

§ 382.9

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respect to passengers flying under its code, and the Department could take enforcement action against the U.S. carrier for acts or omissions by the foreign carrier.

(d) As a foreign carrier, if you operate a charter flight from a foreign airport to a U.S. airport, and return to a foreign airport, and you do not pick up any passengers in the U.S., the charter flight is not a flight subject to the requirements of this part.

(e) Unless a provision of this Part specifies application to a U.S. carrier or a foreign carrier, the provision applies to both U.S. and foreign carriers.

(f) If you are an indirect carrier, §§ 382.1 through 382.15 of this part apply to you. §§ 382.17 through 382.157 of this part do not apply to you except insofar as provided by § 382.11(b).

(g) Notwithstanding any provisions of this part, you must comply with all FAA safety regulations, TSA security regulations, and foreign safety and security regulations having legally mandatory effect that apply to you.

[Docket OST–2004–19482, 73 FR 27665, May 13, 2008, as amended at 74 FR 11471, Mar. 18, 2009; 75 FR 44887, July 30, 2010]

§ 382.9 What may foreign carriers do if they believe a provision of a foreign nation’s law conflicts with compliance with a provision of this part?

(a) If you are a foreign carrier, and you believe that an applicable provision of the law of a foreign nation precludes you from complying with a provision of this part, you may request a waiver of the provision of this Part.

(b) You must send such a waiver request 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 waiver request must be in English and include the following elements:

(1) A copy, in the English language, of the foreign law involved;

(2) A description of how the foreign law applies and how it precludes compliance with a provision of this part;

(3) A description of the alternative means the carrier will use, if the waiver is granted, to effectively achieve the objective of the provision of this part

subject to the waiver or, if applicable, a justification of why it would be impossible to achieve this objective in any way.

(d) The Department may grant the waiver request, or grant the waiver request subject to conditions, if it determines that the foreign law applies, that it does preclude compliance with a provision of this part, and that the carrier has provided an effective alternative means of achieving the objective of the provisions of this part subject to the waiver or have demonstrated by clear and convincing evidence that it would be impossible to achieve this objective in any way.

(e)(1) If you submit a waiver request on or before September 10, 2008, the Department will, to the maximum extent feasible, respond to the request before May 13, 2009. If the Department does not respond to the waiver request by May 13, 2009, you may continue to implement the policy or practice that is the subject of your request until the Department does respond. The Department will not take enforcement action with respect to your implementation of the policy or practice during the time prior to the Department’s response.

(2) If you submit a waiver request after September 10, 2008, the Department will, to the maximum extent feasible, respond to the request by May 13, 2009 or within 180 days of receiving it, whichever is later. If the Department does not respond to the waiver request by this date, you may continue to implement the policy or practice that is the subject of your request until the Department does respond. However, the Department may take enforcement action with respect to your implementation of the policy or practice during the time between May 13, 2009 and the date of the Department’s response.

(3) If you submit a waiver request after September 10, 2008, and the request pertains to an applicable provision of the law of a foreign nation that did not exist on September 10, 2008, you may continue to implement the policy or practice that is the subject of your request until the Department responds to the request. The Department will, to the maximum extent feasible, respond to such requests within 180 days of receiving them. The Department will not

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