Office of the Secretary, DOT § 382.10

(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 pro-
vide substantially equivalent accessi-
bility to passengers with disabilities,
compared to compliance with the pro-
vision 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 ap-
lication is denied, you must imple-
ment this Part as written.

(f)(1) If you submit your application
on or before September 10, 2008, the De-
partment will respond to the request
before May 13, 2009 to the maximum ex-
tent feasible. If the Department does
not respond to the application by May
13, 2009, you may implement your pol-
icy 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 Infor-
mation

§ 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 lim-
ited to, preboarding) that the indi-
vidual 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 sep-
erate or different services available for
individuals with a disability, except
when specifically permitted by another
section of this Part; and

4. You must not take any adverse
action against an individual (e.g. refus-
ing 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) As an indirect carrier, you must
comply with §§ 382.17 through 382.157
of this Part when providing facilities or
services to passengers that would have
otherwise been provided by a direct air
carrier.

[Docket OST–2004–19482, 73 FR 27665, May
13, 2008, as amended at 75 FR 44887, July 30, 2010]

§ 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 nondiscrim-
inatory service to a particular indi-
vidual 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 con-
stitute an undue burden or would fund-
adamentally 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 air-
ports where applicable) meet the re-
quirements of this Part that would
apply to you if you provided the serv-
ices 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 assur-
ance is a material breach of the con-
tract on the contractor’s part.