U.S. Department of Transportation
Office of the Secretary, Docket Management Facility
1200 New Jersey Avenue SE
Washington, DC 20590
Filed via: https://www.regulations.gov (Docket DOT-OST-2025-0831 accepts direct comments)

Re: Docket No. DOT-OST-2025-0831; RIN 2105-AF37 â€” Enhancing Flexibility of Air Fare Price Advertising (Full Fare Rule Revision)
Regulations.gov reference: DOT-OST-2025-0831 (participating agency, comment form available)
Comment deadline: July 31, 2026

To the Department:

I write to oppose the Department's proposal to amend 14 CFR 399.84(a) to permit individual components of an air fare, such as government-imposed taxes and carrier-imposed fees, to be displayed with the same visual prominence and font size as the total price a consumer must pay. As published in the Federal Register on July 1, 2026, the proposed rule would eliminate the current requirement that itemized components "may not be displayed prominently" and "may not be presented in the same or larger size as the total price," replacing it with a standard that permits equal prominence between the total price and its components. This is not a minor technical adjustment. It dismantles the specific mechanism by which the Full Fare Rule prevents consumers from being anchored on a lower headline number while the true cost of the ticket is disclosed later or in smaller type, and it does so without the reasoned justification that administrative law requires when an agency reverses a settled, court-tested policy.

The rule the Department now proposes to weaken was upheld in full by the United States Court of Appeals for the District of Columbia Circuit in Spirit Airlines, Inc. v. United States Department of Transportation, 687 F.3d 403 (D.C. Cir. 2012), which rejected the same industry arguments the Department now revives. The court held that requiring the total, tax-inclusive price to be the most prominent figure in airfare advertising was a rational and adequately justified exercise of the Department's authority under 49 U.S.C. Â§ 41712 to prevent unfair and deceptive practices in air transportation, reasoning that the rule imposed only a disclosure requirement and did not restrict carriers from itemizing taxes and fees separately, so long as the total price remained the most prominent figure. The court also rejected the First Amendment challenge, finding that the prominence requirement regulated the manner of a disclosure aimed at preventing deception rather than suppressing speech. The Department's preamble now suggests that intervening Supreme Court commercial-speech precedent and the narrowing of deference to agency interpretations of their own regulations in Kisor v. Wilkie, 139 S. Ct. 2400 (2019), might lead a court to decide Spirit differently today. That is a prediction about how a future case might be litigated, not a factual or evidentiary finding that the prominence requirement is failing to prevent deception or that the harms Spirit addressed have disappeared. Speculation about the durability of a precedent is not a substitute for the reasoned explanation required to reverse it.

The consumer harm the current rule addresses is well documented and has not been shown to be outdated. When the Department adopted the Full Fare Rule in 2011, it found that consumers were confused or deceived when fares displayed after an initial search did not reflect the total cost of travel, and that unbundling fare components often produced a lower base fare paired with higher taxes and fees precisely because sellers had an incentive to advertise the more attractive partial figure. This is a textbook description of what the Federal Trade Commission and consumer-protection researchers call drip pricing, the practice of advertising a partial price and revealing mandatory charges later in the purchase process. The FTC's own Trade Regulation Rule on Unfair or Deceptive Fees, finalized January 10, 2025 and effective May 12, 2025, was adopted after the agency received more than 12,000 initial comments and more than 60,000 comments on the proposed rule describing how hidden and mandatory fees distort consumers' ability to comparison shop, and the FTC concluded that requiring total-price-first disclosure would make comparison shopping easier and save consumers an estimated 53 million hours per year, worth more than 11 billion dollars over the following decade, in the live-event ticketing and short-term lodging markets alone. Even that rule requires the total price to be displayed more prominently than any component; the Department's proposal here would go further than the FTC by permitting equal, not subordinate, prominence for components in the airline context, which the Department itself acknowledges is a weaker standard than the one the FTC just adopted for other industries.

The Department's own preamble concedes that the mechanism it now proposes to weaken is precisely the mechanism that determines whether a component can visually compete with the total price for consumer attention. Permitting fare components to be displayed as prominently, and in as large a font, as the total price recreates the exact anchoring dynamic the 2011 rulemaking record identified as deceptive: a consumer's eye is drawn to whichever figure is presented with equal visual weight and, absent a controlling prominence rule, sellers retain every incentive to design layouts in which a low base fare draws attention while the true total is displayed elsewhere at the same size. The Department has not identified new evidence that this dynamic no longer occurs, nor evidence that consumers no longer rely on the most prominent figure when comparing fares. Absent such evidence, the proposal amounts to reversing a factual finding about consumer deception without addressing the factual basis for that finding, which the Supreme Court held is impermissible in Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29 (1983), where an agency changing course must supply a reasoned analysis for the change beyond a conclusory statement that a different policy is preferable, and must confront the evidence and rationale underlying its prior rule rather than simply disregard it.

The Department's invocation of Executive Order 14219 and its suggestion that the prominence requirement raises constitutional difficulty do not substitute for the reasoned explanation the Administrative Procedure Act demands. Section 553(c) of Title 5 requires the Department to respond to the reasoning underlying its own settled rule, not merely to assert that a future court might apply stricter scrutiny. The

Department has not shown that the prominence requirement itself, as opposed to any font-size specification, imposes a burden on speech beyond requiring a truthful disclosure to be no less visible than a partial figure, which is exactly what Spirit held was constitutionally permissible. Nor does the Department's reliance on 26 U.S.C. Â§ 7275, the Internal Revenue Code's tax-disclosure provision, justify weakening 14 CFR 399.84(a): that statute is a criminal tax-disclosure provision carrying a maximum penalty of 100 dollars per violation, addressed to the display of government taxes specifically, and was never intended to displace the Department's broader unfair-and-deceptive-practices authority over carrier-imposed fees and total-price advertising under 49 U.S.C. Â§ 41712. Treating a narrow, decades-old tax statute as the governing standard for total-price prominence, when Congress has never amended or repealed the Department's independent authority under Section 41712, is not the best reading of the interaction between the two statutes; it is a reallocation of policy priority unsupported by any change in the statutory text.

For these reasons, the Department should withdraw the proposed amendment to 14 CFR 399.84(a) and retain the current prominence and relative-size requirements that require the total price, inclusive of all mandatory taxes and fees, to remain the single most prominent figure in any airfare advertisement. If the Department nonetheless proceeds, it must, consistent with State Farm, articulate specific, current evidence that the harms identified in 2011 and affirmed in Spirit no longer exist, rather than rely on generalized doubts about how a court might rule if the issue were relitigated today.

Respectfully submitted,

Concerned Citizen