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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[Docket No. DOT-OST-2025-0831]

RIN No. 2105-AF37

Enhancing Flexibility of Air Fare Price Advertising

AGENCY: Office of the Secretary (OST), Department of Transportation.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The U.S. Department of Transportation (Department or DOT) is proposing to amend its rule on air fare advertising to allow the total fare, including taxes and fees, to be displayed with the same prominence as any individual components. The current rule states that individual components of air fare, like taxes and fees, may not be displayed prominently. The Department is also proposing to eliminate a prescriptive advertising regulation stating that components of a fare may not be presented in the same or larger size as the total price. These proposed changes would ensure greater flexibility in how air fare is displayed while ensuring information is presented clearly to consumers, and in conformity with the intent of Congress as articulated in a provision of the Internal Revenue Code establishing standards for the display of taxes in advertisements for air transportation. In addition, the Department is proposing to rescind nine air fare price advertising guidance documents. They have become outdated and unnecessary because entities are bound by statute and regulatory text; furthermore, in certain cases, these documents improperly functioned as *de facto* regulations without adhering to the notice-and-comment procedures required by the Administrative Procedure Act.

DATES: Comments should be filed by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN *FEDERAL REGISTER*]. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may file comments identified by the docket number DOT-OST-2025-0831 by any of the following methods:

- Federal eRulemaking Portal: go to https://www.regulations.gov and follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building, 5th Floor, W58-213, Washington, D.C. 20590-0001.
- Hand Delivery or Courier: West Building 5th Floor, Room W58-213, 1200 New Jersey Avenue, S.E., between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays. Commenters using this method of delivery should contact Docket Services at 202-366-9826 or 202-366-9317 before delivery to ensure staff is available to receive the delivery.

Instructions: You must include the agency name and docket number DOT-OST-2025-0831 or the Regulatory Identifier Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to https://www.regulations.gov, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) For information on DOT's compliance with the Privacy Act, please visit https://www.transportation.gov/privacy.

Docket: For access to the docket to read background documents and comments received, go to https://www.regulations.gov or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Robert Gorman, Kyle Joseph, or Blane A. Workie, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590, 202-366-9342; robert.gorman@dot.gov, kyle.joseph@dot.gov, or blane.workie@dot.gov (email).

SUPPLEMENTAL INFORMATION:

A. Statutory Authority

The Department is proposing this rulemaking pursuant to its statutory authority in 49 U.S.C. 40113, which states that the Department may take action that it considers necessary to carry out its statutory duties, including prescribing regulations. In 2011, the Department relied upon 49 U.S.C. 41712 and 49 U.S.C. 40113 to issue its air fare advertising rule, also known as the Full Rare Rule, which is codified at 14 CFR 399.84(a). This rule requires that any advertising for air transportation display the total price to be paid by the consumer, including all government taxes, fees, and carrier-imposed charges. Under the current regulation, the total price must be displayed more prominently and in a larger font than any individual component of that price.

The Department remains committed to the requirement that carriers display the total price to be paid by the consumer. However, the Department tentatively finds that the existing requirements regarding specific font size and prominence is unnecessarily prescriptive, and therefore should be modified to allow fare components to be displayed as prominently as the total price. This change would provide carriers greater flexibility while maintaining essential consumer protections and bring these regulations into conformity with First Amendment jurisprudence. In addition, this proposed rule on prominence reflects the intent of Congress as articulated in the Internal Revenue Code, which similarly states that if the price of transportation and taxes are listed separately from the total price, then the total price must be displayed "at least as prominently as the more prominently stated of the amount to be paid for such transportation or the amount of such taxes."[1]

B. Background

1. *History of DOT's Full Fare Rule*

In 2011, the Department determined in a final rule that it considered any advertising or solicitation by a direct air carrier, indirect air carrier, an agent of either, or a ticket agent, for

[1] 26 U.S.C. 7275(b)(2).

passenger air transportation, a tour (*i.e.*, a combination of air transportation and ground or cruise accommodations) or tour component (*e.g.*, a hotel stay) that must be purchased with air transportation that states a price for such air transportation, tour, or tour component to be an unfair and deceptive practice in violation of 49 U.S.C. 41712 unless the price stated is the entire price to be paid by the customer to the carrier, or agent, for such air transportation, tour, or tour component. When issuing the final rule requiring disclosure of the full fare in 2011, the Department stated that comments filed by individual consumers to the proposed rule, as well as consumer complaints received by the Department, indicated that consumers felt confused or deceived when the fare provided after an initial air fare inquiry did not reflect the total cost of travel. In addition, the Department identified changes in the advertising methods used by sellers of air transportation—particularly then-newer forms of advertising such as social media platforms, unbundling of the cost of air travel into components that must be purchased separately, and offers of more complicated routing with multiple connections—that often result in a lower base fare but higher taxes and fees. The Department found that consumers need "a full picture of the total price to be paid in order to compare fares and routings," and concluded that "to understand the true cost of travel, consumers need to be able to see the entire price they [must] pay to get to their destination the first time the air fare is presented to them."[2]

The 2011 rulemaking also addressed how airlines and ticket agents may display *components* of the full fare. The Department's 2011 final rule allowed advertisers to display fare components separately. In order to ensure that consumers were not confused about the full price to be paid, the final rule clarified that "although charges included within the single total price listed (*e.g.*, government taxes) may be stated separately or through links or "pop ups" on web sites that display the total price, such charges may not be false or misleading, may not be displayed prominently, may not be presented in the same or larger size as the total price, and

[2] *Id.*

must provide cost information on a per passenger basis that accurately reflects the cost of the item covered by the charge."[3]

After the issuance of the 2011 rule, the Department issued guidance that "'prominent' under this rule means that the break-out of per-person charges cannot be in a more prominent place on a web page or in a print advertisement than the advertised total fare.[4] For example, the break-out cannot be at the top of the page, ahead of the total price. The total price should be in larger font. The break-out of charges should not have special highlighting that sets it apart and makes it more prominent than the total price (*e.g.*, bold font, underlined, or italicized)."[5]

Following the issuance of the 2011 final rule, several airlines filed a petition for review with the United States Court of Appeals for the District of Columbia Circuit, asserting, among other things, that the full fare advertising rule was arbitrary and capricious and that it violated the First Amendment right of airlines to engage in commercial and political speech.[6] The airline petitioners stated that the Department's action was arbitrary and capricious because there was nothing inherently deceptive about listing taxes separately, and that the Department lacked substantial evidence for concluding that doing so is deceptive in practice. The Court upheld the final rule requiring the advertised price to be the full fare. In 2012, the Court rejected the airlines' First Amendment challenge, holding that the rule imposed only a disclosure requirement aimed at preventing deception about the total final price of airline tickets, which did not restrict the ability to provide itemized pricing information.[7]

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[3] 76 FR 23110, 23166.

[4] Frequently Asked Questions Concerning the Enforcement of the Second Final Rule on Enhancing Airline Passenger Protections (EAPP #2), Section IX, Question #3, p. 23, available at https://www.transportation.gov/airconsumer/faq-rule2-enhancing-airline-passenger-protections (now listed as "archived guidance" on OACP's web site).

[5] *Id*.

[6] *Spirit Airlines, Inc. v. United States DOT*, 687 F.3d 403 (D.C. Cir. 2012).

[7] *See id.* at 412-15.

However, since the D.C. Circuit rendered the *Spirit* decision, the United States Supreme Court has consistently reviewed commercial speech restrictions more stringently.[8] The Supreme Court has also made clear that applying legal standards expansively to uphold laws imposing restrictions on the size and appearance of speech is inconsistent with its governing precedent.[9] In addition, on February 19, 2025, the President issued Executive Order 14219, "Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative," which requires Federal agencies to identify and work to rescind unconstitutional regulations and regulations that raise serious constitutional difficulties, such as exceeding the scope of the power vested in the Federal Government by the Constitution. The Full Fare Rule's prominence requirement not only restricts the size and appearance of airline disclosures regarding mandatory taxes and fees, and other charges in their airfare advertisements, but also favors the government's preferred pricing message.

In addition, if *Spirit* were litigated today, the limits on deference afforded by the court to the agency's interpretation of its regulation could lead to a different decision. The *Spirit* court afforded substantial deference and controlling weight to the Department's interpretation of the rule, not based on actual evidence of deception caused by prominently displayed itemized pricing information.[10] The statement regarding deference made by the *Spirit* court reads akin to the type of deference previously afforded agency interpretation of statutes under the so-called *Chevron* doctrine, which was overturned in *Loper Bright Enterprises v. Raimondo*.[11] However, the court in *Spirit* was applying the still-existing deference approach for an agency's interpretation of its own ambiguous regulations.[12] The soundness of the *Spirit* court's deference afforded DOT's

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[8] See Micah L. Berman, Manipulative Marketing and the First Amendment, 193 Geo. L.J. 497, 500 (2015).

[9] *See Nat'l Inst. of Family & Life Advocates v. Becerra*, 585 U.S. 755 (2018). This raises questions about whether the Full Fare Rule remains consistent with the Supreme Court's First Amendment jurisprudence.

[10] *See Spirit*, 687 F.3d at 413-15; *see also id.* at 422-24 (Randolph, J., concurring in part and dissenting in part).

[11] 603 U.S. ___ (2024); 144 S. Ct. 2244.

[12] *See Auer v. Robbins,* 519 U.S. 452 (1997). *Auer* deference is also referred to as *Seminole Rock* deference, which is referenced by following the string citation accompanying the *Spirit* court's deference statement.

interpretation of the existing rule is now questionable based on the Supreme Court's narrowing of *Auer* deference in *Kisor v. Wilkie*, 588 U.S. ___ (2019), 139 S. Ct. 2400 (2019), decided subsequent to *Spirit*, which clarified when such deference is appropriate by reinforcing and expanding the *Auer* doctrine's limits.[13]

Given these circumstances, and in light of the Supreme Court's repeated emphasis on heightened scrutiny in the commercial speech context since the *Spirit* decision, as well as direction provided in Executive Order 14219, the Department has tentatively identified the Full Fare Rule's prominence and font size restrictions as raising serious constitutional difficulties, exceeding the scope of the power vested in the Federal Government by the First Amendment. Therefore, the Department proposes to repeal these provisions.

2. *Price Advertising Statute in Internal Revenue Code*

Separate from DOT's Full Fare Rule, in 1970, Congress issued statutory standards for the display of taxes in advertisements for air transportation. Specifically, section 7275 of the Internal Revenue Code requires that any advertising for air transportation must state the cost as the total of (a) "the amount to be paid for such air transportation" and (b) various taxes set forth in the statute.[14] Moreover, if the advertisement separately states the non-tax component and/or the tax component, then the total must be stated "at least as prominently" as the most prominent component.[15] Section 7275 is a criminal tax penalty provision. Violation is considered a misdemeanor, with a maximum penalty of $100 per violation upon conviction.[16] Because the Department did not consider this section when it promulgated the Full Fare Rule, it now seeks

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[13] *See Kisor*, 139 S. Ct. at 2408, 2414-18.

[14] 26 U.S.C. 7275(b)(1).

[15] *Id*. at (b)(2).

[16] *Id*. at (d). Prior to its enactment, DOT Secretary Volpe testified to Congress in support of permitting airlines to state the fare, the tax, and then the total on the ticket instead of only allowing airlines to provide the total without the tax on the ticket. *See Hearing Before The Committee On Finance U.S. Senate* on H.R.19444 – 91st Congress (1969-1970) at 8, 10-11, available at: https://www.finance.senate.gov/imo/media/doc/Skyjacking.pdf. Further legislative history of the rule can be found at *Summary of Testimony On Revenue Aspects of Anti-Skyjacking Proposal: H.R. 19444* (Dec. 1, 1970), available at: https://ia601704.us.archive.org/11/items/summaryoftestimo1870unit/summaryoftestimo1870unit_bw.pdf.

comment on the continued relevance of the prominence regulation in 14 CFR 399.84 in light of this Internal Revenue Code provision, which establishes standards for the display of taxes in advertisements for air transportation.

3. *DOT Guidance on Price Advertising*

Over time, the Department has issued numerous guidance documents and policy statements relating to its interpretation and enforcement of the Full Fare Rule. Some of these documents are listed as active guidance documents on the Department's web site, while others can be found at a separate link at the bottom of that page labeled "archived guidance."[17] In light of today's proposed regulatory change, the Department proposes to rescind the following guidance documents:

- "Use of the Term 'Free' in Air Fare Advertisements and Disclosure of Consumer Costs in Award Travel" (May 17, 2012) (discussing how airlines must disclose carrier charges and government taxes in "free" advertisements);
- "Guidance on the Use of Rounding in Air Fare Advertisements" (February 28, 2012) (providing guidance regarding displaying the exact fare, rather than rounding up or down);
- Additional Guidance on Airfare and Air Tour Price Advertisements" (February 21, 2012) (advising airlines that it is deceptive to list carrier-imposed fees as "taxes" or as "taxes and fees");
- "Advertising Air Fares on Social Media Sites" (October 3, 2011) (discussing how to advertise fares on character-limited sites like Twitter, and noting that the full-fare rule, effective 2012, will apply to all sites);

[17] https://www.transportation.gov/airconsumer/guidance-aviation-rules-and-statutes.

- The price advertising provisions of "FAQ on Rule 2 for Enhancing Airline Passenger Protections" (first issued August 19, 2011) (addressing, among other things, the prominence provision of the Full Fare Rule);
- "Disclosure of Airfare Variations: Web vs. Other Sources, Surcharges that May Be Listed Separately in Advertisements" (November 15, 2004) (indicating that the Office of Aviation Consumer Protection (OACP) will allow separate listing of "government *imposed* surcharges" (like Passenger Facility Charges (PFCs) but not "government *approved*" surcharges (like fuel taxes);
- "Disclosure of Higher Prices for Airfares Purchased Over the Telephone Via Airline Telephone Reservation Centers Or At Airline Ticket Counters, and Surcharges That May Be Listed Separately In Fare Advertisements" (November 5, 2004) [archived];
- "Advertising: 'Free' Tickets, Disclosure of Fees" (September 4, 2003) [archived] (discussing how to disclose tax, fee, and restriction information when fares are advertised as "free");[18] and
- The price advertising provisions of "Letter to Major and National U.S. Air Carriers and to Air Travel Industry Associations and Labor Unions" (December 20, 1994) (discussing, among other things, "2-for-1" fares and "percentage off" advertising).

4. *Full Fare Rule ANPRM and Rescission*

On January 15, 2021, the Department issued an Advance Notice of Proposed Rulemaking (ANPRM) seeking comment on whether and how to revise the Full Fare Rule.[19] This ANPRM was publicly posted on the Department's web site, but was withdrawn before it published in the *Federal Register*.[20]

[18] This guidance is listed on the "archived" section of DOT's guidance page, and also appears at 68 FR 53628 (September 11, 2003).

[19] Docket DOT-OST-2021-0007.

[20] https://www.regulations.gov/document/DOT-OST-2021-0007-0001.

5. *Final Rule on Transparency of Ancillary Fees*; *Effect on Price Advertising Requirements*

On April 30, 2024, the Department issued a final rule titled "Enhancing Transparency of Airline Ancillary Fees" (Ancillary Fee Rule).[21] While the Ancillary Fee Rule primarily focused on the disclosure of fees for certain ancillary services such as transporting a first or second checked bag and canceling or changing a reservation, it also made relatively minor changes to the Department's price advertising requirements for air transportation in 14 CFR 399.84(a). For example, the Department stated that the Full Fare Rule applied to "mandatory charges" (as opposed to optional ancillary fees), and then defined the term "mandatory charges" consistent with longstanding OACP policy.[22] The Ancillary Fee Rule also added and amended other subsections of 14 CFR 399.84; for example, it included a provision relating to "percentage off" advertisements in 14 CFR 399.84(e).

Following the publication of the Ancillary Fee Rule, several airlines and airline associations challenged it in the U.S. Court of Appeals for the Fifth Circuit. Petitioners argued that the Department lacks prescriptive rulemaking authority under 49 U.S.C. 41712 and that the Ancillary Fee Rule was arbitrary and capricious under the Administrative Procedure Act (APA). Specifically, petitioners alleged that the Department failed to provide an opportunity for public comment on an economic study the Department relied upon to estimate the percentage of consumers who find ancillary fee information relevant to their search for airfare.[23]

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[21] 89 FR 34620 (Apr. 30, 2024); RIN 2105-AF10; Docket DOT-OST-2022-0109.

[22] 14 CFR 399.84(a) (price advertising for air transportation, tours, or tour components is an unfair and deceptive practice "unless the price stated is the entire price (*all mandatory charges*) to be paid by the customer to the carrier, or agent, for such air transportation, tour, or tour component. *Mandatory charges refer to all taxes and fees that are required to purchase air transportation on the channel where the advertising or solicitation occurs (e.g., if a fare is advertised online for $100 then that means the fare must be available for the consumer to purchase for $100 online). Mandatory charges* included within the single total price listed may be stated separately or through links or 'pop ups' on online platforms that display the total price, but such charges may not be false or misleading, may not be displayed prominently, may not be presented in the same or larger size as the total price, and must provide cost information on a per passenger basis that accurately reflects the cost of the item covered *by the mandatory charge*.") (emphasis added).

[23] *See* Enhancing Transparency of Airline Ancillary Service Fees Regulatory Impact Analysis RIN 2105–AF10, n. 35 and accompanying text, *available at* https://www.regulations.gov/document/DOT-OST-2022-0109-0753. The study is also available in the docket at https://www.regulations.gov/document/DOT-OST-2022-0109-0835.

On January 28, 2025, a Fifth Circuit panel issued a decision on the merits of the petition.[24] The court held that the "plain text of the statutory framework" authorizes the Department to prescribe regulations to stop unfair and deceptive practices under 49 U.S.C. 41712[25] and that DOT's power to do so is not inconsistent with the Airline Deregulation Act or the major question or nondelegation doctrines. However, the court determined that the failure to provide the economic study for comment violated APA procedures. Accordingly, the court remanded the rule to the Department to provide the opportunity to comment on the new data. On February 3, 2026, an *en banc* panel of the Fifth Circuit vacated the Ancillary Fee Rule, reasoning that the Department violated the APA's notice and comment requirement by not providing the opportunity for comment on the economic study.[26] The *en banc* panel did not rule on the scope of the Department's authority to issue regulations under 49 U.S.C. 41712 and 40113.[27]

It is well-established that when a court vacates a regulation, "the judgment . . . ha[s] the effect of reinstating the rules previously in force."[28] Thus, under existing precedent, the vacatur of the Ancillary Fee Rule had the legal effect of reinstating section 399.84 as it was written in 2011. Despite this effect of the vacatur, the Ancillary Fee Rule remains codified in the Code of Federal Regulations.

In this NPRM, the Department proposes to amend only subsection (a) of 14 CFR 399.84. To comply with the Fifth Circuit's vacatur, the new proposed regulatory text reverts to the 2011 version of subsection (a). Accordingly, it does not include the term "mandatory charges" and its associated definition, which were features of the now vacated Ancillary Fee Rule. Instead, we

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[24] *Airlines for Am. v. U.S. Dep't of Transp.*, 127 F.4th 563 (Jan. 28, 2025).

[25] *Id.* at 573.

[26] *Airlines for Am. v. U.S. Dep't of Transp.*, No. 24-60231, 2026 WL 276679 (5th Cir. Feb. 3, 2026) (*en banc*).

[27] *Id.*

[28] *Action on Smoking & Health v. C.A.B.*, 713 F.2d 795, 797 (D.C. Cir. 1983); *see also Prometheus Radio Proj. v. F.C.C.*, 652 F.3d 431, 453 n.25 (3rd Cir. 2011); *Paulsen v. Daniels*, 413 F.3d 999, 1008 (9th Cir. 2005); *Cumberland Med. Ctr. v. Sec'y of Health & Human Servs.*, 781 F.2d 536, 538 (6th Cir. 1986).

modify the 2011 text only with respect to prominence and font size. All other matters addressed by the vacated Ancillary Fee Rule, including the broader disclosure of ancillary fees and any other necessary amendments to 14 CFR 399.84, will be addressed separately in the rulemaking, titled "Increasing Flexibility on Disclosure of Airline Ancillary Fees" (RIN 2105-AF34).

6. *Federal Trade Commission (FTC) Trade Regulation Rule on Unfair or Deceptive Fees*

On January 10, 2025, FTC issued a final rule titled "Trade Regulation Rule on Unfair or Deceptive Fees" (FTC Rule).[29] The FTC Rule became effective as of May 12, 2025, and applies to offers, displays, or advertisements of the prices of live-event tickets and short-term lodging.[30] The rule was motivated by concerns about various forms of bait-and-switch pricing in those industries. Specifically, FTC found that providers in those industries advertised low prices, only to add mysterious, mandatory fees (such as "convenience fees," "processing fees," and "resort fees") later in the purchasing process.[31] FTC heard concerns from stakeholders that such practices were widespread in many other industries beyond live tickets and short-term lodging, but limited the scope of its rule to live-event tickets and short-term lodging where evidence of unfair and deceptive practices was particularly clear.[32] The FTC Rule sets standards for initial advertisements, disclosures before final payment, and general prohibitions on misleading fees.

The key feature of the FTC Rule is that the advertised price must be the "total price," which is defined as "the maximum total of all fees or charges a consumer must pay for any good(s) or service(s) and any mandatory ancillary good or service."[33] The FTC reasoned that any fee that was necessary to obtain the product as advertised must be included in the total price. In other words, the rule prohibits advertising a certain price and then adding *unavoidable* fees (*e.g.*, "convenience fees" and "processing fees") later in the purchasing process.

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[29] 90 FR 2066 (Jan. 10, 2025); RIN 3084-AB77; Docket FTC-2023-0064.

[30] 16 CFR 464.1 (defining "covered good or service").

[31] 90 FR at 2067.

[32] *Id*. at 2067.

[33] 16 CFR 464.2(a); 16 CFR 464.1 (defining "total price").

The key difference between the current DOT Full Fare Rule and the FTC Rule is the treatment of government charges. Under the current DOT Full Fare Rule, all government charges must be included in the advertised price. Under the FTC Rule, which covers offers, displays, or advertisements for live-event tickets and short-term lodging, the advertised price may *exclude* "government charges," which are defined as "the fees or charges imposed on the transaction by a Federal, State, Tribal, or local government agency, unit, or department."[34] Although the FTC Rule allows businesses that offer, display, or advertise live-event tickets and short-term lodging to exclude government charges from the advertised price, it does not require them to do so and such businesses may advertise prices inclusive of such charges and be in compliance with the FTC Rule.

Under the FTC Rule, advertisers are free to list the components of an advertised price, but the total price, excluding government charges and shipping fees, must be disclosed "clearly and conspicuously." The rule defines "clearly and conspicuously" as "easily noticeable (*i.e.,* difficult to miss) and easily understandable by ordinary consumers."[35] Moreover, the total price must be disclosed "more prominently than any other pricing information," except, as discussed below, the final amount of payment, which must be at least as prominent as the total price.[36]

In this respect, the FTC Rule largely tracks the current DOT Full Fare Rule. The DOT Full Fare Rule states that components of the fare may be displayed separately, but "may not be displayed prominently." The practical effect of both rules is that the total price, although defined differently by FTC and DOT, must be displayed more prominently than any components. The DOT Full Fare Rule is more prescriptive than the FTC Rule with respect to font size: under the

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[34] 16 CFR 464.2 ("Hidden fees prohibited"); 46 CFR 464.1 (defining "government charges"). The FTC noted that it was possible for sellers of tours and tour packages, with both an air transportation component and a hotel component, to comply both with the current Full Fare Rule and the FTC Rule.

[35] 16 CFR 464.1.

[36] 16 CFR 464.2(a), (b).

DOT Full Fare Rule, components "may not be presented in the same or larger size as the total price."[37] The FTC Rule is silent as to font size.

Finally, under the FTC Rule, prior to payment, the covered entity must disclose "the nature, purpose, and amount of any fee or charge imposed on the transaction that has been excluded from total price and the identity of the good or service for which the fee or charge is imposed."[38] These disclosures must be clear and conspicuous.[39] The final amount of payment must be clear and conspicuous, and must be displayed "more prominently than, or as prominent as," the advertised total price.[40] The net effect of these rules is that the advertised price and the final amount of payment must be displayed more prominently than any components. FTC has issued a guidance document to help regulated entities and the public understand the rule and how to comply with it.[41]

7. *Request for Information (RFI) and Comments*

On April 3, 2025, the Department issued an RFI titled "Ensuring Lawful Regulation; Reducing Regulation and Controlling Regulatory Costs."[42] The Department solicited comment from the public and stakeholders regarding existing DOT regulations, guidance documents, or reporting requirements that may be "inconsistent with law or Administration policy" and/or "obsolete, unnecessary, unjustified, or simply no longer make sense."[43]

In response to the RFI, Airlines for America (A4A) and the International Air Transport Association (IATA) urged the Department to repeal the core feature of the Full Fare Rule, which is that the initial advertised fare must include taxes and government-imposed fees. They contend

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[37] 14 CFR 399.84(a).

[38] 16 CFR 464.2(c)(1).

[39] *Id*.

[40] 16 CFR 464.2(b), (c).

[41] https://www.ftc.gov/business-guidance/resources/rule-unfair-or-deceptive-fees-frequently-asked-questions

[42] 90 FR 14593 (Apr. 3, 2025); Docket DOT-OST-2025-0026. The RFI was not limited to aviation consumer protection issues; instead, it was directed to all individuals and entities that may be affected by any DOT regulations.

[43] *Id.* at 14594.

that DOT's advertising regulations impose stricter standards on the airline industry than on any other industry, despite the passage of the Airline Deregulation Act of 1978 (ADA). They argue that the rule "requires airlines to hide some of the true cost to consumers" in the form of government taxes and fees, which have increased over time.[44] They argue that it would be easy for airlines to display taxes and fees later in the booking process separately like other industries, and to let consumers calculate the total, because taxes are generally uniform across purchases. A4A notes that the FTC Rule, which covers lodging and live-event tickets, allows those industries to exclude taxes and government fees from the total price. They recommend that "if retained in any material form, the DOT should strictly align with the price advertising standards set by the FTC for other industries."[45] A4A contends that if the Department continues to require the total price to be advertised more prominently than components (like taxes), then the Department should eliminate prescriptive size requirements and allow airlines to have flexibility on how to display the total price (or final amount of payment) more prominently than other components.[46] A4A also urged the Department to rescind its price advertising guidance documents.

Spirit Airlines and the Association of Value Airlines (AVA), representing ultra-low-cost carriers,[47] also urged the Department to rescind the Full Fare Rule. They argued that there is

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[44] A4A at 30; *see also* IATA at 8-9. We note that under the current Full Fare Rule, airlines are free to display fare components separately.

[45] A4A at 35; *see also* IATA at 9.

[46] A4A included an example of the type of flexibility that it would support. The example lists four versions of the following equation:

Fare $100
Gov't tax $25
Price $125
In each version, all font *sizes* are the same, but the "price" is made more prominent by highlighting, bolding, a text box, or a red font.

[47] Allegiant Air, Avelo Airlines, Breeze Airways, Frontier Airlines, Spirit Airlines, and Sun Country Airlines.

nothing unfair or deceptive about listing taxes and fees separately from the advertised fare. They also argued that the Full Fare Rule unconstitutionally abridges commercial speech.[48]

The Travel Technology Association (Travel Tech) argued that the Department should *retain* the Full Fare Rule because it "prevent[s] deceptive or misleading marketing of air fares, such as by display bias; enable[s] accurate price comparisons across carriers and sales channels; and uphold[s] a baseline standard of fairness across both airline-direct and indirect platforms."[49] The United States Tour Operators Association (USTOA) did not comment on the general requirement to display the full fare inclusive of government taxes and fees in advertisements, but urged the Department to rescind its May 2012 guidance regarding advertisements for "free" travel.

Five public interest organizations, advocating on behalf of airline passengers, supported the existing Full Fare Rule because it "enables basic market forces to function. Without price transparency, consumers cannot make informed decisions and competition fails."[50]

C. Other Deregulatory Alternatives for the Full Fare Rule

Today, the Department is proposing a minor, but certainly meaningful, revision to the Full Fare Rule's prominence provision. However, as an alternative, the Department is considering repealing the Full Fare Rule in whole. The Department's consideration to repeal the rule is based on the combined effect of three primary factors: (1) reconsideration of the exercise of the relevant statutory authorities; (2) direction from Executive Order 14219 to identify for revision those regulations that are based on anything other than the best reading of the

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[48] AVA at 4 ("When challenged on First Amendment grounds, the court in *Spirit Airlines v. U.S. Department of Transportation*, 687 F.3d 403 (D.C. Cir. 2012) (cert. denied), gave deference to the DOT citing *St. Luke's Hosp. v. Sibelius*, 611 F.3d 900 (D.C. Cir. 2010), which rests on *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504 (1994), which rests on *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), which, of course, was overturned this past year in *Loper Bright Enterprises v. Raymond*, 603 U.S. 369 (2024), holding that deference to agencies over their own authority is not appropriate. Given that deference was wrongfully applied in *Spirit Airlines* to override the First Amendment, we all the more urge that this regulation be repealed.")

[49] Travel Tech at 7.

[50] Comments of American Economic Liberties Project, Consumer Action, Consumer Federation of America, FlyersRights, and National Consumers League.

underlying statutory authority; and (3) the unnecessary regulatory layering between the existing Full Fare Rule and other applicable law.

1. Reconsideration of Relevant Statutory Authorities

The Department is reconsidering the optimal exercise of its statutory authorities. The Department has historically regulated airfare advertising under its 49 U.S.C. § 41712 authority to stop unfair or deceptive practices. However, 49 U.S.C. 41712 does not provide explicit direction to the Secretary to regulate price advertising. As discussed above, in 1970, Congress established specific standards for the display of taxes in airfare advertising in the form of a criminal tax penalty under the Internal Revenue Code (26 U.S.C. § 7275). The Department is considering whether, as a matter of policy, the specific standards set by Congress in the Internal Revenue Code should be the primary framework for required disclosures of the amount of applicable taxes in airfare advertising, rather than the Department maintaining overlapping and distinct requirements. Specifically, the Department questions whether, in the specific context of tax and fee prominence, Congress intended for these standards to be governed primarily by the Internal Revenue Code.

2. Ensuring Lawful Governance

On February 19, 2025, the President issued Executive Order 14219, which requires Federal agencies to review regulations and identify for revision those that are "based on anything other than the best reading of the underlying statutory authority." The Department is considering whether the best reading of the interaction between 49 U.S.C. § 41712 and 26 U.S.C. § 7275 suggests that the specific governing standard for tax advertising should be the Internal Revenue Code, thereby making the Department's overlapping Full Fare Rule unnecessary for achieving the goal of non-deceptive pricing.

3. Regulatory Divergence and Overlap

The Department identifies misalignment between the existing Full Fare Rule and the Internal Revenue Code. While the Internal Revenue Code permits taxes to be stated as prominently as the total price, the existing Full Fare Rule imposes a stricter standard, prohibiting taxes and fees from being displayed "prominently." While it may be possible for entities to comply with both by adhering to the more restrictive DOT standard, the Department questions whether maintaining this divergence remains in the public interest. Further, the Internal Revenue Code establishes standards specifically for tax and total price displays; however, the Department's Full Fare Rule extended these requirements to all "mandatory charges," a term the Department defined to include all taxes as well as government- and carrier-imposed fees required to purchase air transportation.[51] By including carrier-imposed fees within these prominence restrictions—a category of charges not addressed by the Internal Revenue Code—the Full Fare Rule creates a broader and more restrictive regulatory scheme.

The Department questions whether repeal of the Full Fare Rule may eliminate conflicts with more specific laws, streamline the regulations by eliminating unnecessary restrictions, and reduce the potential for confusion that can arise when multiple Federal entities impose overlapping and different requirements.

Rather than modify the Full Fare Rule as proposed herein, should the Department instead repeal 14 CFR 399.84 in whole or in part? If the Department should consider a partial repeal, what provisions should be retained? For example, the Department seeks comment on a modification to the Full Fare Rule that removes any reference to "prominence" and instead cross-references the Internal Revenue Code by stating that mandatory "charges may not be false or misleading, must provide cost information on a per passenger basis that accurately reflects the cost of the item covered by the charge, and must comply with 26 U.S.C. 7275, as applicable."

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[51] As we discussed in section B5, above, the Fifth Circuit vacated the Ancillary Fee Rule, which had added the term "mandatory charges" and its definition. Even if those terms and definitions are vacated from regulatory text, they do reflect longstanding OACP enforcement policy, and therefore a regulatory misalignment still exists.

What quantifiable or qualitative cost-savings and benefits would be realized through a full or partial repeal? Please submit any data that would assist the Department in weighing the economic impacts of a variety of deregulatory options. In asking these questions, the Department notes it could, under its adjudicative authority found in 49 U.S.C. 41712, pursue enforcement action if an entity in air transportation is found to display fees in a way that is unfair or deceptive, even in the absence of the existing Full Fare Rule.

C. Need for a Rulemaking and Statement of Deregulatory Effect

The Department is of the view that the Full Fare Rule can be revised to provide greater flexibility for advertisers in how they display air fare, including calling attention to the components of a fare (*e.g.*, government charges) if they wish to do so. Specifically, we believe that the prominence provision of the Full Fare Rule is unnecessarily prescriptive, particularly regarding font size. The current rule states that components of the full fare may not be displayed "prominently." However, we believe that there is nothing inherently unfair or deceptive in having components of a fare be displayed "prominently," so long as the total price is just as prominent.

The current rule also states that components of a fare "may not be presented in the same or larger size as the total price." As noted above, we believe that specifically regulating font size is overly prescriptive. We also recognize the concerns of some stakeholders that the prominence and font size provisions unconstitutionally burden commercial speech, given more recent Supreme Court decisions that have been issued after the D.C. Circuit Court's decision in *Spirit Airlines*.[52]

This proposed rule is deregulatory in two respects. First, unlike the current Full Fare Rule, this proposed rule eliminates the requirement that components of a total price may not be

[52] *See, e.g.*, *Nat'l Inst. of Family & Life Advocates v. Becerra*, 585 U.S. ___ (2018), 138 S. Ct. 2361, 2372, 2377-78 (2018) (striking down California law requiring crisis pregnancy centers to provide government-scripted information about the availability of state-sponsored abortion services and imposed restrictions on the size and appearance of text).

"prominent." Under this proposed rule, components may be listed as prominently as the total price. Second, this proposed rule eliminates prescriptive advertising rules related to font size. The proposed rule provides airlines and ticket agents greater flexibility with respect to advertising components of air fares, and advances their First Amendment interest in calling greater attention to the portion of air fare that is attributable to government-imposed taxes and fees.

This deregulatory action complies with the policies set forth in Executive Order 14192, "Unleashing Prosperity through Deregulation" (January 31, 2025), because it alleviates an unnecessary regulatory burden. It also complies with Executive Order 14219, "Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative" (February 19, 2025), to the extent that the current Full Fare Rule raised constitutional concerns, imposed significant costs that were not outweighed by benefits, was based on anything other than the best reading of the underlying statutory authority, and/or was inconsistent with Administration priorities. Both Executive Orders are intended to further the Administration's goal of dismantling the "overbearing and burdensome administrative state."[53]

Summary of the Proposed Deregulatory Provisions

The Department is proposing to amend the Full Fare Rule as provided in the summary table below.

Subject	Proposal
Components of Air Fare	Eliminates font size requirements and the requirement that components of a fare may not be displayed prominently. Components of the total fare may be displayed as prominently as the total price, but not more so.
Price Advertising Guidance	Rescinds all prior OACP price advertising guidance documents.[54]

[53] Executive Order 14219, Section 1.

[54] On August 29, 2022, the Department issued broader guidance regarding its interpretation of key terms such as "unfair" and "deceptive." 87 FR 52677 (Aug. 29, 2022). This guidance includes, but is not limited to, a discussion of advertising practices. In a separate NPRM, the Department has indicated its intent to rescind this guidance. 90

Notice of Proposed Rulemaking

Section-by-Section Analysis

Prominence of fare components

This NPRM proposes to amend 14 CFR 399.84(a). Currently, that section states that the components of an advertised fare may be stated separately, but "may not be displayed prominently, [and] may not be presented in the same or larger size as the total price." This proposal would eliminate those requirements, and would instead simply prohibit any components of the fare from being displayed more prominently than the total price. This proposed change would allow advertisers greater flexibility in how air fare is displayed and ensure greater price transparency of the components, including government taxes and fees. The Department recognizes that its proposal differs from the FTC Rule, in that this proposal would allow the total price to be displayed *equally* as prominently as any component, while the FTC Rule requires the total price to be *more* prominent. However, our proposal is consistent with the Internal Revenue Code's statutory provision on prominence. As noted above, the Internal Revenue Code requires the total price to be listed "at least as prominently" as any component. 26 U.S.C. 7275(b)(2). As Congress has established standards for the display of advertisements for air transportation in the Internal Revenue Code, to the extent DOT has rules on price advertising, DOT believes it would be preferable to be consistent with Internal Revenue Code.

We solicit comment on all aspects of this proposal, including its costs and benefits, and whether it strikes the right balance in ensuring greater flexibility for regulated entities in how air fare is displayed while ensuring information continues to be presented in a clear and non-misleading manner to consumers.

Price Advertising Guidance

FR 48850 (October 30, 2025). In addition, in 2015, the Department issued guidance regarding its enforcement policy related to mistaken fares. https://www.transportation.gov/airconsumer/mistaken-fare-policy-statement-050815. We intend to address mistaken fares in future rulemaking.

To avoid confusion, the Department proposes to rescind all price advertising guidance documents on its web site (whether active or archived). The Department is of the view that the guidance documents are unnecessary or outdated. DOT stresses that all guidance documents are nonbinding and that regulated entities are bound by statute and regulatory text. With that said, are there any guidance documents that DOT should keep because they clarify existing obligations, reduce compliance burdens, or provide value in other ways?

Impact on Existing Requirements

The Department is of the view that the proposed rule imposes no new requirements relative to the baseline requirements of the current Full Fare Rule. As a result, the rule is deregulatory in several respects. Under this proposal, advertisers are free to display components of the fare prominently, so long as they are not more prominent than the total price. In other words, the total price and the fare components can be equally prominent. In contrast, the current Full Fare Rule prohibits prominent display of fare components. The current Full Fare Rule also prohibits presenting fare components as the same size as the total price, which would be allowed under this proposal.

REGULATORY ANALYSES AND NOTICES

Changes to Federal regulations must undergo several analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. No. 96–354), as codified in 5 U.S.C. 601 *et seq*., requires agencies to analyze the economic impact of regulatory changes on small entities. The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq*.) requires that DOT consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. Finally, the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) requires DOT to analyze

this action to determine if it will have an effect on the quality of the environment. This portion of the preamble summarizes DOT's analyses of these impacts with respect to this notice.

A. Executive Order 12866 and DOT's Regulatory Policies and Procedures

This proposed rule is not a significant regulatory action under Executive Order 12866 and the Department's Regulatory Policies and Procedures (49 CFR part 5 and DOT Order 2100.6B). It provides sellers of air transportation flexibility in advertising while maintaining price transparency for consumers. The Department's Regulatory Impact Analysis is available in the docket.

B. Executive Order 14192

This proposed rule is expected to be an Executive Order 14192 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's economic analysis.

C. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. A carrier is a small business if it provides air transportation exclusively with small aircraft, defined as any aircraft originally designed to have a maximum passenger capacity of 60 seats or less or a maximum payload capacity of 18,000 pounds or less. The proposed rule also has the potential to disproportionally affect small firms in the travel arrangement and reservation industry, as defined in the rule's economic analysis.

The proposed rule is deregulatory in nature and intends to provide greater flexibility for firms without imposing adjustment costs, therefore, the Department does not expect that the proposed rule would have a significant or disproportionate impact on small entities. Small carriers, travel agents, or tour operators would not be required to make any changes to their advertisements, web sites, information systems, or pricing strategies. Passengers on small

carriers or consumers who book travel through small travel agencies or tour operators would continue to be presented with full fares upfront, allowing them to make informed purchasing decisions without having to invest additional time searching for information on taxes and fees. Overall, the Department expects that the proposed rule would not have a significant economic impact on a substantial number of small entities. While certification could be made at this stage, the Department instead defers formal certification until the final rule, after considering public comments and additional evidence, to ensure a fully informed determination.

D. Executive Order 13132

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This notice does not propose any requirement that (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government, (2) imposes substantial direct compliance costs on State and local governments, or (3) preempts state law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

E. Executive Order 13175

This notice has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because none of the options on which we are seeking comment would significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (PRA), no person is required to respond to a collection of information unless it displays a valid OMB control

number. The Department is of the view that this NPRM does not impose new information collection requirements and therefore the PRA does not apply.

G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. As described elsewhere in the preamble, this proposed rule would have no such effect on State, local, and tribal governments or on the private sector. Therefore, the Department has determined that no assessment is required pursuant to UMRA.

H. National Environmental Policy Act

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq*.) and has determined that it is categorically excluded pursuant to DOT Order 5610.1D, Procedures for Considering Environmental Impacts (June 30, 2025). Appendix A of DOT Order 5610.1D provides that "actions relating to consumer protection, including regulations" are categorically excluded. The purpose of this rulemaking is to enhance protections for air travelers and to improve the air travel experience. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Issued in Washington, D.C., under authority delegated in 49 CFR part 1.27(n):

Gregory Zerzan,

General Counsel.

List of Subjects

14 CFR Part 399

Air carriers, Consumer Protection, Enforcement

For the reasons stated in the preamble, DOT proposes to amend 14 CFR chapter 2, subchapter F as follows:

Part 399 - STATEMENTS OF GENERAL POLICY

1. The authority citation for part 399 continues to read as follows:

   Authority: 49 U.S.C. 40113(a), 41712, 46106, and 46107.

2. Revise § 399.84(a) to read as follows:

§ 399.84 Price advertising and opt-out provisions.

(a) The Department considers any advertising or solicitation by a direct air carrier, indirect air carrier, an agent of either, or a ticket agent, for passenger air transportation, a tour (*i.e.,* a combination of air transportation and ground or cruise accommodations) or tour component (*e.g.,* a hotel stay) that must be purchased with air transportation that states a price for such air transportation, tour, or tour component to be an unfair and deceptive practice in violation of 49 U.S.C. 41712, unless the price stated is the entire price to be paid by the customer to the carrier, or agent, for such air transportation, tour, or tour component. Charges included within the single total price listed may be stated separately or through links or "pop ups" on online platforms that display the total price. Such charges may be displayed with the same prominence as the total price itself, but such charges may not be false or misleading, and must provide cost information on a per passenger basis that accurately reflects the cost of the item covered by the charge.

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[FR Doc. 2026-13294 Filed: 6/30/2026 8:45 am; Publication Date: 7/1/2026]