons with disabilities up to the point of undue hardship. Compliance with regulations is an important part of this obligation.

The ATPDR apply to the following, with some exceptions:

Air

large airlines - i.e. an airline that transported a worldwide total of at least 1 million passengers in each of the two preceding calendar years - operating within Canada, from Canada to a destination in a foreign country or from a destination in a foreign country to Canada;

Rail

VIA Rail and Amtrak (operations in Canada);

Ferries

ferries of at least 1,000 gross tonnage that operate across national, provincial or territorial borders **and** that offer on-board services for passengers;

Buses

Greyhound and Megabus operations in Canada; and

Terminals

airports located in a national, provincial, or territorial capital or that have served more than 200,000 passengers during each of the preceding two calendar years; Canadian transportation terminals used by the above rail, ferry and bus carriers; and Canadian ports used by cruise ships.

In addition, certain requirements related to security screening and border clearance, training and communication apply to the CBSA and the CATSA.

While the ATPDR apply broadly to all modes of transport, there are some exceptions:

- the service requirements apply to both Canadian and international carriers, but communications, training and technical requirements apply to Canadian carriers only;
- the technical requirements for Canadian airlines apply only to aircraft with 30 or more passenger seats;
- Only the technical requirements apply to ports in Canada that serve cruise ships (given that services to persons with disabilities are provided by cruise ship personnel); and
- The One Person, One Fare requirement only applies to domestic travel.

9. Annex B – Medium and Small Transportation Service Providers

Medium and small TSPs are not currently covered by the ATPDR.

For the purposes of this discussion paper, medium TSPs are those that are currently covered by the ATPDR, as defined in Annex A above, but that subsequently do not qualify as large TSPs due to reductions in passenger volumes (these TSPs are expected to be in the airport and airline sectors).

Small TSPs would never have met the large TSP thresholds. They include, for example, small northern or regional airlines.

For ease of reference, the following types of TSP operations are outside of the scope of the ATPDR:

- 1) Airlines that provide a domestic service or international service for the transportation of passengers and that transported fewer than 1,000,000 passengers during either of the preceding two years.
- 2) Railway companies that provide passenger rail service between two provinces or from a point of origin in Canada to a point of destination in a foreign country, or from a point of origin in a foreign country to points of destination in one or two provinces.
- 3) Marine carriers (ferry operators) that provide service between two provinces or from a point of origin in Canada to a point of destination in a foreign country, if the service is provided on a ferry of less than 1,000 gross tonnage and on which on-board services are offered to passengers.

- 4) Bus operators that provide service using a bus that has a carrying capacity of fewer than 40 passengers between two provinces or from a point of origin in Canada to a point of destination in a foreign country.
- 5) Terminal operators – owners, operators, or lease-holders of an airport with less than 200,000 passengers enplaned and deplaned during either of the two preceding calendar years; or
- 6) A rail, ferry, or bus terminal in Canada serving the above-noted TSPs.