

§ 382.11

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 nondiscrimination 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

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when specifically permitted by another section of this Part; and

(4) You must not take any adverse action against an individual (*e.g.* refusing to provide transportation) because the individual asserts, on his or her own behalf or through or on behalf of others, rights protected by this Part or the Air Carrier Access Act.

(b) If, as an indirect carrier, you provide facilities or services for other carriers that are covered by sections 382.17 through 382.157, you must do so in a manner consistent with those sections.

§ 382.13 Do carriers have to modify policies, practices, and facilities to ensure nondiscrimination?

(a) As a carrier, you must modify your policies, practices, and facilities when needed to provide nondiscriminatory service to a particular individual with a disability, consistent with the standards of section 504 of the Rehabilitation Act, as amended.

(b) This requirement is part of your general nondiscrimination obligation, and is in addition to your duty to make the specific accommodations required by this Part.

(c) However, you are not required to make modifications that would constitute an undue burden or would fundamentally alter your program.

§ 382.15 Do carriers have to make sure that contractors comply with the requirements of this Part?

(a) As a carrier, you must make sure that your contractors that provide services to the public (including airports where applicable) meet the requirements of this Part that would apply to you if you provided the services yourself.

(b) As a carrier, you must include an assurance of compliance with this Part in your contracts with any contractors that provide services to the public that are subject to the requirements of this Part. Noncompliance with this assurance is a material breach of the contract on the contractor's part.

(1) This assurance must commit the contractor to compliance with all applicable provisions of this Part in activities performed on behalf of the carrier.

(2) The assurance must also commit the contractor to implementing directives issued by your CROs under §§ 382.151 through 382.153.

(c) As a U.S. carrier, you must also include such an assurance of compliance in your contracts or agreements of appointment with U.S. travel agents. You are not required to include such an assurance in contracts with foreign travel agents.

(d) You remain responsible for your contractors' compliance with this Part and for enforcing the assurances in your contracts with them.

(e) It is not a defense against an enforcement action by the Department under this Part that your noncompliance resulted from action or inaction by a contractor.

§ 382.17 May carriers limit the number of passengers with a disability on a flight?

As a carrier, you must not limit the number of passengers with a disability who travel on a flight. (See also § 382.27(c)(6) of this Part.)

[Docket OST-2004-19482, 73 FR 27665, May 13, 2008, as amended at 74 FR 11471, Mar. 18, 2009]

§ 382.19 May carriers refuse to provide transportation on the basis of disability?

(a) As a carrier, you must not refuse to provide transportation to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this Part.

(b) You must not refuse to provide transportation to a passenger with a disability because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers.

(c) You may refuse to provide transportation to any passenger on the basis of safety, as provided in 49 U.S.C. 44902 or 14 CFR 121.533, or to any passenger whose carriage would violate FAA or TSA requirements or applicable requirements of a foreign government.

(1) You can determine that there is a disability-related safety basis for refusing to provide transportation to a passenger with a disability if you are able to demonstrate that the passenger poses a direct threat (see definition in

§ 382.3). In determining whether an individual poses a direct threat, you must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain:

(i) The nature, duration, and severity of the risk;

(ii) The probability that the potential harm to the health and safety of others will actually occur; and

(iii) Whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

(2) If you determine that the passenger does pose a direct threat, you must select the least restrictive response from the point of view of the passenger, consistent with protecting the health and safety of others. For example, you must not refuse transportation to the passenger if you can protect the health and safety of others by means short of a refusal.

(3) In exercising this authority, you must not act inconsistently with the provisions of this Part.

(4) If your actions are inconsistent with any of the provisions of this Part, you are subject to enforcement action under Subpart K of this Part.

(d) If you refuse to provide transportation to a passenger on his or her originally-scheduled flight on a basis relating to the individual's disability, you must provide to the person a written statement of the reason for the refusal. This statement must include the specific basis for the carrier's opinion that the refusal meets the standards of paragraph (c) of this section or is otherwise specifically permitted by this Part. You must provide this written statement to the person within 10 calendar days of the refusal of transportation.

§ 382.21 May carriers limit access to transportation on the basis that a passenger has a communicable disease or other medical condition?

(a) You must not do any of the following things on the basis that a passenger has a communicable disease or infection, unless you determine that the passenger's condition poses a direct threat: