

Enhancing Airline Passenger Protections – Excerpt re Peanut Allergies

12. Peanut Allergies

The Department is considering several different measures to provide greater access to air travel for individuals with severe peanut allergies in light of the significant number of children diagnosed with peanut allergies, some of whom do not fly because of health concerns related to peanut service on aircraft. The Air Carrier Access Act (ACAA) prohibits discrimination by U.S. and foreign air carriers against individuals with disabilities. The Department of Transportation defines an individual with a disability in 14 CFR part 382 (Part 382), the regulation implementing the ACAA. An individual with a disability is any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Generally, a person with an allergy is not an individual with a disability. However, if a person's allergy is sufficiently severe to substantially limit a major life activity, then that person meets the definition of an individual with a disability. Part 382 states that major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Airline passengers with severe allergies to peanuts have a qualifying disability as defined in part 382.

Part 382 requires airlines to change or make an exception to an otherwise general policy or practice to make sure that a passenger with a disability can take the trip for which he or she is ticketed unless the change would cause an undue burden on the airline or a fundamental alteration in its services. The Department has in the past told airlines that, based on this requirement, they must make reasonable accommodations for air travelers who are allergic to peanuts. Specifically, in August 1998 the Department's Aviation Enforcement Office sent an industry letter providing guidance on this issue. That letter suggested that, if given advance notice, providing a peanut-free buffer zone in the immediate area of a passenger with a medically-documented severe allergy to peanuts would be a reasonable accommodation for the passenger's disability, and would not constitute an undue burden on the airline.

After the issuance of the guidance letter, the Department was directed by Congress to cease issuing guidance on this subject or face a cutoff of funding for its Aviation Enforcement Office. See, for example, section 346 of Public Law 106-69, (October 9, 1999)—“DOT and Related Agencies Appropriations Act, 2000,” which stated that none of the funds made available under that Act could be used to require or suggest that airlines provide peanut-free buffer zones or otherwise restrict the distribution of peanuts. This congressional prohibition was to remain in effect “until 90 days after submission to the Congress of a peer-reviewed scientific study that determined that there are severe reactions by

passengers to peanuts as a result of contact with very small airborne peanut particles of the kind that passengers might encounter in an aircraft.” This specific congressional ban on our involvement in this issue has not appeared recently in any legislation. At this time, we are considering the following alternatives to provide greater access to air travel for individuals with severe peanut allergies: (1) Banning the serving of peanuts and all peanut products by both U.S. and foreign carriers on flights covered by DOT’s disability rule; (2) banning the serving of peanuts and all peanut products on all such flights where a passenger with a peanut allergy is on board and has requested a peanut-free flight in advance; or (3) requiring a peanut-free buffer zone in the immediate area of a passenger with a medically-documented severe allergy to peanuts if passenger has requested a peanut-free flight in advance. We seek comment on these approaches as well as the question of whether it would be preferable to maintain the current practice of not prescribing carrier practices concerning the serving of peanuts. We are particularly interested in hearing views on how peanuts and peanut products brought on board aircraft by passengers should be handled. How likely is it that a passenger with allergies to peanuts will have severe adverse health reactions by being exposed to the airborne transmission of peanut particles in an aircraft cabin (as opposed to ingesting peanuts orally)? Will taking certain specific steps to prepare for a flight (e.g., carrying an epinephrine auto-injector in order to immediately and aggressively treat an anaphylactic reaction) sufficiently protect individuals with severe peanut allergies? Who should be responsible for ensuring an epinephrine auto-injector is available on a flight—the passenger with a severe peanut allergy or the carrier? Is there recent scientific or anecdotal evidence of serious in-flight medical events related to the airborne transmission of peanut particles? Should any food item that contains peanuts be included within the definition of peanut products (e.g., peanut butter crackers, products containing peanut oil)? Is there a way of limiting this definition?