

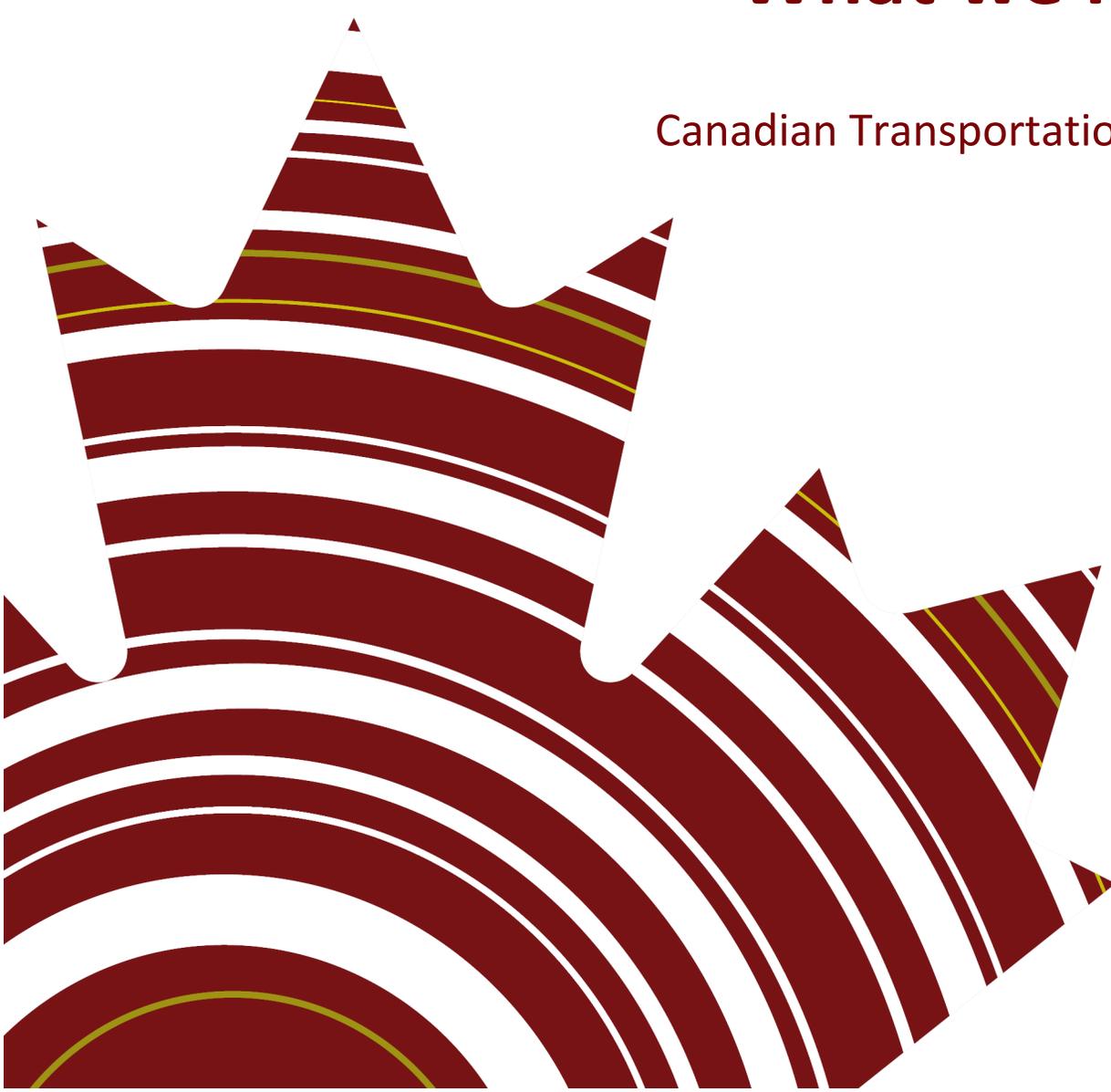


Canadian
Transportation
Agency

Office
des transports
du Canada

Consultations on Phase II of the *Accessible Transportation for Persons with Disabilities Regulations*: What we heard

Canadian Transportation Agency

A large, stylized graphic of a maple leaf, composed of concentric, curved bands of maroon and white, with thin yellow lines. The graphic is positioned on the left side of the page, partially overlapping the text.

Canada 

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1. Introduction

The Canadian Transportation Agency (CTA) is Canada's longest-standing independent, expert tribunal and regulator. One of the CTA's core mandates is the protection of the fundamental right of persons with disabilities to accessible transportation services.

The *Canada Transportation Act* (Act) gives the CTA the responsibility of ensuring that persons with disabilities have equal access to federal transportation services and that barriers to accessibility are removed. One way the CTA achieves this goal is by developing and administering accessibility guidelines, codes of practice and regulations that apply to the transportation network under federal jurisdiction.

In July 2019, the CTA's new *Accessible Transportation for Persons with Disabilities Regulations* (ATPDR) were published. In December 2019, the CTA launched [public consultations](#) on a second phase of regulations – Phase II ATPDR. Our consultations on Phase II ATPDR closed in late February 2020, shortly before the onset of the COVID-19 pandemic, which delayed the finalization of this report and will affect the timing of next steps.

This report provides a high-level summary of what we heard during the consultation period from the community of persons with disabilities (the community), transportation service providers (TSPs) such as airlines, passenger railways, the bus and ferry industries and airports, and members of the public.

2. Background

The ATPDR establish legally binding requirements for accessible services, technical standards for equipment, communications, training, and security and border screening. Most provisions of the regulations came into effect 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. Together, these are referred to as "large TSPs." Some requirements of the ATPDR – such as those with respect to security, border screening, communications, training and signage – also apply to the Canada Border Services Agency and the Canadian Air Transport Security Authority.

Because they apply to large TSPs, the ATPDR cover a sizeable portion of all passenger trips taken to, from and within Canada. However, at this time, small TSPs are not covered by the current ATPDR. These small TSPs include smaller airlines, tourist railway companies and bus and ferry operators, as well as the terminals that serve them. This leaves a gap in the applicability of these new accessible transportation regulations, particularly for remote and northern areas.

Accessible transportation is a human right and is integral to achieving equality, inclusion and dignity for Canadians with disabilities. It is important that the ATPDR cover as much of Canada's federal transportation network as possible. That is why the CTA publicly committed, when the ATPDR were finalized in 2019, to holding consultations on how they should be extended to smaller TSPs.

The CTA also committed at that time to holding more discussions on two issues that were raised during the development of the ATPDR, both of which are complex.

The first issue is whether to apply the one person, one fare (1P1F) rule to international travel. The 1P1F rule requires carriers, in situations where a person with a disability requires more than one passenger seat for travel within Canada due to a disability-related need, to provide additional, adjacent passenger seating at no extra cost. Under the ATPDR, large carriers in all modes (air, rail, bus and marine) must apply the 1P1F rule to travel within Canada. Carriers must provide sufficient space if required for a disability-related need in international travel, but in contrast to the rule for travel within Canada, may charge for that

additional seating. We heard during the development of the ATPDR that this is of great concern to the community.

The second issue is whether to require TSPs to accept emotional support animals (ESAs) and if so, under what conditions. Currently, the ATPDR require TSPs in all modes to accept service dogs for transport and permit them to accompany a person with a disability on board. A key distinction between ESAs and service dogs, as the latter of these terms is used in the ATPDR, is that service dogs have been professionally trained to perform clear, specific tasks related to their handlers' disabilities, while ESAs have not. In recent years, a growing number of people have sought to travel with ESAs whose simple presence may offer therapeutic value – and as a result, there is a need to consider whether and how ESAs could and should be accepted.

Finally, the CTA committed to seeking input on new planning and reporting regulations under the *Accessible Canada Act (ACA)*. The ACA, which came into force in July 2019, requires the CTA to develop regulatory requirements for TSPs with respect to the development and publication of accessibility plans, in consultation with persons with disabilities; mechanisms for obtaining feedback on their plans; and the development and publication of progress reports. Under the ACA, the CTA is expected to have the regulations in place by July 2021.

3. Consultation overview

The CTA received 108 written submissions, including 67 from the public, 16 from the community of persons with disabilities, 21 from TSPs and 4 from government entities. The CTA also held a meeting with our standing [Accessibility Advisory Committee](#) (AAC) and had 9 bilateral discussions with community representatives and TSPs.

4. Key themes

The community indicates that:

- Persons with disabilities need equality without delay: small TSPs should be required to follow robust accessibility standards as soon as possible. The community also indicated that any exceptions for small TSPs should be based on objective criteria and reflect input from the community.
- The 1P1F policy reflects human rights principles and should be extended to international travel.
- Any new policies on ESAs should be carefully considered, and take into account health, safety and other risks, including to persons with disabilities who use trained guide and service dogs. That said, some members of the community see ESAs as essential for certain persons with disabilities.
- The new planning and reporting regulations under the ACA should make sure that TSPs' accessibility plans and progress reports are timely and meaningful.

Members of the public are mostly in agreement with the community on the issues related to small TSPs and the 1P1F policy. Some support making rules to ensure that persons with disabilities can travel with ESAs, but a larger number express concern about the safety risks of ESAs on-board aircraft. Members of the public provided little input on the topic of ACA regulations.

TSPs indicate that:

- Small TSPs have unique operating environments and infrastructure, and it is not realistic to apply all provisions of the ATPDR to them.

- The 1P1F rule should not be extended to international air travel, as such a step would violate international air treaties. There is more openness to the 1P1F concept in the rail, marine and bus sectors.
- Airlines should not be required to accept untrained ESAs, due to health, safety, hygiene and fraud concerns. There is a greater openness to ESAs in the rail, marine and bus sectors.
- The ACA planning and reporting obligations should be phased-in over time to give TSPs lead time to comply.

Extending the ATPDR to small transportation service providers (TSPs)

Community views

The community generally believes that the ATPDR should apply to small TSPs. They feel that accessibility standards work better when they are consistent, and that this will help avoid serious problems for persons with disabilities when travelling. They are concerned about the risks of bias and discrimination against persons with disabilities if clear rules are not put in place.

They also feel strongly that any decision to exempt TSPs from accessibility rules should be made on an exceptional basis and involve consultation with persons with disabilities. They stress that the unique operating circumstances of TSPs should not be a reason to avoid accessibility rules.

For the most part, the community wants new regulations to be put in place within the next year or two.

Some members of the community believe that it may be possible to apply accessibility standards in a way that recognizes the unique situations of small TSPs in Canada – for instance, through more tailored standards.

As well, some feel it would be appropriate to give small TSPs, particularly in the North and remote areas, some flexibility to find the best ways, in their specific contexts, to accommodate persons with disabilities.

Some members of the community suggest that federal economic support should be provided to help small TSPs remove accessibility barriers, especially in the North.

There is consensus in the community that the 1P1F rule, which now covers large carriers operating in Canada, should apply to small carriers operating within Canada.

Public views

Members of the public who provided comments generally share the views of the community. They emphasize that accessibility in remote, regional and northern areas of Canada should be a priority and that new regulations should be put in place quickly.

A few members of the public have concerns about applying the 1P1F rule to small northern airlines. They suggest that this rule will not be affordable for these airlines and may, as a result, make it difficult for these airlines to operate in these communities.

Transportation service provider (TSP) views

Small TSPs emphasize that they are committed to treating persons with disabilities in a manner that respects their dignity. However, they are of the view that it is not feasible for them to be made subject to the full ATPDR. They underscore that northern, regional and remote areas have limited resources and infrastructure and, as a result, the rules cannot be applied to them in the same way as they are to large TSPs.

Some small TSPs propose that, as an alternative to the ATPDR, they could be expected to make best efforts and provide assistance to persons with disabilities in making alternative travel arrangements when they cannot accommodate those travellers' needs.

Some also suggest that airlines with under 100,000 passengers yearly, and airports with under 50,000 emplaned/deplaned passengers yearly, should not be covered by the ATPDR in any manner.

Airlines point to aircraft limitations, including weight, door size, cargo space and equipment, noting that there are physical constraints on accessible design and accommodation. They also express concern that they might be required by regulations to make unsafe changes to aircraft or other equipment in order to make them accessible – even though the ATPDR provide that nothing in the regulations requires any person to do anything that jeopardizes security, public health or public safety.

Airlines and airports serving the North suggest they will be unable to absorb the costs of making their equipment or technology more accessible and that such obligations could ultimately make air travel unaffordable for the communities they serve. Some suggest that if they are required to invest in certain requirements, such as accessible communications, they will not be able to invest in other upgrades needed in remote areas.

Small airlines and airports also suggest that government should invest in northern infrastructure to help serve persons with disabilities.

Bus carriers raised similar concerns. They suggest that they will need flexibility in how to carry out the duty to accommodate, citing concerns around safety, cost, convenience and available amenities that limit rural safe stopping options. They also note that many buses used in long trips are narrow inside and were manufactured under old standards.

Small TSPs believe the 1P1F policy should not apply to them and suggest that it would have significant financial and operational impacts. Airlines in the North note that they serve a high volume of passengers with disabilities, including those travelling for medical assistance, and suggest they would be disproportionately affected by this rule.

Small TSPs state that new regulations should not be put in place for a minimum of two to three years.

Extending the One Person, One Fare (1P1F) rule to international travel

Community views

There is broad support in the community for extending the 1P1F rule to international travel. Disability rights groups emphasize the 1P1F rule is a matter of human rights.

Some note there are challenges to overcome in achieving this goal internationally, including provisions of international air treaties. They recommend that the CTA work with the International Civil Aviation Organization (ICAO) to promote adoption of the 1P1F principle globally.

Public views

Members of the public who submitted comments support extending the 1P1F rule to international travel.

Transportation service provider (TSP) views

Both domestic and foreign airlines are opposed to extending the 1P1F rule to international travel. They feel it is an intrusion into pricing freedom and would unfairly erode their revenue. Some suggest that governments should subsidize

any additional seating required for persons with disabilities if the 1P1F rule is applied to international travel.

Airlines are also of the view that applying the 1P1F rule to international flights would violate international air treaties. This position is supported by a number of federal government departments.

In the rail and bus sectors, the views are more diverse. Some bus carriers support 1P1F requirements. They believe 1P1F could help to offer a seamless customer experience from domestic to international travel. In the rail sector, it is suggested that the 1P1F rule is not needed for international operations, as there are existing policies to provide additional space for persons with large service animals or who need it for medical equipment.

Emotional support animals (ESAs)

Community views

The views of the community are mixed on the issue of ESAs.

Some express support for ESAs, particularly to help passengers with mental health-related disabilities.

An organization representing Indigenous women with disabilities emphasizes the importance of ESA accommodations due to the history of the trauma that these women have experienced.

Service dog users, on the other hand, have concerns about any rules allowing for the use of ESAs during travel in the federal transportation network. They note that service dogs undergo rigorous training. They emphasize that untrained animals can be a safety threat to passengers, staff and trained service dogs.

Generally, the community agrees that if ESAs are accepted for travel, it is important that their handlers keep them under control; for example, with a crate or harness.

Most members of the community oppose a criteria-based approach for accepting ESAs, because they believe it would be too uncertain for them. They prefer an approach where it is clear which animals would be permitted.

Public views

Some members of the public express support for rules permitting travel with ESAs. They state that ESAs are important for mental health and help prevent isolation – and that passengers can follow rules, such as keeping animals harnessed, to help mitigate any safety risks.

However, most of the submissions received from the public express opposition to ESAs, due to risks of misbehaviour, violence or aggression, fraudulent claims and allergies. They emphasize the importance of proper training and certification of ESAs, and suggest that federal standards be developed in these areas.

Some members of the public also suggest that, if ESAs are accepted, there should be limits on their size and number and where they can go on-board an aircraft.

Transportation service provider (TSP) views

Airlines are generally opposed to being required to accept ESAs. Many state that they should not have to accept them under any circumstances. They indicate that if acceptance of ESAs becomes mandatory, airlines should be able to request medical documentation attesting to the passenger's disability-related need for the animal, as well as documentation from a veterinarian or specialized organization confirming that the animal will behave well, will not act aggressively and will not relieve itself on-board.

Airline unions express concern for staff safety if ESAs are allowed on-board, citing incidents of biting and aggression towards customer service personnel as well as flight attendants.

In addition to expressing concerns about safety and hygiene risks, airlines also raise concerns about fraud and abuse. Airlines operating in the United States, where ESAs have been permitted, suggest they have experienced many difficulties related to the acceptance of ESAs.

Some small airlines in Canada suggest they are open to accepting ESAs, but argue it should be up to each airline to set its own policy.

Rail, marine and bus carriers are willing to consider ESAs. Rail and marine carriers highlight the importance of appropriate documentation related to the ESA and suggested that there be a licensing process. Bus carriers believe the choice of how to accommodate or reject an ESA should be left to the bus carrier, based on their operating realities.

TSPs agree that if acceptance of ESAs is required in Canada's federal transportation network, it must be clear what species this obligation covers, no more than one ESA per passenger should be permitted, and the passenger should be required to handle the animal in a way that mitigates safety risks (e.g., through use of a carrier, harness or tether).

Accessible Canada Act (ACA) planning and reporting regulations

Community views

The community places great importance on the content of accessibility plans and progress reports. They feel that TSPs' accessibility plans should be specific and meaningful. For example, the community states that TSPs' plans should cover how and when they will remove barriers, how they will measure success, how

they will incorporate universal design, and how they will engage persons with disabilities in training programs.

The community also believes that TSPs should identify a direct contact person so a person with a disability, can give feedback to that person on their accessibility plans. Community organizations state that TSPs should promptly respond to concerns raised in feedback and complaints. Some members of the community emphasize that poor staff training on dignity and human rights, and lack of universal design, are serious challenges that warrant the greatest attention in TSPs' accessibility plans.

The community believes that TSPs should be given no more than 1-2 years from the time regulations are in place (summer 2021) to publish their first accessibility plans.

As well, they advise that it would be helpful for the CTA to provide guidance on what is expected in accessibility plans and progress reports.

Public views

Members of the public provided little input on the topic of the planning and reporting regulations. Some believe that websites and the built environment should be a priority for accessibility plans. They also indicate that TSPs should develop their plans within one to two years.

Transportation service provider (TSP) views

TSPs tend to focus comments on the timelines and format for accessibility plans and progress reports.

They generally think that it is reasonable to provide accessibility plans in standard accessible formats, such as large print and accessible electronic formats. TSPs recommend a variety of alternative publication approaches for

smaller organizations without a website, including email, mail, telephone, and making documents available in places like airports.

TSPs also indicate they will need some flexibility in offering ways that persons with disabilities can provide feedback on accessibility plans.

TSPs generally suggest they could have accessibility plans in place around 2 years after the regulations are published (i.e., by summer 2023). Some airlines advocate for longer timelines, such as 3 years, noting they are focusing on complying with other new regulations and challenges.

Airlines and railways operating in the United States indicate that accessibility planning and consulting with persons with disabilities have been valuable in making meaningful progress on accessibility. They indicate they are subject to similar requirements already in the United States and therefore, should be exempted from Canadian requirements.

TSPs agreed that guidance from the CTA would be helpful.

5. Next steps

The CTA appreciates the participation of the community, members of the public and TSPs in these consultations, particularly considering the timing at which they occurred.

Shortly after the consultation period closed, Canadians began to experience the effects of the COVID-19 pandemic. In addition to the unique effects brought on by the pandemic, persons with disabilities continue to experience serious impacts, including difficulty accessing services. The transportation sector has experienced severe operational and financial disruptions.

Taking into account all input received – and the subsequent effects of the pandemic on persons with disabilities and the transportation sector – the CTA will continue to advance progress on accessibility in a multi-step process.

First, we will advance, as planned, the planning and reporting regulations required under the ACA. We expect to publish draft regulations for public review in early 2021.

We are also continuing discussions on the issues related to application of ATPDR requirements to small TSPs – and will start working on guidelines so that, regardless of the timing of regulatory action, they can meet their human rights obligations under Part V of the Act. We want to hear more about what works, and what does not, from these TSPs and the communities they serve. We plan to consult on and finalize guidelines in 2021. We will use these guidelines to develop binding regulations, which we are aiming to have in place by 2022.

The input received in our consultation did not lead to a clear regulatory option for 1P1F or ESAs. With respect to 1P1F and international travel, we will continue our efforts, generally, to increase attention to accessibility in international transportation forums, including ICAO, and to encourage common approaches that remove barriers to persons with disabilities. With respect to ESAs, we will continue to examine options and to deal with individual ESA-related complaints filed with us by travellers with disabilities.