

57741

**DEPARTMENT OF TRANSPORTATION**

DEPT. OF TRANSPORTATION  
DOCKETS

99 JUN 18 PM 4: 01

**Office of the Secretary**

**14 CFR Part 254**

[Docket No. OST-1996-1340,<sup>23</sup> formerly Docket 416901

**RIN 2105-AC07**

**DOMESTIC BAGGAGE LIABILITY**

**AGENCY:** Office of the Secretary, DOT

**ACTION:** Supplemental Notice of Proposed Rulemaking (SNPRM).

**SUMMARY:** The Department is proposing to amend its rule governing the amount to which certain U.S. air carriers may limit their liability to passengers for lost, damaged, and delayed baggage in interstate and overseas air transportation. This action continues the proceeding initiated by a petition from Public Citizen and Aviation Consumer Action Project to increase the minimum domestic baggage liability limit. This SNPRM reports and evaluates aggregate baggage data submitted by certain air carriers in response to the Department's 1994 NPRM and responds to comments received from various parties subsequent to the issuance of the NPRM. DOT now requests comment on raising the minimum liability limit to \$2,500 with a mechanism that would provide for periodic updates every two years.

**DATES:** Comments are requested by [60 days after publication in the Federal Register]. Late-filed comments will be considered only to the extent practicable.

**ADDRESSES:** Address comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, SW., PL-401, Washington, D.C. 20590-0001. Comments should identify the docket number and two copies should be submitted. Persons wishing to receive confirmation of receipt of their written comments should include a self-addressed, stamped postcard. The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. Public dockets may be reviewed there between the hours of 9:30 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Comments also may be reviewed on-line at the DOT Dockets Management System web site, [http:// dms.dot.gov/](http://dms.dot.gov/).

**FOR FURTHER INFORMATION CONTACT:** Joanne Petrie, Office of Regulation and Enforcement, Office of General Counsel, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. (202) 366-9306.

**SUPPLEMENTARY INFORMATION:**

**Background**

Lost, damaged and delayed baggage ranks as one of the top sources of aviation consumer complaints filed with the Department of Transportation and is a major source of consumer dissatisfaction. In the Air Travel Consumer Report published by the Department, major U.S. air carriers reported the following number of domestic mishandled-baggage reports per year:

<b>Year</b>	<b># of Mishandled Baggage Reports</b>
1993	2,282,903
1994	2,321,524
1995	2,227,599
1996	2,460,487
1997	2,278,841
1998	2,484,841

*P 4/15/97*  
**ADDRESSES:** Address comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, SW., PL-401, Washington, D.C. 20590-0001. Comments should identify the docket number and two copies should be submitted. Persons wishing to receive confirmation of receipt of their written comments should include a self-addressed, stamped postcard. The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. Public dockets may be reviewed there between the hours of 9:30 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Comments also may be reviewed on-line at the DOT Dockets Management System web site, <http://dms.dot.gov/>.

*EP 4/15/97*  
**FOR FURTHER INFORMATION CONTACT:** Joanne Petrie, Office of Regulation and Enforcement, Office of General Counsel, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590. (202) 366-9306.

**SUPPLEMENTARY INFORMATION:**

**Background**

Lost, damaged and delayed baggage ranks as one of the top sources of aviation consumer complaints filed with the Department of Transportation and is a major source of consumer dissatisfaction. In the Air Travel Consumer Report published by the Department, major U.S. air carriers reported the following number of domestic mishandled-baggage reports per year:

<b>Year</b>	<b># of Mishandled Baggage Reports</b>
1993	2,282,903
1994	2,321,524
1995	2,227,599
1996	2,460,487
1997	2,278,841
1998	2,484,841

14 CFR Part 254 sets forth the minimum level for permissible limitations of air carrier liability for loss, damage or delay in the carriage of passenger baggage in domestic air transportation. The rule applies to both charter and scheduled service. It provides, “[i]n any flight segment using large aircraft [any aircraft designed to have a maximum passenger capacity of more than 60 seats], or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger’s personal property, including baggage, in its custody to an amount less than \$1,250 for each passenger.”

In addition, Part 254 requires a carrier to provide certain types of notice to passengers. It provides, “[i]n any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall provide to passengers, by conspicuous written material included on or with its ticket, either: (a) notice of any monetary limitation on its baggage liability to passengers; or (b) the following notice: “Federal rules require any limit on an airline’s baggage liability to be at least \$1,250 per passenger.”

The amount of the minimum liability limit was last amended by a final rule (ER-1374, 49 FR 5065, February 10, 1984), issued by the Civil Aeronautics Board (CAB) before its “sunset,” in 1984. The \$1,250 figure was calculated based upon the percentage increase in the “Consumer Price Index for all Urban Consumers” (CPI-U) between the date of the previous amendment in May 1977 and September 1983. When setting the limit, the CAB attempted to balance the amount necessary to cover the value of passengers’ baggage while still allowing the air carriers to protect themselves from extraordinary claims.

### **Petition for Rulemaking**

On December 21, 1993, Public Citizen and Aviation Consumer Action Project (ACAP) petitioned the Department to raise the minimum limit to \$1,850, which was calculated by factoring in the increase in the CPI-U from the previous amendment of September 1983 and compensating for inflation changes until the implementation of the final rule (estimated to be one year from the date of the

petition). In support of the formula, ACAP conducted a study that concluded that the CPI-U increase was a good proxy for the price increases for specific consumer goods cited in the study. ACAP stated that, if the rulemaking process proceeded past one year or if the-inflation rate changed unexpectedly during this time, the Department should recalculate a new figure using the same methodology.

### **The NPRM**

On September 30, 1994, in response to ACAP's petition, the Department issued an NPRM, requesting comment on three proposals (59 FR 49868). First, based on a 46.4 percent increase in the CPI-U calculated from September 1983 until April 1994, the Department proposed to raise the limit to ACAP's proposal of \$1,850. The Department stated that this calculated figure should compensate passengers based on the present value of money and constructively influence air carriers to remedy the causes of baggage problems. To assess the economic effects of this figure on the industry, air carriers were requested to submit annual data on 1993 domestic baggage claims, specifically: (1) the total number of domestic baggage claims (defined in the NPRM) for reimbursement and the total amount claimed (i.e., the amount that the claimants requested); (2) the total amount paid by the carrier in settling those claims; and (3) the number and total dollar amount of claims that exceeded \$1,250, and the number and total dollar amount that exceeded \$1,850.

As additional alternatives, the Department proposed: (1) to raise the minimum limit to \$1,850 with a mechanism that automatically provides for periodic future increases, or (2) to raise the minimum liability limit to \$2,000. The first alternative proposal would have provided for an automatic increase of the minimum liability limit every other year based on changes in the CPI-U. DOT asked commenters on the first alternative proposal to address the administrative burden on the airline industry of a periodic update, evaluate current technology, and state their opinions concerning the best method of notice for each rate change. Commenters on the second alternative proposal were asked to focus on the benefits of a fixed minimum liability limit in terms of advance planning and administrative costs. Finally, the Department asked for comment on several proposed time frames for the implementation of the final rule and future automatic adjustments, taking

into account ticket stock procurement procedures in the industry. The Department suggested that the new minimum dollar limit go into effect 30 days after issuance of the final rule, but that the revised notice requirement be implemented 60 days after the final rule is issued. In conjunction with these proposals, the Department asked the public and the industry to consider and address several options, such as electronic tickets, a ticket addendum, and ticket stickers. If the automatic adjustment proposal were selected, the Department requested comment on whether a 30-day effective date would be sufficient for future adjustments. Comments and baggage data were due on November 29, 1994.

### **Request for Extension of Comment Period**

On November 10, 1994, the Air Transport Association (ATA) asked for an extension of the November 29, 1994 deadline. ATA requested that the baggage data be published in aggregate form and asked for the comment period to be extended to 60 days after the Department publishes the aggregate baggage data in the docket. ATA cited a critical need for sufficient time for the public to analyze and comment on the baggage data, as well as the need for the Department to fulfill its procedural responsibilities and make a decision based on the most complete information. In response, the Department partially granted ATA's request. The Department stated in a notice issued in the Federal Register (59 FR 60926, November 29, 1994) that carrier data would be due November 29, 1994 and the aggregated information would be published in the docket, followed by a 30-day comment period.

### **Comments Received**

Comments were received from American Trans Air, Atlantic Southeast Airlines, North American Airlines, Michael Kees, and ACAI? The three air carriers agreed that the minimum liability limit should not exceed \$2,000. North American believed that the limit should not be adjusted at all, because the excess liability is covered through excess value insurance offered by airlines for a fee, homeowners insurance, or supplemental baggage coverage provided by some credit cards. If the minimum level is raised, North American claimed carriers would be forced to devote more financial resources to paying and scrutinizing claims, resulting in higher fares. North American believed that carriers themselves should set the

minimum level based on market forces and consumer choice. Additionally, North American stated that if the level were raised, the level should not exceed \$1,600. It argued that the all-item index of the CPI-U no longer realistically reflects changes in individual indices, such as apparel. (The Department interprets this comment as saying that the all-item CPI-U index is disproportionately influenced by particular items other than items that passengers would normally pack in their baggage when flying domestically, such as food and gas.) North American proposed that the methodology utilize the lower apparel index, rather than the higher CPI-U all-item index. North American objected to the automatic adjustment proposal, claiming that the rate for baggage mishaps only increased slightly from the last rate amendment and that the NAFTA and GATT agreements might affect future apparel index ratings.

American Trans Air favored a fixed liability limit of \$2,000 and 90 days advance notice before implementation of a final rule.

ASA stated that the Department's claim that a low liability limit will simply prompt the air carriers to pay damages rather than fix their baggage system is a "disservice" to the industry. It argued that because baggage claims result in profit erosion and customer dissatisfaction, air carriers have operational incentives to improve baggage service and do not need monetary incentives from liability limitations. For example, ASA noted that airlines are purchasing and using enhanced baggage tracing systems. ASA believed that a comparison should be made to the passenger bus and rail industries, which have kept their liability limits relatively low in comparison to the air carrier industry. ASA also believed that an \$1,850 minimum limit is not necessary because of supplemental insurance offered to the passenger by credit card companies, air carriers and homeowner policies for a modest premium. ASA objected to the proposal for regular future increases, stating that the periodic-increase provision is not applied to other transportation modes and is costly and burdensome, especially to smaller carriers that cannot invest as heavily in cost-saving technology. Finally, ASA suggested that an increase in the liability limit would place air carriers at risk for an increasing number of fraudulent baggage claims.

Mr. Michael Kees, a passenger affected by baggage problems, believed that the limit should be raised to \$2,500. Alternatively, he also proposed adding an unlimited-compensation provision, enabling passengers to replace lost items at current costs. Mr. Kees believed it is unfair to compel passengers who want additional insurance to utilize their homeowners policy. According to this commenter, a passenger should not have to pay a deductible and file a claim with the passenger's insurance policy because of the actions of an air carrier.

The Department also received confidential 1993 baggage data from American Airlines, American Trans Air, Atlantic Southeast Airlines, Delta Air Lines, Northwest Airlines, Southwest Airlines, United Airlines, USAir (now US Airways), and Trans World Airlines. Although the carriers' individual data are confidential, the aggregated industry data are not. The air carriers were asked to send data responding to: 1) the total number of domestic baggage claims for reimbursement and the total amount claimed; 2) the total amount paid by the carrier in settling those claims; and 3) the number and total dollar amount of such claims that exceeded \$1,250, and the number and total dollar amount that exceeded \$1,850. The Department offered the opportunity to air carriers through their industry groups to submit updated material on June 12, 1998. No updates were provided. As a result, the Department will proceed with reporting baggage data submitted in 1993. Because some air carriers did not submit data for certain categories, the Department can only report limited information. In 1993, the submitting air carriers reported 819,480 baggage claims for reimbursement. Reimbursement claims that exceeded \$1250 constituted 3.2% of the aggregate baggage claim total and reimbursement claims that exceeded \$1850 constituted 1.4% of this total, according to the carriers.

### **Second ACAP Petition**

ACAP submitted an updated petition on May 1, 1998, requesting that the Department raise the minimum domestic baggage liability level to \$2,100. ACAP calculated a \$2,005.47 limit using the CPI-U index, with an additional \$94.53 that provides an incentive for the airlines to provide improved baggage facilities and services.

## **The Current Proposal**

After reviewing the comments and baggage data, the Department now proposes to increase the minimum domestic baggage liability limit to \$2,500. This figure is based on the Administration's "Airline Passenger Fair Treatment Initiative," as well as the minimum liability limitation being considered by Congress in H.R 780. This figure was based on doubling the current \$1,250 regulatory minimum liability limitation and reflects both the Administration's and a Congressional judgment about fairness and the current value of some claims.

Future increases would be based on any increase to the Consumer Price Index for all Urban Consumers from the time the final rule in this proceeding is issued. The Department believes the CPI-U is a proper measuring tool for price changes. The CPI-U is an index of price change, reflecting spending patterns for approximately 80% of the total U.S. population. The index encompasses expenditures reported by persons living in urban areas, including professional employees, the self-employed, the poor, the unemployed, retired persons, urban-wage earners, and clerical workers. The CPI-U is considered by many to be the best measure for adjusting payments to consumers when the payer's intent is to allow the consumer to purchase the same items in current dollars. The index includes all goods for consumption by urban households and reflects sales tax. The apparel index, which was advocated by North American, does not accurately represent the wide variety of items passengers pack in their luggage. Because of the impossibility of identifying an individual index covering all items in a traveler's checked baggage, the aggregate CPI-U index is the best indicator.

In order to keep the liability limitation current, the Department would review the Consumer Price Index for All Urban Consumers every two years following the issuance of a final rule in this proceeding. The minimum baggage liability limitation would be increased, if necessary, based on the July CPI-U rounded to the nearest \$100 for simplicity. Under this process, the Department would publish a final rule in the Federal Register in early fall of the second year following the previous amendment. Because this would be a mathematical computation of the CPI-U on the liability limit in accordance with this proposed rule, the

Department would not need to publish a proposed rule first. The liability limitation and the revised notice requirement would be effective on the following January 1. We are proposing January 1 for simplicity and to tie in with publication cycle of Title 14 of the Code of Federal Regulations. Consequently, if this rule is issued in 1999, the first adjustment would be calculated in 2001 and would go into effect on January 1, 2002.

The Department believes that these biyearly adjustments are in the public interest because they will keep the liability limitation in line with inflation. This is particularly important in light of decreasing opportunities for passengers to carry luggage into the cabin. In addition, this periodic update is consistent with a similar recent statutory requirement, the Federal Civil Penalties Inflation Adjustment Act of 1990 amended by the Debt Collection Improvement Act of 1996.

In September of 1983, when the \$1250 rule was issued, the CPI-U was 100.7. The May 1999 CPI-U is 166.2. If the current limitation were adjusted solely based on the change in the CPI-U during this period, the minimum baggage liability limitation would be \$2063, and likely higher before the final rule is issued. Although we are proposing to raise the baseline to \$2500, we note that the two numbers are very close.

The escalator provision we are proposing today would use the most recent CPI-U figure that is available at the time the final rule is issued as the baseline. For clarity, we would state exactly what that number is. The formula for these biyearly increases would be as follows:

$$lx (a-b)/(b) x (\$2,500)$$

a= July CPI-U of year of new adjustment

b= the most current CPI-U figure when final rule is issued

[The numerical result would be rounded to the nearest \$100.1

### **Regulatory Analyses and Notices**

The Department has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies

and Procedures. A regulatory evaluation that examines the projected costs and impacts of the proposal has been placed in the docket.

The Department certifies that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. There were no comments on small entity impacts in response to the NPRM. By its express terms, the rule only applies to flight segments using large aircraft, or on any flight segment that is included on the same ticket as another flight segments that uses large aircraft. Few, if any, air carriers operating large aircraft would qualify as small entities. The rule could apply to some air carriers that might be considered small entities to the extent that they interline or codeshare with large air carriers. Based on our analysis, we do not believe this rule would have a significant economic impact because most claim payments are currently well below \$1250. Aggrieved passengers still need to document their loss and are not automatically entitled to compensation at the higher level. Nevertheless, the Department seeks comment on whether there are further unidentified small entity impacts that should be considered. If comments provide information that there are significant small-entity impacts, the Department will prepare a regulatory flexibility analysis at the final rule stage. The Department does not believe that there would be sufficient federalism implications to warrant the preparation of a federalism assessment. The proposal would not result in an unfunded mandate.

#### **List of Subjects in 14 CFR Part 254**

Air transportation, consumer protection

For reasons set forth in the preamble, the Department proposes to amend 14 CFR Part 254, Domestic Baggage Liability, as follows:

1. The authority citation for Part 254 would continue to read:

Authority: Title 49 Secs. 40113, 41504, 41510, 41702, 41501, and 41707.

2. The Table of Contents would be revised to read:

254.1 Purpose.

254.2 Applicability.

254.3 Definitions.

254.4 Carrier liability.

254.5 Notice Requirement.

254.6 Periodic Adjustments.

3. In §254.1 and 254.2, the phrase, “and overseas” would be removed and the phrase “and intrastate” would be added in its place.

4. Section 254.4 would be revised by replacing “\$1250” with “\$2,500”, so that it reads as follows:

**§ 254.4 Carrier Liability**

On any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger’s personal property, including baggage, in its custody to an amount less than \$2,500 for each passenger.

5. In § 254.5, the “\$1250” would be revised to read, “\$2,500.”

6. Section 254.6 would be added to Part 254 to read as follows:.

**§ 254.6 Periodic Adjustments**

The minimum limit of liability prescribed in this Part will be reviewed every two years by the Department of Transportation based on changes in the Consumer Price Index for All Urban Consumers. The Consumer Price Index for All Urban Consumers as of July will be used to calculate the revised liability limit pursuant to the following formula:

$lx (a-b/b) \times (\$2,500)$  rounded to the nearest \$100

a= July CPI-U of year of current adjustment

b= the most current CPI-U figure when final rule is issued

Issued in Washington, DC on June 17, 1999, under authority delegated by 49 CFR § 1.56a(h)2.



A. Bradley Mims  
Acting Assistant Secretary for Aviation  
and International Affairs

Certified to be a true  
copy of the original

5  
Louise M. Pearson  
Alternate Certifying Officer