



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 18th day of March, 2026

**ALLERGY & ASTHMA NETWORK,  
ASTHMA AND ALLERGY FOUNDATION  
OF AMERICA, FOOD ALLERGY &  
ANAPHYLAXIS CONNECTION TEAM,  
NO NUT TRAVELER**

**Complainants,**

**v.**

**SOUTHWEST AIRLINES, CO.**

**Respondent.**

**Docket DOT-OST-2022-0134**

**Served March 18, 2026**

**ORDER OF DISMISSAL**

On November 16, 2022, Allergy & Asthma Network, Asthma and Allergy Foundation of America, Food Allergy & Anaphylaxis Connection Team, and No Nut Traveler (collectively, the Complainants) filed a joint, third-party complaint against Southwest Airlines Co. (Southwest). The Complainants allege that Southwest is violating the Air Carrier Access Act (ACAA), 49 USC 41705, and the Airline Passengers with Disabilities Bill of Rights<sup>1</sup> by not permitting passengers with food allergies to preboard to wipe down seating areas.

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<sup>1</sup> The Airline Passengers with Disabilities Bill of Rights describes the fundamental rights of air travelers with disabilities under the ACAA and its implementing regulation, 14 CFR Part 382. It does not expand or restrict the rights available to air travelers with disabilities. Rather, it provides a summary of existing law and provides references to the regulations that provide authority for those rights.

Pursuant to 14 CFR § 302.406(a)(2),<sup>2</sup> we dismiss the complaint. This dismissal is based on the U.S. Department of Transportation’s (Department) finding that Southwest has restored preboarding eligibility for passengers with nut allergies.<sup>3</sup> Furthermore, with respect to non-nut food allergies, the Department finds that existing regulations and prior enforcement orders have not provided carriers with fair notice that the preboarding protections must be extended to those with any severe food allergy. The Department determines that such an expansion of carrier obligations is more appropriately addressed through notice-and-comment rulemaking rather than individual adjudication.

## Background

### I. Complaint

The Complainants are four, national nonprofit organizations representing individuals with food allergies. Complaint at ¶¶ 1-4. They assert that passengers with food allergies are individuals with disabilities “because food allergies cause substantial limitation in major life activities.” *Id.* at ¶ 5. The Complainants emphasize that for many, these allergies are life-threatening and that exposure to even trace amounts can trigger anaphylactic shock or respiratory distress. *Id.* at ¶ 6.

To mitigate this risk, the Complainants state that individuals with food allergies must be permitted to preboard flights to wipe down their seating areas. *Id.* at ¶ 7. The Complainants’ legal arguments rest on two primary points. First, they argue that, under 14 CFR 382.93, individuals with food allergies qualify as passengers with a disability who need additional time to be seated. *Id.* at ¶¶ 7-9. Second, they cite Food Allergy Research and Education, Inc. v. American Airlines, Inc. and White v. American Airlines, Inc. (collectively, FARE), DOT Order 2019-5-12,<sup>4</sup> asserting that the “[Department] held that an air carrier violates [Section] 382.93 when it denies a passenger with a food allergy disability the opportunity to pre-board so that the individual can secure the seating area.” *Id.* at ¶ 11.

The Complainants allege that Southwest’s policy of denying preboarding to passengers with food allergies and offering Extra-time boarding between Group A and Group B to passengers with nut allergies is insufficient. *Id.* at ¶ 18. They claim that this policy effectively forces passengers to either pay fees for Upgraded Boarding to obtain a Group A boarding position or board in a crowded environment where cleaning is impossible. *Id.* at ¶¶ 17-19. The Complainants seek relief that includes, but is not limited to, an order for Southwest to cease and desist the denial of preboarding requests made by passengers with food allergies. *Id.* at ¶ 31.

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<sup>2</sup> 14 CFR 302.406(a)(2), applicable to formal complaints, provides that the Assistant General Counsel has the procedural option to “[i]ssue an order dismissing the complaint in whole or in part, stating the reasons for such dismissal.”

<sup>3</sup> For ease of understanding, the Order of Dismissal does not distinguish between peanuts and tree nuts and refers to them both as “nuts.”

<sup>4</sup> The Order is available at <https://www.regulations.gov/docket/DOT-OST-2017-0026-0006> (FARE) and <https://www.regulations.gov/docket/DOT-OST-2017-0204-0005> (White).

## II. Answer

In its Answer dated December 1, 2022, Southwest confirms that it requires passengers with severe nut allergies who request preboarding to board during Extra-time boarding, which occurs between Group A and Group B. Answer at 1.

Southwest explains that, pursuant to the Department’s November 5, 2019 Equivalent Alternative Determination (EAD) on Southwest’s preboarding process,<sup>5</sup> it is allowed to offer Extra-time boarding, rather than preboarding, to passengers with a disability “who need extra time to board/be seated.” Id. at 3. Southwest cites to the May 16, 2019 FARE decision for its view that requests by a passenger with a severe allergy to preboard to clean seating surfaces is a request for additional time to be seated. Id. Southwest further explains that it continued to offer preboarding to passengers with severe nut allergies until September 22, 2022, when it began denying preboarding to these passengers and only offering them Extra-time boarding due to an “unintentional internal miscommunication.” Id. at 4.

Southwest states that it notified the Department on November 4, 2022, prior to the Complaint filing date, that it would return to its previous policy of offering preboarding to passengers with severe nut allergies. Id. Southwest explains that, due to “union notice rules and advance publication requirements,” id. at 4, it will return to the previous policy on December 15, 2022, id. at 5. As such, Southwest states that the “Complaint is effectively moot because Southwest had previously decided to provide, and is already in the process of implementing, the relief the Complaint requests.” Id. at 6.

## III. Additional Filings

In their December 22, 2022 Reply, Complainants argue that the Complaint is not moot because “Southwest fails to address accommodations for individuals who are severely allergic to any other food” than nuts. Reply at 5. They assert that Southwest effectively “admits its discrimination because it allows pre-boarding for [n]ut allergies and not other food allergies.” Id. at 6. The Complainants further argue that the EAD should be revoked since “Southwest assert[s] that the EAD ... absolves it of obligation to comply with the ACAA.” Id. at 7.

Southwest filed a Response on February 17, 2023, denying that Southwest admits to discrimination or uses the EAD to justify it. Response at 2. Southwest states that “the EAD pertains only to Southwest’s procedure for the boarding of passengers who simply need additional time to reach their seat,” id. at 2-3, and maintains that its policy complies with Section 382.93, id. at 3. Southwest notes that, in FARE, the Department “effectively interpreted section 382.93” to require preboarding only for passengers with nut allergies. Id. at 4. Southwest argues that, given the similarity of the instant case to FARE, the Department should dismiss the Complaint, noting that it had resumed preboarding passengers with nut allergies on December 15, 2022. Id. at 5, 13.

In addition, Southwest argues that determining whether non-nut allergies qualify for preboarding through adjudication, rather than notice-and-comment rulemaking, would be an abuse of discretion. Id. at 8-12. Quoting Pfaff v. HUD, 8 F.3d 739, 748 (9<sup>th</sup> Cir. 1996), Southwest states

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<sup>5</sup> The EAD is available at <https://www.regulations.gov/document/DOT-OST-2008-0273-0241>. Since this filing, Southwest transitioned from open seating to assigned seating and requested withdrawal of its EAD. The Department formally withdrew the EAD in 2026. See <https://www.regulations.gov/document/DOT-OST-2008-0273-0294>.

that an agency abuses its discretion when a new standard adopted by adjudication departs radically from the previous interpretation upon which the public has relied. Id. at 9.

The Complainants filed a second Reply on March 17, 2023, asserting that Southwest's arguments are baseless. Second Reply at 2. They argue that 14 CFR Part 382 protects passengers with any food allergy, id. at 3-4, and point to language in Southwest's own EAD stating that "the Department interpreted section 382.93 as requiring airlines to permit passengers with severe allergies to other types of allergens to preboard to wipe down surfaces around their seat," id. at 5 (quoting the EAD at 4 n.11 (emphasis added by the Complainants)).

## **Decision**

The ACAA and Part 382, prohibit U.S. and foreign carriers from discriminating against individuals based on disability. To determine whether Southwest's actions constitute a violation, the Department must evaluate (1) whether the affected passengers qualify as individuals with disabilities, and (2) whether the specific accommodation requested (preboarding for cleaning) is an established regulatory requirement.

### **I. Disability Status**

Section 382.3 defines individual with a disability as "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." It defines physical or mental impairment as including, but not limited to, "[a]ny physiological disorder or condition" that impacts "one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardio-vascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine." Id. The Department considers a severe food allergy to constitute a physiological disorder that substantially limits major life activities such as breathing and eating. Therefore, such individuals are protected under the ACAA.

### **II. Enforcement Discretion Regarding Nut Allergies**

Historically, the Department has addressed only nut allergies when discussing accessibility protections. See Nondiscrimination on the Basis of Disability in Air Travel, 73 Fed. Reg. 27614, 27650 (May 13, 2008) ("if a carrier informs a passenger that it will accommodate his or her [ ]nut allergy by not serving [ ]nuts on his or her flight itinerary, the carrier must ensure that [ ]nuts are not served on those flights"). While severe food allergies are disabilities, the specific right to preboard to clean the seating area has only been tied to nut allergies. See FARE at 3-4 ("when an airline fails to allow passengers with severe nut allergies to preboard to wipe down seating surfaces, it violates section 382.93").

Southwest admitted that it denied preboarding for passengers with severe nut allergies for a period of 84 days due to an unintentional internal miscommunication. However, the Department notes that Southwest notified the Department before the complaint was filed that it would be returning to its previous policy of offering preboarding for those with nut allergies and restored the service shortly thereafter. Consequently, as an exercise of enforcement discretion, the Department determines that no further action is necessary. We believe that Southwest's self-correction and restoration of

services for nut-allergic passengers sufficiently addresses the regulatory lapse without the need for civil penalties.

### III. The Fair Notice Doctrine

The Complainants seek to extend these preboarding protections to all severe food allergies. However, the existence of a disability does not automatically mandate a specific form of boarding unless that requirement has been clearly articulated by the Department. The fair notice doctrine, rooted in the Fifth Amendment's Due Process Clause, prevents agencies from penalizing a regulated party for violating vague rules or an interpretation that was not clearly communicated beforehand. F.C.C. v. Fox Television Stations, Inc., 567 U.S. 239, 253 (2012). We find that the Department has not sufficiently articulated through guidance, rulemaking, or adjudication that the protections afforded by Part 382 apply to passengers with non-nut food allergies.

First, the Preamble to the 2008 Final Rule on Part 382 and the 2010 Notice of Proposed Rulemaking on passenger protections both specifically mention only nut allergies when discussing accessibility protections. See Nondiscrimination on the Basis of Disability in Air Travel, 73 Fed. Reg. 27614, 27650 (May 13, 2008) (“if a carrier informs a passenger that it will accommodate his or her []nut allergy by not serving []nuts on his or her flight itinerary, the carrier must ensure that []nuts are not served on those flights”); Enhancing Airline Passenger Protections, 75 Fed. Reg. 32318, 32332 (proposed June 8, 2010) (“the significant number of children diagnosed with []nut allergies, some of whom do not fly because of health concerns related to []nut service”). By omitting other food allergies in these foundational documents, the Department inadvertently created a perception within the industry that nut allergies occupy a distinct regulatory category.

Second, as Southwest notes, while the FARE order identifies preboarding as a means to facilitate seating area cleaning, it specifically identifies “severe nut allergies” as the protected category, suggesting that the Department limited Section 382.93 protections to that specific group. The industry has reasonably relied on this specific focus as the limit of the Department's current enforcement stance.

Although, as the Complainants note, the Southwest EAD contains a footnote regarding other severe food allergies, the Department finds that a footnote within a carrier-specific procedural determination does not rise to the level of clear, industry-wide notice required to sustain an enforcement action for non-nut allergies. It would be more appropriate to engage in a notice-and-comment rulemaking to determine whether Part 382 should be amended to explicitly make clear that interpretation.

### IV. Conclusion

The Department acknowledges the Complainants' position that the safety risks of dairy, egg, or shellfish allergies can be just as severe as those of nut allergies. However, as Southwest has already restored preboarding eligibility for passengers with nut allergies, and because expanding such protections to all food allergies constitutes a significant policy shift requiring a formal notice-and-comment rulemaking process, the Department finds that further adjudication of this individual complaint is not warranted. The Department determines that an industry-wide expansion of carrier obligations is more appropriately addressed through a process that allows for input from all stakeholders.

ACCORDINGLY, we dismiss the complaint filed in Docket DOT-OST-2022-0134. This order is issued under authority assigned in 14 CFR 302.406(a)(2) and shall be effective as the final action of the Department within 30 days after service. Copies will be served on the Complainants and Southwest.

**BY:**

**BLANE WORKIE**  
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