



Registrar Bulletin

Natural Disasters

TICO would like to remind registrants of their responsibilities under the *Travel Industry Act, 2002* in relation to the change or cancellation of travel services and to damage sustained to properties in areas where a natural disaster has occurred. Consumers wishing to cancel their travel services are subject to the Terms and Conditions of their booking unless the supplier of the services is willing to offer a good will gesture. Travel wholesalers should note that subsection 40(2) of Ontario Regulation 26/05, which deals with force majeure, only applies to the scheduled departure of transportation, it does not apply to changes to accommodation or the standard of accommodation. Further, the right of a registrant to vary a contract is limited by sections 39 and 40 of the Regulation.

When damage is caused by severe weather or force majeure, registrants must consider whether conditions in the destination have deteriorated in a manner that changes the conditions of the accommodations sold to customers. "Accommodations" is defined in section 1 of the Regulation to include any room which is to be used for lodging by the customer, and any other facilities and services related to the room that are for the use of the customer, but does not include meals.

Section 39 of the Regulation makes registrants responsible for taking reasonable measures to ensure that the accommodations sold to customers are in the same condition as described by the registrant at the time of sale, when the time comes for the customer to use those travel services. **If the accommodations are not in such condition, the registrant must promptly notify the travel agent or customer, and must offer the customer a choice of a full and immediate refund or comparable alternate services acceptable to the customer.** If the accommodations are sold as part of a package that includes transportation to a destination, the refund or comparable alternative services must be with reference to the entire package; otherwise, they are with reference only to the accommodation portion of the travel services sold.

The following are the relevant sections of Ontario Regulation 26/05 for your reference:

Relevant Sections of Ontario Regulation 26/05

Section 39 - Verifying condition of accommodation

39. (1) A registrant who acquires a right to accommodation for the purpose of selling it to a customer shall take reasonable measures to ensure that the accommodation is, at the time the customer uses the travel services, in the same condition as was described by the registrant at the time of sale.
- (2) If the accommodation is not in the condition represented by the registrant, the registrant shall promptly notify the customer to whom the accommodation is sold, or the customer's travel agent, as the case may be, of that fact and,
- (a) if the accommodation is sold as part of a package that includes transportation to a destination, offer the customer the choice of a full and immediate refund of the amount the customer paid for the package, including all fees, levies, service charges, surcharges, taxes and other charges, or a comparable alternate package acceptable to the customer; or
 - b) if the accommodation is not sold as a part of a package that includes transportation to a destination, offer the customer the choice of a full and immediate refund of the amount the customer paid for the accommodation, including all fees, levies, service charges, surcharges, taxes and other charges, or comparable alternate accommodation acceptable to the customer.
- (3) Every registrant shall establish a file for the purposes of this section, and a registrant who is required to act under clause (2) (a) or (b) shall make a written notation in the file stating,
- (a) what information was communicated to the customer;
 - (b) the date on which the information was communicated to the customer;
 - (c) what method of communication was used; and
 - (d) what choice the customer made.

Section 40 - Events requiring notice and offer of refund or replacement

40. (1) A registrant who becomes aware that any of the following events has occurred shall promptly notify the travel agent or customer, as the case may be, and offer the customer the choice of a full and immediate refund or comparable alternate travel services acceptable to the customer:
- 1. The scheduled departure of any transportation that forms part of the travel services is delayed or advanced by 24 hours or more, unless the reason for the delay or advancing is one described in subsection (2).
 - 2. A different cruise ship is substituted.
 - 3. The accommodation is changed or the standard of the accommodation is changed.
 - 4. The contract permits price increases, the total price of the travel services is increased and the cumulative increase, except any increase resulting from an increase in retail sales tax or federal goods and services tax, is more than 7 per cent.
 - 5. The contract does not permit price increases but the total price of the travel services is increased, whatever the amount of the increase or the reason for it.
 - 6. The documents needed for the trip are changed because the transportation routing is changed, and there is not enough time for the person to obtain the documents before the departure.

- (2) Paragraph 1 of subsection (1) does not apply if the delay or advancing is the result of,
- (a) mechanical problems with a vehicle, ship or aircraft;
 - (b) safety considerations;
 - (c) weather conditions;
 - (d) a strike or lock-out; or
 - (e) force majeure.
- (3) Every registrant shall establish a file for the purposes of this section, and a registrant who is required to act under subsection (1) shall make a written notation in the file stating,
- (a) what information was communicated to the customer;
 - (b) the date on which the information was communicated to the customer;
 - (c) what method of communication was used; and
 - (d) what choice the customer made.

Should you have any questions regarding this issue, TICO's Compliance Team will be pleased to assist you and may be contacted at Tel: 1-888-451-TICO (8426) or email: tico@tico.ca

Richard Smart
Registrar, *Travel Industry Act, 2002*

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