May 18, 2026

The Honorable April J. Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Avenue NW, Suite CC–5610 (Annex C)
Washington, D.C. 20580

Re: International Franchise Association Comments on the Advance Notice of Proposed Rulemaking Regarding Unfair or Deceptive Fees in Online Food Delivery Services [Food Delivery Fees ANPRM]: 16 C.F.R. Chapter I: RIN 3084–AB88: Project No. P267101

Dear Secretary Tabor:

The International Franchise Association (IFA) appreciates this opportunity to submit its views to the Federal Trade Commission, as requested by the Commission in its Advance Notice of Proposed Rulemaking (ANPRM) regarding a possible Rule on Unfair or Deceptive Fees in Online Food Delivery Services, published in the Federal Register on April 16, 2026.[1] For the reasons detailed below, we do not believe that the Commission should commence a rulemaking proceeding. However, if the Commission ultimately determines to conduct a rulemaking proceeding, and issues a Notice of Proposed Rulemaking to that effect, we intend to participate in that proceeding and represent and actively support the views and interests of our members.

International Franchise Association

The IFA is the largest organization representing franchising. Its members include franchise companies in over 300 different industries, individual franchisees, and companies that support those franchise companies in marketing, law, technology, human resources, business development, and operations. Franchising serves as an engine for economic growth, contributing an estimated $907.3 billion in economic output and providing an estimated 8.8 million direct jobs in 2025 across the more than 830,000 franchised establishments operating in the United States.[2] When considering the significant impact of franchised businesses on the U.S. economy, it is imperative to recognize that franchising is small. Approximately half of the U.S. franchised businesses are operated by franchisees owning a single unit.[3] These small business owners hire local workers, serve local consumers, support local families and invest

[1] *Federal Trade Commission: 16 CFR Chapter I: RIN 3084-AB88: Rule on Unfair or Deceptive Fees in Online Food Delivery Services: Advance Notice of Proposed Rulemaking and Request for Public Comment*, 91 Fed. Reg. 20,381 (April 16, 2026) [hereinafter *ANPRM Notice*].
[2] Alka Sinha, Khadija Cochinwala & Jin Wang, 2026 FRANCHISING ECONOMIC OUTLOOK 4, (INT'L FRANCHISE ASS'N 2026), https://www.franchise.org/franchising-economic-outlook/.
[3] *See 2023 Mega 99 Rankings*, MULTI-UNIT FRANCHISEE MAGAZINE ISSUE 1 (2023), https://www.franchising.com/articles/2023_mega_99_rankings.html [hereinafter, the 2023 MEGA 99 RANKINGS].

in local communities. Often, these small businesses are the first casualties of broad sweeping regulations that fail to appropriately consider the disparate impact of compliance costs on small businesses, and those casualties have real consequences to local communities across America, including lost job opportunities, less competition resulting in higher prices and fewer consumer choices, and fewer local businesses investing back into the community. As is often the case, small businesses are disproportionately affected by regulations, compared to larger firms that have the legal and executive firepower to navigate difficult administrative and operational changes.

On January 10, 2025, the Commission published in the Federal Register the final version of its Rule on Unfair or Deceptive Fees (the "Fees Rule"), which as promulgated now applies to "Live-event tickets" and "Short-term lodging.[4] The Fees Rule defines the "Covered good[s] or service[s]" to which it applies as including

> (1) Live-event tickets; [and]
> (2) Short-term lodging, including temporary sleeping accommodations at a hotel, motel, inn, short-term rental, vacation rental, or other place of lodging.[5]

The Commission has now published an Advance Notice of Proposed Rulemaking in which the Commission proposes to conduct a new rulemaking proceeding to address what it characterizes as

> certain unfair or deceptive acts or practices relating to fees and charges for food and grocery items ordered through online delivery platforms, [and to determine whether] such a rulemaking [is needed] to prevent persons, entities, and organizations from engaging in such unfair or deceptive acts or practices.[6]

The Commission defines the term ''online food delivery platforms'' as

> online services that enable consumers to order food and beverage items from restaurants, grocery stores, and other retailers to be delivered to consumers' homes, businesses, or other designated locations.[7]

It is important to note that this definition does not include the online services that consumers use to order food and beverage items from restaurants, grocery stores, and other retailers, when they pick up those items themselves; in that circumstance, consumers typically pay the same prices they would pay if they were to shop for and purchase the items in person. The universe containing both types of online food ordering systems—pick-up and delivery—in a single platform is extremely large. The Commission notes that in 2024, for example, more than 138 million Americans (more than one-half of all American adults) spent more than $84 billion purchasing groceries online in 2024; they spent more than fifty percent of that total on online orders that included home delivery; and "the market for online food and grocery delivery services is expected to continue growing over the next several years."[8]

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[4] *Federal Trade Commission: 16 CFR Part 464: RIN 3084–AB77: Trade Regulation Rule on Unfair or Deceptive Fees: Final Rule*, 90 Fed. Reg. 2,066, 2,167 (January 10, 2025) [hereinafter *Final Fees Rule Notice*]. The Final Rule is codified at 16 CFR Part 464 (Rule on Unfair or Deceptive Fees).
[5] 16 CFR § 464.1 (Definitions).
[6] *ANPRM Notice*, 91 Fed. Reg. at 20,381.
[7] *ANPRM Notice*, 91 Fed. Reg. at 20,381 note 1.
[8] *ANPRM Notice*, 91 Fed. Reg. at 20,381-20,382 (citations omitted).

Policy Concerns

As a general proposition, IFA supports greater transparency in pricing to consumers, provided that it does not unduly burden legitimate business activity or injure competition and is consistent with the mission of the Commission established by Section 5 of the Federal Trade Commission Act; that is, to prevent unfair methods of competition and unfair or deceptive acts or practices. We do not, however, believe that a new rulemaking proceeding is warranted with respect to online food delivery services, where those services are made available from restaurants where pick-up of the menu items is also an option. IFA's franchisee and franchisor members take great care to develop and maintain customer relationships and rely on repeat business that centers around customer satisfaction and consumer trust. Transparent pricing lies at the heart of both, and the IFA and its members believe that companies should not misrepresent the total prices of products or services, and should not charge consumers for products or services they did not purchase. For this and many other reasons, there is no need for a new rule applicable to the restaurant sector, particularly given the fact that the costs imposed on businesses by any such rule are likely to far outweigh any benefits such a rule might produce.[9]

In determining whether to initiate a new rulemaking proceeding, the Commission should therefore carefully consider the adverse effects on competition within the restaurant sector—and the substantial costs of compliance—that a new rule (the "Prospective Rule")[10] applying some or all the requirements of the Fees Rule is likely to produce. In particular, like the Fees Rule, the Prospective Rule would probably require firms to move to a significant degree from an unbundled pricing approach to a bundled pricing approach, with adverse effects on competition like those which former Commissioner Christine S. Wilson identified when she dissented from the issuance of the Fees Rule Advance Notice of Proposed Rulemaking. As she pointed out at the time, with respect to the Funeral Rule, one of the Commission's oldest trade regulation rules:

> The Funeral Rule's goals are to lower barriers to price competition in the funeral goods and services market and to facilitate informed consumer choice. One way the Funeral Rule helps achieve these goals is to require funeral providers to ''unbundle'' the goods and services they sell and instead to offer them on an itemized basis. But this ANPR takes the opposite approach by favoring up-front, all-in pricing. How might this ANPR impact price transparency and competition? . . . [And could] a potential rule incentivize all-in pricing and the bundling of products and services, which would then require consumers to pay for goods and services they may not want or need?[11]

The response to these questions—with respect to the Prospective Rule—is likely to be "yes." For these and other reasons, therefore, it would be a mistake for the Commission to promulgate a rule that would

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[9] Indeed, when the Commission analyzed the more extensive restaurant sector in the Fees Rule NPRM, it conceded that it "lack[ed] data to quantify the benefits of the proposed rule within the restaurant industry." *Federal Trade Commission: 16 CFR Part 464: Trade Regulation Rule on Unfair or Deceptive Fees: Notice of Proposed Rulemaking and Request for Public Comment* [hereinafter *Fees Rule NPRM*], 88 Fed. Reg. 77,420, 77,475-77,476 (November 9, 2023).

[10] Throughout this comment, we refer to a rule that would apply some or all the requirements of the Fees Rule to online food delivery services as the Prospective Rule, while recognizing, of course, that the Commission has not proposed, and hopefully will not propose, to promulgate such a rule.

[11] *Federal Trade Commission: 16 CFR Part 464: Unfair or Deceptive Fees Trade Regulation Rule: Commission Matter No. R207011: Advance Notice of Proposed Rulemaking*, 87 Fed. Reg. 67,413, 67,424 (November 8, 2022) [hereinafter *Fees Rule ANPRM*] (Dissenting Statement of Commissioner Christine S. Wilson).

require a complete overhaul of legal pricing practices and mandate a one-size-fits-all, nationalized pricing display regime for all online food delivery service providers, whether third party delivery service providers (from whom consumers may only select delivery), or restaurant and retail owners (from whom consumers may elect to pick up online food purchases or opt for delivery), similar to the regime created by the Fees Rule for live-event tickets and short-term lodging providers. That is especially true because of the many substantial costs that the Prospective Rule would very likely impose on franchised small business restaurant owners. To begin with, the cost of initial and ongoing legal advice to determine what is permissible and what is not is likely to be substantial, particularly given the evolving landscape of state laws applicable to delivery fees that will not be preempted by the Prospective Rule. In the Fees Rule proceeding, IFA pointed out that its restaurant members, just as a threshold matter, would have to purchase hundreds of hours of legal advice, at an average billable rate of $500 per hour, so that they would be able

> to understand the impact of the Proposed Rule for systemwide advertising across all media channels and digital platforms and on-site at franchised restaurant locations, as well as ongoing costs of compliance as new national, regional and local advertising campaigns are implemented.[12]

In the testimony presented by IFA at the Fees Rule oral hearing, IFA described the concerns of its members "about the economic impact to their small businesses due to costs incurred to comply with the proposed [Fees] Rule," and the inadequacy of the Commission's analysis, which substantially understated those costs.[13] To illustrate those concerns, IFA provided an extensive discussion of the many substantial costs that the Fees Rule would have imposed on the 200,000 franchised quick service restaurants in the United States and their four million employees, and the consequent injury to consumers and small businesses, from the perspective of both service offerings and finances. That discussion also illustrates the likely adverse effects the Prospective Rule would have on online food delivery services providers. As IFA noted:

> These franchised small businesses weathered the COVID-19 pandemic by relying on delivery, a feature of quick service dining that continues to be a mainstay for consumers, particularly in the current economic climate with consumers opting for low-cost dining options and convenience. As quick service restaurants battle rising labor and supply chain costs, meeting consumer demand for delivery is essential to their sustainability. The FTC's broad-brush proposed Rule threatens that sustainability by rendering meeting consumer demand for delivery untenable. . . .[14]

> [Moreover, franchisees currently have] the autonomy to establish menu prices based on market forces and consumer preferences where the restaurant is located. Some franchisees may elect to provide visibility into the rising costs of third party delivery services, credit card payment processing (or "swipe" fees), and locally imposed labor costs for transparency to the consumer; other franchisees may elect to include those costs in the menu price. These choices are vested with the small business owner that operates its quick

[12] Comment from International Franchise Association at 12.
[13] Transcript of Informal Hearing on Proposed Trade Regulation Rule on Unfair or Deceptive Fees (April 24, 2024): Testimony of Sarah Davies, General Counsel, International Franchise Association, at 13.
[14] *Id*. at 11-12.

> service restaurant. Franchisees respond based on how those costs vary for their individual restaurant and what the market demands. . . .[15]
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> Our quick service restaurant industry members estimate incurring hundreds of hours in legal advice at the brand level in addition to the hours incurred at the individual restaurant level (which varies depending upon the jurisdiction in which the restaurant is located and implication of existing state laws), all at an estimated rate of $500/hour.[16]
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> The Commission's flawed cost-benefit analysis is further detailed in IFA's comment [responding to the Fees Rule NPRM], including flawed estimates specific to the restaurant industry such as estimates to update menu boards at $715 when current costs for menu boards are commonly over $4,000. The Commission's cost-benefit analysis also fails to consider the era in which quick service restaurants (and companies generally) operate. With most engaging with consumers via a mobile app, the proposed Rule [would necessitate] widescale changes to a quick service restaurant brand's mobile app that must be completed at the brand level to provide for continuity across all restaurants operating in the system from a consumer-facing perspective yet provide the ability for each individual restaurant owner to make changes to its menu offering and pricing.[17]

Furthermore, modifying a given app to meet the requirements of a rule like the Fees Rule or the Prospective Rule is not only extremely time-consuming—and consequently disruptive, while the requisite changes are being made—but also very expensive. As we pointed out in our testimony, the cost of updating a given mobile app to conform to the requirements of a single State fees rule ranges from $250,000 to $400,000.[18]

In addition to the foregoing costs, the Prospective Rule would create many logistical impossibilities with respect to the provision of online food delivery services, including two that are particularly significant.[19] First, franchised restaurants within the same franchise system may offer delivery through one or more channels, including (1) online ordering through the franchise's system-wide mobile application and/or website for pick-up or delivery, and/or (2) multiple third-party delivery providers. In the latter circumstance, each third-party delivery provider sets its delivery fees and driver tips independently—including pricing based on geographic delivery areas surrounding the franchised restaurants—and the franchised restaurants have no control over those policies. As a consequence, if the Prospective Rule were in effect, a consumer who visited the mobile application for a national pizza franchise system would see displayed two prices for the same medium pepperoni pizza: one price for carry-out and a greater price for delivery. If the consumer instead were to visit the website of a third-party food delivery provider—such as DoorDash, Uber Eats, Grubhub, or Postmates—to purchase a medium pepperoni pizza from the national pizza franchise system, he or she might see displayed a price greater than the delivery price offered on the franchise brand's mobile application, because it includes the third-party provider's delivery fee, service charge and tip. Those charges vary from one third-party provider to another, and neither the franchisor nor each individual franchised restaurant controls the various prices charged by third party delivery service

[15] *Id*. at 12.
[16] *Id*. at 13.
[17] *Id*.
[18] *Id*.
[19] IFA and the National Restaurant Association described many of these problems in their respective comments responding to the Fees Rule NPRM. *See* Comment from International Franchise Association and Comment from National Restaurant Association.

providers. In short, under this regime a consumer might face as many as six different prices for a medium pepperoni pizza purchased from the national pizza franchise system, likely leading to disclosure overload and consumer confusion. As a consequence, restaurant brands and their franchisees would lose consumer confidence and trust, as consumers navigated multiple prices for a single menu item across third party delivery platforms, brand websites and mobile applications, and in-store menus.

Second, franchised restaurants may independently establish discounts (including delivery fee discounts) for meeting a minimum purchase order or purchasing bundled menu items, and the Prospective Rule would render such discounts impossible because the all-in price must be displayed for each menu item. For example, a restaurant may waive the delivery fee for consumers meeting a minimum purchase of $25, regardless of which menu items are selected. If the Prospective Rule requires the restaurant to display the all-in price for each menu item inclusive of delivery fees, consumers are deprived of the opportunity to avoid the delivery fee.

Additionally, compliance with the Prospective Rule would render national and regional advertising—a demonstrable and sizable benefit to both consumers and franchisees—impossible, and would eliminate a key reason many franchisees elected to invest in their franchises. Small business owners that operate franchised restaurants would no longer have the full benefits provided by the national marketing fund to which they contribute. National marketing funds provide centralized marketing support for the franchise system and often are used for research and development of limited time offers, which are a proven tool to drive consumer traffic and increase sales. Pricing and advertising are critical to the success of limited-time offers, and the Prospective Rule would make them impossible on a national scale unless all the franchisees operating within a given system are stripped of the autonomy to choose whether to pass through delivery fees in the total purchase price for each order containing the limited-time offer menu item. If franchisees are to retain the authority to choose whether to pass through delivery fees, with the Proposed Rule in place, then marketing collateral must be produced at a per-restaurant rather than systemwide level, resulting in greater costs per restaurant location, both for the franchisee in producing such marketing collateral, and for the franchisor in ensuring compliance with its brand standards at each restaurant location.

As one example, many franchised quick service restaurant systems offer limited time offer pricing on menu items, such as when National Pizza Day coincided with Super Bowl Sunday, and franchisees of franchised pizza chains were able to participate in national advertising campaigns offering discounts to consumers for bundled orders. Franchisees received the benefit of national advertising and consumers received the benefit of discounted menu offerings that they could elect—at their option—to be delivered to their doors for an additional fee, or instead to pick up the menu items from their local franchised pizza restaurant at the advertised price. The Prospective Rule would render such national advertising impossible, as individual restaurants must factor into the advertised menu price the delivery costs and other charges that vary on a restaurant-by-restaurant basis, in addition to presenting a lower "pick up only" price. And as noted above, the ability to participate in regional and national advertising campaigns is one of the key reasons many quick service restaurant franchisees elect to invest in a franchise system rather than operate a non-franchised restaurant.

For all these reasons, the Commission should not promulgate a rule like the Fees Rule that applies uniformly to all providers of online food delivery services—whether offering only delivery services or the option to dine in, pick up food items or have them delivered—because the costs it would impose on affected franchised small businesses, and on competition in general, would far outweigh any conceivable benefit to consumers. If, notwithstanding these concerns, the Commission nevertheless determines to initiate a

rulemaking proceeding with respect to online food delivery services, it will have to undertake the difficult task of establishing both (1) that any rule it proposes to promulgate will satisfy all applicable substantive requirements, and (2) that the rulemaking proceeding it conducts will comply with all the procedural requirements prescribed by the FTC Act.

Substantive Issues

The FTC Act empowers the Commission to promulgate "rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce . . . ," but it may do so only by establishing that a particular act or practice is actually unfair or deceptive "within the meaning of" Section 5(a)(1) of the Act—and that it is prevalent— and by conducting a rulemaking proceeding that complies with all the procedural requirements imposed by Section 18 of the Act.[20] Section 18 also provides that a Court of Appeals reviewing an FTC trade regulation rule "shall hold unlawful and set aside the rule" if, *inter alia*, the "agency action, findings, and conclusion" are (1) "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;"[21] (2) "contrary to constitutional right, power, privilege, or immunity;"[22] (3) "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;"[23] (4) "not supported by substantial evidence in the rulemaking record . . . taken as a whole;"[24] or (5) "without observance of procedure required by law."[25]

If the Commission determines to initiate a rulemaking proceeding here, notwithstanding all the foregoing concerns, it will need to overcome at least three substantive obstacles. The first arises from the Commission standard for determining whether an act or practice is deceptive. The Commission has for more than forty years—since the issuance of its *Policy Statement on Deception* in 1983—defined a deceptive act or practice as a "representation, omission or practice" (1) that is likely to mislead consumers "acting reasonably under the circumstances," and (2) that is "material" because it involves "information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product."[26] With respect to what "material" means in the context of Commission rulemaking in particular, the Commission *Telemarketing Sales Rule* similarly defines "Material" as "likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution,"[27] and the Commission *Rule on Impersonation of Government and Businesses* defines "Materially" as "likely to affect a person's choice of, or conduct regarding, goods or services."[28]

If, notwithstanding all the problems detailed above, the Commission nevertheless determines to publish an NPRM, and the proposed rule tracks the Fees Rule, it will be difficult to establish that the failure to make the disclosures required by a provision analogous to Fees Rule Section 464.2 is deceptive with respect to the provision of online food delivery services, regardless of whether the delivery services are

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[20] 15 U.S.C. 57a(a)(1)(B).
[21] 5 U.S.C. § 706(2)(A).
[22] 5 U.S.C. § 706(2)(B).
[23] 5 U.S.C. § 706(2)(C).
[24] 15 U.S.C. § 57a(e)(3)(A). The term "evidence" is defined as "any matter in the rulemaking record." *Id.*
[25] 5 U.S.C. § 706(2)(D).
[26] *In the Matter of Cliffdale Associates, Inc.*, 103 F.T.C. 110, 164-166 (1984), *citing* Federal Trade Commission Policy Statement On Deception (October 14, 1983) (*appended to the Commission Opinion in Cliffdale Associates)*; *accord, e.g.,* Final Fees Rule Notice, 90 Fed. Reg. at 2,078; *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006).
[27] 16 CFR § 310.2(t).
[28] 16 CFR § 461.1.

offered by the seller of the food products or the provider of delivery services. That is because consumers are not likely to consider the information in the required disclosures to be material at the time the offers, displays, or advertising of food products at issue are disseminated; the information becomes material only at the point of purchase. Indeed, as we pointed out in our earlier public comment addressing the Fees Rule NPRM, the Commission in that proceeding did not identify a single cease and desist order—including in franchised businesses operating across hundreds of industries—where failing to disclose fees until the point in the purchasing process at which payments had to be made was found to be deceptive.

This analysis is even more dispositive here because the online food delivery services sector differs in important respects from the live-event ticket and short-term lodging sectors. Consumers typically must spend hundreds or thousands of dollars each time they purchase tickets to a live event or purchase short-term lodging, and most consumers therefore do not make such purchases very often. As a consequence, such a consumer may never have the opportunity to "discipline" a vendor that fails to disclose all costs prior to purchase—in a manner that the vendor is likely to perceive—by switching to another vendor. The Fees Rule is based largely on the theory that offers, displays, and advertising for live-event tickets and short-term lodging which fail to disclose—at the time they are disseminated—the total cost that consumers will later have to incur at the point of sale are deceptive because they omit facts that are material to consumers at the point of dissemination, as well as at the point of sale. Moreover, these undisclosed fees cannot be avoided by the consumer—they are applied uniformly. This theory derives in turn from the possibility that consumers in these circumstances may suffer significant financial injury, arising from having to pay substantially more than anticipated at the point of sale and not having, at the point of sale, any ready alternatives. By contrast, where a consumer elects to purchase food online directly from the restaurant or retail owner, the consumer typically has a choice whether to pick up the food products, with no additional fee, or to request delivery of the food products for an additional fee. The only instance of online food delivery purchases where all-in pricing makes sense arises with respect to purchases from third party delivery service providers, where delivery is the only option and the consumer cannot avoid the additional delivery fees, tips and surcharges. Failing to make this distinction in any rulemaking contemplated by the Commission will disparately disadvantage restaurant and retail owners who give consumers the choice whether to pick up their online food orders, or instead to have them delivered. The resulting "delivery" and "pick up" pricing disclosure obligations will result in consumer confusion, and deprive consumers of discounts to which they would otherwise be entitled for meeting order minimums, and for purchasing on the basis of limited time offers and other promotional items.

It will also be difficult to establish that the conduct prohibited by a provision analogous to Fees Rule Section 464.2 with respect to all online food delivery services is unfair. Section 5(n) of the FTC Act provides that

> [t]he Commission shall have no authority under this section or section 57a of this title [Section 18 of the FTC Act] to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.[29]

As noted above, the monetary injury consumers may suffer when they are assessed unexpected additional costs at the time they purchase online food delivery services ordinarily will be just a few dollars—and can

[29] 15 U.S.C. § 45(n).

be readily avoided altogether by canceling a given order and switching to another provider—and therefore cannot be characterized as the "substantial" injury required by the statute. Moreover, that minimal level of injury will almost certainly be vastly outweighed by the "countervailing benefits to consumers or to competition" produced by the manner in which online food delivery services are currently marketed. In particular, a rule like the Fees Rule can be expected to significantly confuse consumers, curtail discounting and other legal and pro-consumer practices, and increase the prices consumers pay for online food delivery services, without saving consumers time or helping them to make better, more informed purchasing decisions. Furthermore, the vast array of different online food delivery pricing and service provider organizational structures and revenue-sharing arrangements, and the large variety of pricing, delivery, and other options available to consumers, are likely to make it extremely difficult, if not impossible, for a rulemaking proceeding to produce a defensible rule. Indeed, the ANPRM itself recognizes this massive complexity by requesting answers to almost 100 different questions about the "market for online food delivery platforms."[30] As a consequence, it will be very difficult, if not impossible, to establish either that the manner in which prices in this sector are currently offered, displayed, or advertised constitutes an unfair act or practice, or that any rule could be devised that would not unduly burden legitimate business activity, injure competition, and leave consumers as well as businesses worse off than they are now.

Third, there is very little evidence that the practices prohibited by the Fees Rule are prevalent across all channels of online food delivery services. Section 18 of the FTC Act provides, in relevant part:

> (3) The Commission shall issue a notice of proposed rulemaking . . . only where it has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are *prevalent*. The Commission shall make a determination that unfair or deceptive acts or practices are prevalent under this paragraph only if-
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> (A) it has issued cease and desist orders regarding such acts or practices, or
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> (B) any other information available to the Commission indicates a *widespread pattern of unfair or deceptive acts or practices*.[31]

In the Fees Rule NPRM—when the Commission proposed to apply the prohibitions and requirements at issue to every part of the American economy—the Commission addressed online food delivery services only by citing the complaints of a small number of individual commenters and a statement by the Consumer Federation of America that

> prepared food and grocery delivery apps have been the subject of law enforcement actions challenging misrepresentations relating to fees.[32]

Indeed, the Fees Rule NPRM did not cite any cease-and-desist orders against franchised businesses alleging that those businesses unfairly or deceptively utilized partitioned pricing in making sales to consumers. Instead, the NPRM provided only limited anecdotal accounts of settled enforcement actions—including, for example, against a funeral home and a seller of prepaid calling cards[33]—and these and other cited settlements cannot support a finding that these practices are prevalent in unrelated industries. Similarly, private lawsuits or state enforcement actions that seek to enforce state law against allegedly bad actors in

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[30] *ANPRM Notice*, 91 Fed. Reg. at 20,387-20,389.
[31] 15 U.S.C. § 57a(b)(3)(A),(B) (emphasis added).
[32] *Fees Rule NPRM*, 88 Fed. Reg. at 77,426 and notes 66-68.
[33] *Fees Rule NPRM*, 88 Fed. Reg. at 77,435.

particular industries cannot support a finding that restaurants in the online food delivery services sector are violating the federal proscription against unfair or deceptive acts or practices.

The minimal evidence of prevalence is not surprising, particularly with respect to restaurant franchise systems that offer online food delivery services, which each have their own business models and marketing strategies, respond differently to economic circumstances, and face unique challenges and consumer demands. Importantly, while promotional, "limited time offer" pricing may be set at the franchise system level, individual franchised businesses independently establish pricing based on economic factors relevant in the markets in which they operate. For example, some might make extensive use of service and other additional fees, while others might not use them at all. The Commission itself admitted that the practices prohibited by the Fees Rule were not prevalent when it estimated the benefits and costs of applying the Fees Rule to the entire economy. In the NPRM, in conducting its cost-benefit analysis, the Commission acknowledged that while it assumed "that 90% of these firms already comply with the proposed rule,"[34]

> [t]he total costs of the proposed rule are uncertain because it is unclear how, across a variety of industries, firms would adjust prices, change their price displays and disclosures, and upgrade their systems in response to the proposed rule.[35]

The Commission similarly admitted that

> [t]he degree to which the proposed rule generates benefits for all industries in the economy is unclear, due to a lack of reliable information on how these fees affect search and decision-making at the economy level and the way in which pricing and search costs vary across industries. As such, we are unable to quantify economy-wide benefits.[36]

The Commission's own estimate that no more than 10 percent of the firms in a given sector, such as the online food delivery services sector, "do not currently comply with the [then-proposed economy-wide Fees Rule]"—coupled with the documented inability to accurately quantify costs or identify benefits from that rule—make it highly unlikely that the prevalence requirement can be satisfied here, and these circumstances in particular do not support a finding of a "widespread pattern of unfair or deceptive acts or practices," as Section 18 of the FTC Act requires, in the absence of any relevant cease and desist orders.

In light of the foregoing factors, it seems highly unlikely that a new rulemaking proceeding will be able to establish (1) that the practices that would be prohibited by applying some or all of the requirements of the Fees Rule uniformly across all providers of online food delivery services are either unfair or deceptive with respect to the provision of online food delivery services, or (2) that any of the practices prohibited by the Fees Rule are prevalent across all online food delivery services providers. Moreover, (3) the costs of imposing some or all of the Fees Rule requirements on all online food delivery service providers—particularly restaurant owners—are likely to far outweigh any benefits those requirements might provide to consumers, and in fact, are likely to result in increased costs to consumers.

If the Commission nevertheless determines to conduct a new rulemaking proceeding despite the obstacles it is unlikely to overcome, it should be guided by a number of policy considerations in addition

[34] *Fees Rule NPRM*, 88 Fed. Reg. at 77,448.
[35] *Fees Rule NPRM*, 88 Fed. Reg. at 77,448; *see also id*. Table 2-Economy-Wide Compliance Costs, 88 Fed. Reg. at 77,450-77,451.
[36] *Fees Rule NPRM*, 88 Fed. Reg. at 77,448.

to those discussed earlier in this comment. First, given the substantial differences between the live-event ticket and short-term lodging sectors and the online food delivery service sector described above, the rulemaking proceeding should be directed toward promulgating a new rule, rather than amending the Fees Rule. Second, if the Commission ultimately determines to promulgate a Prospective Rule applicable to online food delivery services, such a rule presumably will include a provision like Section 464.4(a) of the Fees Rule, which provides that the rule only supersedes, alters, or affects "any State statute, regulation, order, or interpretation" to the extent that it "is inconsistent with the provisions" of the Fees Rule.[37] Ideally, in order to reduce compliance burdens for franchised small businesses and avoid consumer confusion regarding product and service pricing, the Prospective Rule should not also include a provision like Section 464.4(b) of the Fees Rule, which would exempt from the preemption prescribed by Section 464.4(a) any State requirement that affords any consumer greater protection than the Fees Rule.[38] However, if the Commission does include such a provision, it will need to and should devote substantial resources to explaining to covered firms the precise way in which Federal law interacts with State law, and to ensuring that covered firms are not subjected to conflicting obligations. One way to help accomplish this objective would be to develop a "safe harbor" program through which covered firms could secure Commission approval for less burdensome mechanisms for complying with both the Prospective Rule and applicable State law.[39] Thus, for example, the Commission could, through a safe harbor application and review process, approve making required disclosures at the point of payment—rather than earlier, at the point of offer, display, or advertising dissemination and consumer menu-browsing—when delivery is not selected until the point of payment, or when payment amounts cannot be determined until consumers decide on delivery fees, the items to be selected, service fees, tips, and other charges.

It is important to note in this regard that since the Commission issued the Notice of Proposed Rulemaking that led to promulgation of the Fees Rule, a patchwork of state laws has emerged with various drip pricing disclosure requirements, restrictions and exemptions. The attached chart in Schedule 1 shows that California, Colorado, Maine, Massachusetts, Minnesota, New York, Rhode Island, Tennessee, and Virginia have thus far enacted such laws. These developments have created a compliance nightmare, both for national franchise systems that must navigate the administration of their respective mobile apps across fifty different States, and for hundreds to thousands of independently owned franchised businesses that set their own pricing. And while the Fees Rule establishes uniform nationwide requirements with which providers of live-event tickets and short-term lodging must comply, as noted above, it does not preempt any "State statute, regulation, order, or interpretation" that "affords any consumer" greater protection than that provided by the Rule. As a consequence, providers of live-event tickets and short-term lodging must not only comply with the requirements of the Fees Rule, but also with many different State statutes and regulations which impose more extensive disclosure requirements and restrictions.

This concern is especially acute with respect to any all-in pricing requirement the Commission may consider. Many states and localities have already enacted disclosure laws that vary considerably in their scope and application to different categories of food ordering platforms. A federal rule that merely establishes a floor would leave IFA's restaurant member-franchises simultaneously subject to an array of non-uniform state all-in pricing requirements and whatever new federal standard the Commission adopts,

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[37] *See, e.g.*, 16 CFR § 464.4(a).
[38] *Compare* 16 CFR § 464.4(a) (Relation to State laws in general) *with* 16 CFR § 464.4(b) (Greater protection under State law).
[39] As one example of this approach, the Children's Online Privacy Protection Rule (the COPPA Rule), 16 CFR Part 312, provides a safe harbor program through which firms can apply to the Commission for approval of self-regulatory program guidelines ("safe harbor programs"). 16 CFR § 312.11.

compounding rather than rationalizing the compliance burden. Where, as explained further below, an all-in pricing requirement is structurally impossible for restaurant-operated platforms at the menu-browsing stage in the first instance, adding a federal floor requirement on top of existing state obligations would impose costs on IFA members that cannot be justified by any cognizable consumer-protection benefit. IFA therefore urges the Commission, if it proceeds to rulemaking, to preempt inconsistent state all-in pricing requirements rather than merely supplement them, and to limit any all-in pricing obligation to those platforms for which such a requirement is operationally feasible—namely, third-party delivery service providers.

As noted above, if the Commission were to promulgate a rule (1) that establishes uniform nationwide requirements, and (2) that preempts inconsistent State law requirements that impose more extensive disclosure requirements and restrictions, that would prevent the above problems. By contrast, a Commission rule that merely establishes a floor—preempting only the state laws that are less restrictive than the Commission rule while permitting a more restrictive patchwork of state laws to remain enforceable—will serve only to increase compliance burdens for franchised small businesses and increase consumer confusion regarding product and service pricing.

If, notwithstanding all the problems discussed above, the Commission nevertheless determines to conduct a rulemaking proceeding, it should also ensure that any resultant rule applies only to third-party online food delivery service providers. Requiring restaurants, grocery stores, and other food retailers that provide direct delivery services to provide the total price to be assessed—including both the product price and all fees associated with delivery—at the time consumers conduct their searches and place their online orders, even where the consumer may elect to pick up the order for no additional fee, is inaccurate and misleading. Currently, many states permit third-party delivery service providers to exclude the cost of delivery from the price they initially present to consumers because they are selling a service that is distinct from the product offered by the restaurants, grocery stores, and other retailers whose products they deliver. This result allows third party delivery service providers to "game" customers by offering a product price lower than what may be required to be displayed in the all-in pricing to customers displayed on the restaurant's or retailer's mobile app and website. This has the effect of steering a given customer to the third-party delivery service provider, and that customer ultimately could pay more to the third party delivery service provider—once delivery fees are included—than the customer would have paid by purchasing directly from the restaurant or retailer. In many cases, restaurants and retailers use a white label version of the third party delivery service providers' websites or mobile apps to execute delivery services—with respect to which they have no control of the delivery fees and other surcharges imposed by the third party delivery service providers—and that can make the outcome even more imbalanced. If the Commission determines to promulgate a rule, it should only narrowly address any perceived lack of transparency in pricing presented to consumers by third party delivery service providers.

There is a further, structural reason why any all-in pricing requirement must be limited to third-party delivery service providers and must not be extended to restaurants or other food merchants that offer online purchasing through their own proprietary mobile applications or websites when those platforms accommodate both pick-up and delivery as fulfillment options. When consumers browse a restaurant's own app or website, they typically have not yet determined whether to pick up their orders themselves or instead to have them delivered. Pick-up orders carry no delivery fee whatsoever, while delivery orders are subject to fees that may themselves vary dynamically, based on distance, time of day, driver availability, and other conditions, and that often are set by third parties. There is therefore no single, accurate all-in price that can be displayed at the menu-browsing stage, because the applicable fees—and indeed whether any delivery-related fee applies at all—depend entirely on a fulfillment-method choice the consumer has not yet made.

Requiring a restaurant's proprietary platform to display all-in pricing at that stage would force the restaurant into an impossible choice: either display a delivery-inclusive price at the most conservative (and highest) estimate to all consumers browsing the menu—including the many who will ultimately choose pick-up, to whom no delivery fee applies, thereby misstating the price for those customers—or maintain separate parallel price displays for pick-up and delivery across potentially hundreds of menu items, creating operational burdens and consumer confusion that undermine rather than advance the Commission's transparency objectives. This is particularly true with respect to franchised restaurant systems, where the consumer experience and the prices consumers pay may vary as a function of franchisor and franchisee control points—where, for example, the franchisees set retail prices, the franchisor sets the system technology to be used, and third-parties set many delivery-related charges—and integrated delivery arrangements, where the consumer experience may appear to be "brand-owned," but a delivery partner actually determines delivery mechanics and fees. These examples help explain why the same disclosure mandate is not equally feasible across business models and why the Commission should avoid imposing liability on parties that do not control all the fees at issue.

By contrast, third-party delivery service providers are not subject to these structural constraints. Platforms such as DoorDash, Uber Eats, and Grubhub offer purchases exclusively for delivery; every consumer who opens such a platform has, by definition, already selected delivery as their fulfillment method before they have viewed a single menu item. Delivery fees and service surcharges are therefore applicable to every transaction on those platforms, and it is entirely feasible—and appropriate—to require those platforms to incorporate all mandatory fees into the prices they display from the outset of the consumer's ordering experience. Limiting any all-in pricing requirement to third-party delivery service providers would therefore give effect to the Commission's consumer-protection objectives precisely where they are most needed, while sparing IFA's restaurant members from a requirement that is not only unworkable but, given the probable non-preemptive floor character of the Prospective Rule, would layer additional federal obligations on top of existing and varying state disclosure regimes.

The cases the Commission cites in this regard in the ANPRM support the importance of making this distinction in the online food delivery services sector; that is, between restaurants, grocery stores, and other food retailers which provide direct delivery services, and third-party delivery service providers such as Grubhub, Instacart, Amazon, and DoorDash. Indeed, six of the seven Commission, State, and local government law enforcement actions the Commission discusses in the ANPRM were filed against these four third-party online food delivery services.[40] Moreover, as the Commission points out, a number of State laws draw the same distinction:

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[40] *ANPRM Notice*, 91 Fed. Reg. at 20,383, *citing FTC v. Grubhub Inc*., No. 1:24–cv–12923 (N.D. Ill. Stipulated Final Order entered Dec. 31, 2024); *FTC v. Maplebear Inc. d/b/a Instacart*, No. 4:25–cv–10783 (N.D. Cal. Stipulated Final Order entered Jan. 13, 2026); *In the Matter of Amazon*, Inc., No. C–4746 (FTC June 9, 2021); 91 Fed. Reg. at 20,385, *citing City of Chicago v. DoorDash*, Inc., No. 1:21–cv–5162 (N.D. Ill. dismissed pursuant to joint stipulation Nov. 19, 2025); *District of Columbia v. Grubhub Holdings, Inc*., No. 2022 CA 001199 B (D.C. Super. Ct. Consent Judgment and Order entered Jan. 4, 2023); *District of Columbia v. Maplebear, Inc. d/b/a Instacart*, No. 2020 CA 003777B (D.C. Super. Ct. Consent Judgment and Order entered Aug. 22, 2022); *In the Matter of the Investigation of Letitia James, Attorney General of the State of New York, of DoorDash, Inc*.: Assurance of Discontinuance (Assurance No. 25-007) (February 24, 2025).

In the seventh case, against Walmart, the Commission's federal court complaint alleged, among other things, that Walmart "deceptively stated that 100% of tips would be passed on to drivers, when in fact Walmart sometimes failed to provide paid tips to drivers," and the Commission secured an order enjoining Walmart from misrepresenting that

> Despite slight variations across jurisdictions, [the approaches that a number of States follow] highlight that tailored pricing and disclosure requirements may be appropriate for third-party food and grocery delivery platforms given that such platforms typically serve as intermediaries between consumers and the primary seller or maker of the ordered goods. Indeed, some States expressly distinguish between pricing and fee disclosure requirements for third-party food delivery platforms versus pricing disclosure requirements for food- and beverage-service facilities like restaurants, bars, and hotels.[41]

Procedural Issues

As discussed above, if the Commission determines to issue a Notice of Proposed Rulemaking, it must carefully evaluate the costs and benefits of any rule it may propose. If, by contrast, an agency

> inconsistently and opportunistically frame[s] the costs and benefits of the rule [at issue]; fail[s] adequately to quantify the certain costs or to explain why those costs could not be quantified; neglect[s] to support its predictive judgments; contradict[s] itself; and fail[s] to respond to substantial problems raised by commenters. . . .

a reviewing court is likely to conclude that the agency action is "arbitrary and capricious," and therefore should be vacated.[42] To avoid that result, Section 22 of the FTC Act requires the Commission to include a preliminary regulatory analysis in the NPRM if it determines to propose a new rule.[43] If the Commission instead proposes to amend the Fees Rule, the NPRM must contain such an analysis if the amendment will have one or more of three listed economic effects.[44] Given the fact that more than 138 million Americans spent more than $42 billion purchasing groceries with home delivery online in 2024,[45] and the foregoing discussion of the probable adverse effects on consumers and competition of any amendment to the Fees Rule, it seems clear that any NPRM the Commission issues – whether to propose a new rule or an amendment to the Fees Rule – must include a preliminary regulatory analysis.

Section 22 provides that the preliminary regulatory analysis must contain:

> (A) a concise statement of the need for, and the objectives of, the proposed rule;
> (B) a description of any reasonable alternatives to the proposed rule which may accomplish the stated objective of the rule in a manner consistent with applicable law; and

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the customers' tips would be paid to drivers. *ANPRM Notice*, 91 Fed. Reg. at 20,383, *citing FTC v. Walmart Inc*., No. 3:26–cv– 01655 (N.D. Cal. Stipulated Final Order entered Mar. 3, 2026).

[41] *ANPRM Notice*, 91 Fed. Reg. at 20,384. The Commission cites as one example a California statute which expressly applies this distinction. *Id*. at note 34.

[42] *Business Roundtable and Chamber of Commerce of the United States of America v. Securities and Exchange Commission*, 647 F.3d 1144, 1148 ( D.C. Cir. 2011).

[43] 15 U.S.C. § 57b-3(b)(1)(A)(B)(C).

[44] 15 U.S.C. § 57b-3(a)(1)(A),(B),(C),(2). A preliminary regulatory analysis must be included in the NPRM if the proposed amendment (1) "will have an annual effect on the national economy of $100,000,000 or more;" (2) "will cause a substantial change in the cost or price of [certain] categories of goods or services;" or (3) "will have a significant impact upon persons subject to regulation under such amendment and upon consumers."

[45] *ANPRM Notice*, 91 Fed. Reg. at 20,381 (citations omitted).

> (C) for the proposed rule, and for each of the alternatives described in the analysis, a preliminary analysis of the projected benefits and any adverse economic effects and any other effects, and of the effectiveness of the proposed rule and each alternative in meeting the stated objectives of the proposed rule.[46]

The NPRM the Commission issued in the Fees Rule rulemaking proceeding included a preliminary regulatory analysis, but as IFA and other commenters pointed out, it raised far more questions than it answered; dramatically underestimated the costs that an economy-wide Fees Rule could have been expected to impose on virtually every American business; and failed to adequately discuss any reasonable alternatives.

If, notwithstanding all the problems detailed above, the Commission publishes an NPRM here, the preliminary regulatory analysis it prepares must provide a far more comprehensive discussion that details and analyzes the objectives of the Prospective Rule, any reasonable alternatives, and all the costs and other adverse economic effects that the Prospective Rule could be expected to impose on the restaurant small businesses offering direct online food delivery services and their consumers. In particular, the analysis should address and answer the more than 160 questions regarding the marketplace for online food delivery services and possible rule provisions set forth in Parts III.A. and III.B. of the ANPRM.[47] The sheer volume of questions that need to be answered in order to determine whether, and if so how, a rule governing fees in the online food delivery service sector should be promulgated in itself supports the conclusion that no such rule should be promulgated.

A preliminary regulatory analysis is particularly important with respect to determining the likely effects of a newly proposed rule on small businesses, such as the hundreds of thousands of small businesses represented by IFA. And if the Commission determines to conduct a new rulemaking proceeding, IFA urges the Commission to develop, as part of its preliminary regulatory analysis, sufficient empirical data to determine the extent to which the proposed rule will affect small businesses, and the magnitude of the economic effects it is likely to have on small businesses. Indeed, as the Office of Advocacy of the U.S. Small Business Administration pointed out in its comment responding to the Fees Rule NPRM, the Regulatory Flexibility Act requires any Notice of Proposed Rulemaking to include an "initial regulatory flexibility analysis" that focuses in particular on the effects the proposed rule is likely to have on small businesses, and that must include the following elements:

> 1. A description of the reasons why the action by the agency is being considered.
> 2. A succinct statement of the objectives of, and legal basis for, the proposed rule.
> 3. A description—and, where feasible, an estimate of the number—of small entities to which the proposed rule will apply.
> 4. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record.
> 5. An identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule.

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[46] 15 U.S.C. § 57b-3(b)(1)(A),(B),(C); 16 CFR § 1.11(c)(1)-(4), *citing* the Regulatory Flexibility Act, 5 U.S.C. §§ 601-612, and the Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520.

[47] *ANPRM Notice*, 91 Fed. Reg. at 20,387-20,391.

> 6. A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes, and which minimize any significant economic impact of the proposed rule on small entities.[48]

To that end, IFA urges the Commission to ensure that any such initial regulatory analysis provides a detailed and comprehensive discussion of every way the proposed rule will impact small businesses, and to examine this issue fully at an informal hearing. Without this type of analysis, which focuses in particular on how a given proposed rule will affect small businesses, the Commission will not be able to accurately assess those effects. IFA, the Small Business Administration, and other commenters urged the Commission to conduct a more comprehensive initial regulatory flexibility analysis in the Fees Rule rulemaking proceeding,[49] and it should do so here if it initiates a rulemaking proceeding.

If the Commission determines to initiate a rulemaking proceeding, it must also ensure that every other aspect of the proceeding also complies with the procedural requirements set forth in Section 18 of the FTC Act. In 2021, however, the Commission amended its rules governing the conduct of trade regulation rule proceedings in a number of respects that do not conform to the statutory requirements.[50] As former Commissioner Melissa Holyoak noted in her dissent when the Commission promulgated the amended version of the Negative Option Rule,[51] several of these changes are inconsistent with the requirements of Section 18 of the FTC Act:

> Among other things, the Commission revised the Rules of Practice so as to remove selection of the Presiding Officer from an independent judge and assign that role to the Chair; strip the Presiding Officer of significant control over the hearing process; and narrow opportunities for the public to help determine which factual issues are in dispute.[52]

In particular, Section 18 of the FTC Act expressly provides that

> [t]he officer who presides over the rulemaking proceeding shall make a recommended decision *based upon the findings and conclusions of such officer as to all relevant and material evidence*."[53]

By contrast, the Commission Rules now instead provide that

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[48] Comment from Small Business Administration at 3, *citing* Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603.
[49] Comment from International Franchise Association at 13; Comment from Small Business Administration at 3.
[50] *See Federal Trade Commission: 16 CFR Parts 0 and 1: Revisions to Rules of Practice: Final Rule*, 86 Fed. Reg. 38,542 (July 22, 2021).
[51] After the Court of Appeals vacated the 2024 amendments to the Negative Option Rule, the Commission restored the Rule to the form it had before the 2024 amendments were approved. *See Federal Trade Commission: 16 CFR Parts 425, 463, and 910: RIN 3084–AB60, RIN 3084–AB72, and RIN 3084–AB74: Revision of the Negative Option Rule, Withdrawal of the CARS Rule, Removal of the Non-Compete Rule To Conform These Rules to Federal Court Decisions: Final Rule*, 91 Fed. Reg. 6507 (February 12, 2026) (citations omitted).The Commission has now published an Advance Notice of Proposed Rulemaking soliciting public comment as to whether it should initiate a new rulemaking proceeding to determine whether the Rule should be amended. *See Federal Trade Commission: 16 CFR Part 425: RIN 3084–AB54: Rule Concerning the Use of Prenotification Negative Option Plans: Advance Notice of Proposed Rulemaking and Request For Public Comment*, 91 Fed. Reg. 12,318 (March 13, 2026).
[52] *Federal Trade Commission: 16 CFR Part 425: RIN 3084-AB60: Negative Option Rule: Final Rule,* 89 Fed. Reg. 90,476, 90,541 (November 15, 2024) (Dissenting Statement of Commissioner Melissa Holyoak).
[53] 15 U.S.C. § 57a(c)(1)(B) (emphasis added).

> [t]he presiding officer's recommended decision will be limited to explaining the presiding officer's proposed resolution of disputed issues of material fact."[54]

The Commission itself determines whether any "disputed issues of material fact" exist and therefore need to be resolved, and if it determines that there are no such issues, then the Presiding Officer has no authority to issue the "recommended decision" that Section 18 requires.

The Commission followed this approach in the Fees Rule rulemaking proceeding. When the Commission issued the NPRM, it stated:

> Based on the comment record and existing prohibitions against unfair or deceptive practices relating to fees under Section 5 of the FTC Act, the Commission does not currently identify any disputed issues of material fact that need to be resolved at an informal hearing.[55]

The Commission reaffirmed this determination when it published its Informal Hearing Notice, despite the fact that a number of commenters who responded to the earlier NPRM expressly identified a significant number of disputed issues of material fact which the Commission should be required to address and resolve.[56] In particular, the U.S. Chamber of Commerce and IFA argued that at least five disputed issues of material fact had to be resolved:

> 1. Consumer expectations about fees or charges consumers expect to be included with the purchase of a product or serviced;
> 2. How displaying Total Price more prevalently than any other pricing information will impact consumers' understanding of and access to cost-saving discounts and rebates;
> 3. The impact of extensive fee disclosures early in the purchasing process on consumers' understanding of the fees most likely to generate additional costs post-purchase or most relevant to a consumer's purchasing decision;
> 4. The procompetitive impacts or efficiencies of partitioned or drip pricing; and
> 5. Whether a fee disclosure that complies with the Commission's 'Total Price' requirements is easier for a consumer to navigate, understand, and comparison shop than
> (1) disclosures that provide item price information separate from dynamic or variable fees or (2) where dynamic or variable fees vary, similar to shipping and carriage costs, depending on characteristics of the order not ascertainable until the consumer provides information or makes order selections."[57]

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[54] 16 CFR § 1.13(d).
[55] *Fees Rule NPRM*, 88 Fed. Reg. at 77,440.
[56] *Federal Trade Commission: 16 CFR Part 464 [Docket ID FTC–2023–0064]: RIN 3084–AB77: Trade Regulation Rule on Unfair or Deceptive Fees: Initial notice of informal hearing; final notice of informal hearing; list of Hearing Participants; requests for submissions from Hearing Participants*, 89 Fed. Reg. 21,216, 21,221 (March 27, 2024) (hereinafter *Informal Hearing Notice*).
[57] *Informal Hearing Notice*, 89 Fed. Reg. at 21,218 and note 31, *citing and summarizing* Comment from U.S. Chamber of Commerce at 19-21, and Comment from International Franchise Association at 13.

The Commission nevertheless rejected these and other commenter arguments; concluded that promulgating the proposed rule—which would have applied to virtually every firm in the American economy—nevertheless did not raise any disputed issues of material fact; and determined that

> [b]ecause there are no ''disputed issues of material fact'' to resolve at the informal hearing, the presiding officer is not anticipated to make a recommended decision.[58]

In short, while the Commission allowed the Presiding Officer to conduct an informal hearing and hear presentations from IFA and others, it did not allow him to issue a recommended decision. Moreover, the Commission determined that no cross-examination of witnesses or rebuttal submissions would be permitted as part of the informal hearing.[59] If the Commission determines to commence a new rulemaking proceeding here, it should not follow this approach. After conducting an informal hearing, the Presiding Officer should issue a recommended decision based on the entire rulemaking record, which in particular addresses and resolves—with respect to the online food delivery services sector—not only the five disputed issues of material fact that the Chamber of Commerce and IFA identified in the earlier proceeding, but also any other such issues identified by other commenters. The Commission should then consider that decision and the entirety of the rulemaking record, as Section 18 requires, before determining whether, and if so in what form, to promulgate a new rule.

Failing to permit the Presiding Officer to issue a recommended decision as to whether, and if so in what form, the Commission should promulgate a new rule – based on findings and conclusions as to *all* relevant and material evidence in the rulemaking record – would arguably provide a procedural basis on which a Court of Appeals could rely to vacate that rule. As noted above, one of the bases for vacating a Commission trade regulation rule at the Court of Appeals level is the failure to follow the procedures "required by law,"[60] and in fact the Court of Appeals for the Eighth Circuit vacated the amended version of the Negative Option Rule because the Commission had failed to include a preliminary regulatory analysis in the NPRM for that rulemaking proceeding.[61] To avoid such a result in a new rulemaking proceeding, the Commission should follow all the procedures prescribed by the FTC Act, rather than the more limited procedures prescribed by the revised Rules of Practice.

Conclusion

As the foregoing discussion indicates, IFA believes that the Commission should not initiate a new rulemaking proceeding. However, if the Commission ultimately determines to conduct another rulemaking proceeding, and issues a Notice of Proposed Rulemaking to that effect, we intend to participate in that proceeding and represent and actively support the views and interests of our members, with a particular focus on the substantive issues discussed above and on ensuring strict compliance with the rulemaking procedures required by the FTC Act. Thank you for considering these comments.

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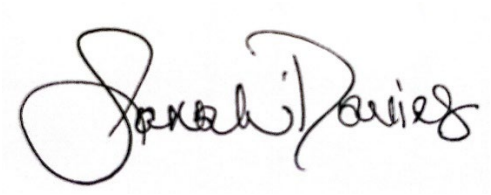
[58] *Informal Hearing Notice*, 89 Fed. Reg. at 21,222.
[59] *Informal Hearing Notice*, 89 Fed. Reg. at 21,221.
[60] 5 U.S.C. § 706(2)(D).
[61] *Custom Communications, Inc., doing business as Custom Alarm, et al., v. Federal Trade Commission*, Nos. 24-3137, 24-3388, 24-3415, 24-3442, 24-3469 (8th Cir. July 8, 2025) (*per curiam*).

Respectfully Submitted,
INTERNATIONAL FRANCHISE ASSOCIATION



Sarah Davies, General Counsel

Schedule 1

**ALL-IN PRICING LAWS AND REGULATIONS**
**(a/k/a "Junk Fee" Laws)[62]**

| **FEDERAL TRADE COMMISSION** |
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| **16 CFR Part 464** (Effective 05/12/2025):<br>• Applies to sale of live-event tickets and short-term lodging.<br>• Must clearly and conspicuously disclose the total price (*i.e.*, the total of all mandatory fees or charges imposed by the merchant) in any offer, display, or advertisement that displays a price. Such disclosure must be more prominent than any other pricing information.<br>• Government taxes/charges, shipping charges, and fees or charges for any optional or ancillary good or service can be excluded.<br>• Before the consumer consents to payment, must clearly and conspicuously disclose A) the nature, truthful purpose, and amount of any fee or charge that is excluded from total price, B) the identity of the good or service for which the fee is imposed, and C) the final amount of payment.<br>• For any fees included as part of the total price which are itemized at checkout, must A) truthfully disclose the nature, purpose, amount, and refundability of such fee, and B) identify the good or service for which such fee is imposed. |
| **CALIFORNIA** |
| **Bus. Prof. Code § 17568.6** (Effective 07/01/2024):<br>• Applies to advertisement of rates for short-term lodging properties physically located in California; however, the advertising itself is subject to regulation even when displayed outside the state.<br>• Before the consumer (located anywhere) reserves a stay in a short-term lodging facility physically situated in California, the seller (including a website, application, or other similar centralized platform, or any other person or entity) must display the total price (*i.e.*, the total of all fees or charges), ***including all taxes and fees imposed by the government*** (but the initial advertising can exclude government-imposed taxes and fees).<br><br>**Civ. Code § 1170(a)(29)** (Effective 07/01/2024):<br>• Applies to all industries, but with various exclusions, including internet access services, financial services, restaurants, and food-delivery services (see fee disclosure requirements for food vendors below).<br>• Must disclose full price (*i.e.*, the total of all mandatory fees or charges) in all advertisements, displays, or offers containing a price term. |

[62] This summary is current as of October 3, 2025, and contains only brief summaries of the main points in the identified statutes and regulations.

- Excludes government-imposed taxes/fees and shipping costs, which only need to be disclosed at checkout.
- Mandatory fees charged by restaurants, bars, and other enumerated food vendors for the direct sale of food and beverage items are exempted from inclusion in the full price so long as A) the fee is clearly and conspicuously displayed wherever prices are shown, and B) a truthful explanation of the additional fee's purpose is displayed therewith.

**COLORADO**

**HB25-1090** (To be codified at Colo. Rev. Stat. § 6-1-737, Effective 01/01/2026):

- Applies to all industries, but with various exclusions, including internet and cable access services, financial services, real estate broker fees, restaurants, and delivery companies operating via digital platforms (see fee disclosure requirements for food vendors below).
- Must disclose the total price, including all mandatory fees or charges, as a single number more prominently displayed than any other pricing information. Total price excludes taxes and shipping charges.
- Must clearly explain the nature and purpose of all excluded fees not reflected in the total price, including A) the refundability and recipient(s) of the fee, and B) the identity of the good or service for which the fee is imposed.
- For any fees included as part of the total price which are itemized at checkout, must A) truthfully disclose the nature, purpose, recipient(s), and refundability of such fee and B) identify the good or service for which such fee is imposed, as well as the actual price of such good or service.
- Mandatory service charges by restaurants, bars, and other enumerated food vendors for the direct sale of food and beverage items are exempted from inclusion in the full price so long as A) the fee is clearly and conspicuously displayed wherever prices are shown, and B) a truthful explanation of the additional fee's purpose is displayed therewith.

**MAINE**

**HP 268 / LD 414** (to be codified at Maine Rev. Stat. Ann. Ch. 206-D §1250-P, effective 09/24/2025):

- Applies to sale of live-event tickets and short-term lodging. Excludes parties in compliance with the FTC Rule (16 CFR Part 464).
- Must disclose the total price, including all mandatory fees or charges, as a single number more prominently displayed than any other pricing information. Total price excludes taxes, shipping charges, and amounts charged for ancillary goods.

| MASSACHUSETTS |
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| **940 CMR 38.00** (Effective 09/02/2025):<br>• Applies to all advertising, solicitation, or offers targeted to or resulting in sales within Massachusetts.<br>• The full price (*i.e.*, "The maximum [mandatory] price a consumer must pay … inclusive of all fees, charges, or other expenses.") must be the first price presented, must be presented during all subsequent stages where price information is conveyed, and must be clearly and conspicuously displayed more prominently than any other pricing information in each instance (except when presenting final transaction amount). Full price excludes taxes and fees imposed by the government.<br>• Full price must be displayed before requiring a consumer to provide any personal information, including billing information.<br>• The final transaction amount (full price, plus taxes and fees imposed by the government) must be disclosed clearly and conspicuously prior to the sale and must be more prominent than any other pricing information.<br>• Must truthfully disclose the "nature, purpose, and amount" of all fees and charges which compose the full price. Many fees can be disclosed using a concise phrase (e.g., "cleaning fee,") so long as the amount charged is reasonably reflective of the cost the seller actually incurs for the listed item/service.<br>*See* compliance summary here |

| MINNESOTA |
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| **Minn. Stat. 325D.44**, amended by **2025 Minn. Laws Ch. 20 § 247** (Effective 01/01/2025)[63]:<br>• Applies to all industries other than A) purchase or lease of an automobile, B) entities regulated by the Minnesota Public Utilities Commission, and C) settlement services not including real estate broker fees. Excludes cable operators and direct broadcast satellite providers in compliance with aggregate pricing requirements for video programming imposed under FCC rule 47 C.F.R § 76.310.<br>• Full price (*i.e.*, total of all mandatory fees or surcharges imposed by the merchant) must be disclosed in all advertisements, displays, or offers which include a price term. Excludes taxes imposed by the government and shipping costs. |

[63] Delayed effective date for entities regulated by the Metropolitan Airports Commission: 06/01/2025.

- Automatic or mandatory gratuities for restaurants and hotels need not be included in the full price, but must be displayed clearly and conspicuously. Delivery platforms must, before checkout, display a subtotal page that itemizes the price of menu items and the additional fee that is included in the total cost.

*See* compliance summary here

**NEW YORK**

**S.9461/A.10500,** codified at **N.Y. ARTS & CULT. AFF. LAW§ 25.07(4)** (Effective 06/30/2022):

- Applies to ticket sales for live events.
- The "All-In Price"[64] (i.e., the total ticket cost, including all mandatory ancillary fees) must be disclosed to the consumer before the ticket is selected for purchase. Must be presented more prominently than any other pricing information.
- Must clearly and conspicuously disclose the portion of the ticket price (as a dollar amount) that represents a service charge before the ticket is selected for purchase.
- The ticket price may not increase during the purchase process, excluding reasonable fees for the delivery of non-electronic tickets.

*See* compliance summary here.

**RHODE ISLAND**

**SB17** (to be codified at R.I. Gen. Law § 6-13.1-1(xxi), effective 01/01/2026):

- "Advertising, displaying, or offering a price for live-event tickets or short-term lodging in violation of 16 C.F.R. Part 464" constitutes a violation of the RI Deceptive Trade Practices Act.

**TENNESSEE**

**SB 1043** (Effective 07/01/2023):

- Applies to third-party resellers of tickets to entertainment events occurring within the state.

[64] NY separately requires businesses to post the total price of an item or service, ***inclusive*** of any credit card surcharge. *See* NYS GBS § 518, and additional guidance on surcharge disclosures here.

- Must conspicuously provide the following information in the same location that the ticket is offered, prior to selecting the ticket for purchase:
    a) The cost of the ticket without fees;
    b) The cost of additional mandatory fees;
    c) The cost of additional fees charged by the third-party ticket reseller; and
    d) The total cost of the ticket.

**VIRGINIA**

**SB1212** (to be codified at Virginia Code §§ 59.1-587 to 59.1-610, effective 07/01/2025)

- Applies to most industries. Excludes, among other select industries,[65] live ticket sellers in compliance with the FTC Rule (16 CFR Part 464) and food-delivery platforms (see fee disclosure requirements for food delivery platforms below).
- Full price (*i.e.*, total of all mandatory fees or surcharges imposed by the merchant) must be disclosed in all advertisements, displays, or offers which include a price term. Excludes taxes imposed by the government and shipping costs.
    - Where a good is sold *with* a service, the full price of the good and service may be displayed separately.
    - Automatic or mandatory gratuities for restaurants and hotels need not be included in the full price if calculated as a fixed percentage rather than a dollar amount, but such fixed percentage must be displayed clearly and conspicuously.
- Food delivery platforms must, at the point where the consumer views and selects menu items, include a clear and conspicuous disclosure of any additional fee or percentage charged. Prior to checkout, food delivery platforms must display a subtotal page that itemizes the price of the menu items and any additional fee or percentage that is included in the total cost.

[65] Other industries excluded from the VA statute are: (i) motor vehicle dealers (ii) electric and natural gas utilities, (iii) broadband internet access services in compliance with 47 C.F.R. § 8.2(a), (iv) cable operators in compliance with 47 U.S.C. § 552, (v) direct broadcast satellite providers in compliance with 47 C.F.R § 76.310 (vi) real estate settlement services, and (vii) the provision of air transportation by air carriers. *See* Virginia Code § 59.1-608(E)-(G); *id*., §59.1-609(B).