

Air Carrier Responsibility for Complaint Responses (March 2022)

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The U.S. Department of Transportation (“DOT”) aggressively regulates airline consumer protection matters, including how airlines respond to consumer complaints. For years, under authority vested in DOT by the Air Carrier Access Act, (49 U.S.C. § 41705), DOT has required that carriers provide “dispositive” responses to written disability-related complaints within 30 days of their receipt¹. More recently, pursuant to DOT’s authority in 49 § U.S.C. 41712 to prohibit unfair and deceptive practices, carriers have been required to acknowledge written complaints regarding scheduled service within 30 days of their receipt and provide “substantive” written responses no later than 60 days after their receipt.² Importantly, DOT interprets this regulation broadly to encompass all complaints about airline service, whether the complaint concerns a regulated DOT area or not. Complaints – once a matter of simple customer relations – now require coordinated recordkeeping and careful attention to avoid DOT enforcement action.³

DOT has also issued formal guidance concerning carrier responses to written complaints made on behalf of third parties.

Disability-Related Complaint Requirements

14 C.F.R § 382.155 imposes detailed requirements for carriers responding to disability-related complaints. In order for a carrier’s response to be “dispositive,” it must address each element of DOT’s regulations,



The firm’s practice encompasses virtually every aspect of aviation law, including advising domestic and foreign airlines on compliance with DOT’s regulations and policies concerning consumers and carrier complaint responses. For further information regarding the matters discussed in this article, please contact either of the following attorneys:

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including, but not limited to: timeliness; admission or denial of a violation; remedial steps taken, if any; and advising the complainant of his or her right to pursue DOT enforcement action. The regulation also requires carriers to conduct an investigation into the alleged incident and support its determination of whether a violation occurred in the response to the passenger.

General Complaint Requirements

Responses to consumer complaints that are not disability-related are governed by 14 CFR § 259.7. A complaint is a specific written expression of dissatisfaction.⁴ Although carrier responses to these complaints are not subject to the same stringent requirements as disability-related complaints, DOT does require responses to be “substantive.” In guidance, DOT has stated that “substantive” means “a response that addresses the specific problems about which the consumer has complained,” i.e., as opposed to a form response.⁵ Moreover, for a response to be “substantive”, the carrier must address each specific allegation in a complaint if the complainant complains about more than one issue, but the carrier need not resolve every issue to the complainant’s satisfaction.⁶

Responding to Third Party Complaints

As carrier customer service personnel will be aware, complaints are often submitted by third parties on behalf of a passenger (e.g., an adult child on behalf of an elderly parent). DOT has issued guidance indicating, among other things, that (in many, but not all, cases) if a carrier’s own privacy policies or national laws require it, a carrier may request that the third-party complainant submit evidence or assurance that the third-party has authorization to act on a passenger’s behalf.⁷ DOT’s guidance also states that carriers implementing such policies should include this information on their web sites in the same location as the complaint filing information.

Use Caution When Responding

A frequent pitfall for carriers is providing complaint responses which do not, in DOT’s view, fully or substantively address each aspect of a consumer complaint. In guidance intended for general consumer complaints, but equally applicable to disability-related complaints, DOT has stated that “[w]hen an individual complains in writing about more than one issue, the rule requires carriers to respond substantively to each specific allegation.”⁸ DOT has established an enforcement policy wherein it will allow carriers to substantively respond to a written complaint via a telephone conversation, but in order for a carrier to take advantage of this policy, DOT imposes recordkeeping requirements for such calls to ensure that the complainant’s issue has been addressed substantively.⁹ In addition, if a complaint raises both disability-related and non-disability related complaint issues, carriers must ensure that the disability-related aspects of the complaint are given a “dispositive” response.¹⁰ Carriers must also carefully categorize disability-related complaints for inclusion in annual reports submitted to DOT.¹¹ Failing to timely submit¹² or code¹³ such reports subjects a carrier to additional enforcement risk.

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Social Media

The Internet and social media have made it far easier for consumers to complain. DOT has stated that carriers do not need to provide “substantive” responses to complaints submitted via a social media site (e.g., Facebook and Twitter).¹⁴ However, if the social media site is not intended by the carrier to be used for submission of written complaints, DOT requires carriers to place a notice on the social media site informing consumers where they can submit a complaint.¹⁵ DOT, besides requiring carriers to provide means for consumers to complain via mail and/or the carrier’s own website, provides its own Internet-based complaint submission form.¹⁶ DOT analysts forward these complaints to carrier personnel for action and monitor and track carrier responses for timeliness and overall compliance. DOT publishes the monthly statistics regarding all of the complaints it receives¹⁷ and uses the data to make enforcement decisions.

Key Takeaways

The requirements discussed above apply to both U.S. and foreign carriers. Carriers are advised to carefully review DOT’s consumer protection requirements to confirm that the carrier is in compliance. In addition, because of the overlap of requirements, and the extensive reach of DOT’s complaint-related regulations (tracking and annual reporting of disability-related complaints; ensuring timely and substantive responses to all complaints; disclaimers for social media, etc.), carriers are urged to consult with counsel to ensure complete compliance with DOT’s varied requirements.

¹ 14 C.F.R. § 382.155(d).

² 14 C.F.R. § 259.7(c).

³ See, e.g., Société Air France, Order 2016-4-9. In this order, DOT assessed a \$200,000 compromise civil penalty against the carrier for systematic failures in responding to disability-related complaints, such as failing to summarize the facts in the complaint, specifically admit or deny that a violation of Part 382 occurred, and inform the complainant of their right to pursue DOT enforcement action.

⁴ See “Answers to Frequently Asked Questions Concerning the Enforcement of the Second Final Rule on Enhancing Airline Passenger Protections (EAPP #2)” (last updated Dec. 12, 2016), at 19.

⁵ Final Rule, “Enhancing Airline Passenger Protections”, 74 Fed. Reg. 68983, 68992 (Dec. 30, 2009).

⁶ See “Answers to Frequently Asked Questions Concerning the Enforcement of the Second Final Rule on Enhancing Airline Passenger Protections (EAPP #2)” (last updated Dec. 12, 2016), at 19

⁷ See “Guidance on Responding to Complaints Filed on Behalf of Airline Passengers”, issued Dec. 13, 2013.

⁸ See “Answers to Frequently Asked Questions Concerning the Enforcement of the Second Final Rule on Enhancing Airline Passenger Protections (EAPP #2)” (last updated Dec. 12, 2016), at 18.

⁹ Id. at 19.

¹⁰ For example, a consumer complaint which expressed dissatisfaction with both an in-flight meal and with a carrier’s wheelchair service would require a “substantive” response with respect to the meal, and a “dispositive” response with respect to wheelchair service. The “substantive” portion of the response

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concerning the meal would not need to be very detailed, but it would have to clearly relate to the essence of the complaint. In contrast, the “dispositive” portion of the response concerning wheelchair service would have to incorporate the specific complaint response elements required by 14 C.F.R. § 382.155.

¹¹ 14 C.F.R. § 382.157.

¹² See, e.g., Israil Airlines and Tourism Ltd., Order 2007-12-4. In this order, DOT assessed an \$18,000 civil penalty against the carrier for failing to file annual reports detailing disability-related complaints.

¹³ See, e.g., JetBlue Airways Corp., Order 2010-12-17. In this order, DOT assessed a \$600,000 civil penalty against the carrier for, among other things, failing to properly code all disability-related complaints.

¹⁴ See “Answers to Frequently Asked Questions Concerning the Enforcement of the Second Final Rule on Enhancing Airline Passenger Protections (EAPP #2)” (last updated Dec. 12, 2016), at 18

¹⁵ Id.

¹⁶ <https://www.transportation.gov/airconsumer/file-consumer-complaint>

¹⁷ <https://www.transportation.gov/individuals/aviation-consumer-protection/air-travel-consumer-reports>.