

take enforcement action with respect to your implementation of the policy or practice during the time prior to the Department's response.

(f) Notwithstanding any other provision of this section, the Department may commence enforcement action at any time after May 13, 2009 with respect to the policy or practice that is the subject of the request if it finds the request to be frivolous or dilatory.

(g) If you have not submitted a request for a waiver under this section with respect to a provision of this part, or such a request has been denied, you cannot raise the alleged existence of such a conflict as a defense to an enforcement action.

§ 382.10 How does a U.S. or foreign carrier obtain a determination that it is providing an equivalent alternative to passengers with disabilities?

(a) As a U.S. or foreign carrier, you may apply to the Department for a determination that you are providing an equivalent alternative to passengers with disabilities.

(b) You must send your application for an equivalent alternative determination to the following address: Assistant General Counsel for Aviation Enforcement and Proceedings (C-70), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W96-322, Washington, DC 20590.

(c) Your application must be in English and include the following elements:

(1) A citation to the specific provision of this part concerning which you are proposing an equivalent alternative.

(2) A detailed description of the alternative policy, practice, or other accommodation you are proposing to use in place of compliance with the provision of this part that you cite, and an explanation of how it provides substantially equivalent accessibility to passengers with disabilities.

(d) The Department may grant the application, or grant the application subject to conditions, if it determines that the proposed facilitation does provide substantially equivalent accessibility to passengers with disabilities, compared to compliance with the provision of this part in question.

(e) If your application is granted, you will be deemed to be in compliance with this Part through implementing the equivalent alternative. If your application is denied, you must implement this part as written.

(f)(1) If you submit your application on or before September 10, 2008, the Department will respond to the request before May 13, 2009 to the maximum extent feasible. If the Department does not respond to the application by May 13, 2009, you may implement your policy or practice that is the subject of your application until the Department does respond.

(2) With respect to an application you make after September 10, 2008, you must comply with the provisions of this part without change from May 13, 2009 until the Department responds to your application.

Subpart B—Nondiscrimination and Access to Services and Information

§ 382.11 What is the general non-discrimination requirement of this part?

(a) As a carrier, you must not do any of the following things, either directly or through a contractual, licensing, or other arrangement:

(1) You must not discriminate against any qualified individual with a disability, by reason of such disability, in the provision of air transportation;

(2) You must not require a qualified individual with a disability to accept special services (including, but not limited to, preboarding) that the individual does not request. However, you may require preboarding as a condition of receiving certain seating or in-cabin stowage accommodations, as specified in §§ 382.83(c), 382.85(b), and 382.123(a) of this part.

(3) You must not exclude a qualified individual with a disability from or deny the person the benefit of any air transportation or related services that are available to other persons, except where specifically permitted by this Part. This is true even if there are separate or different services available for individuals with a disability, except when specifically permitted by another section of this Part; and