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 provi-
sion of this section, the Department
may commence enforcement action at
any time after May 13, 2009 with re-
spect 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 re-
quest 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 en-
forcement action.

§ 382.10 How does a U.S. or foreign
carrier obtain a determination that
it is providing an equivalent alter-
native to passengers with disabil-
ities?

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

(b) You must send your application
for an equivalent alternative deter-
mination to the following address: As-
sistant 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 ele-
ments:

(1) A citation to the specific provi-
sion of this part concerning which you
are proposing an equivalent alter-
native.

(2) A detailed description of the al-
ternative policy, practice, or other ac-
commodation you are proposing to use
in place of compliance with the provi-
sion of this part that you cite, and an
explanation of how it provides substan-
tially equivalent accessibility to pas-
sengers 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-
application 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-
man

§ 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-
arate or different services available for
individuals with a disability, except
when specifically permitted by another
section of this Part; and