



## **Federal Trade Commission**

### **16 CFR Chapter I**

**RIN:** 3084-AB88

#### **Rule on Unfair or Deceptive Fees in Online Food Delivery Services**

**AGENCY:** Federal Trade Commission.

**ACTION:** Advance notice of proposed rulemaking; request for public comment.

**SUMMARY:** The Federal Trade Commission (“Commission”) proposes to commence a rulemaking proceeding to address certain unfair or deceptive acts or practices relating to fees and charges for food and grocery items ordered through online delivery platforms. The Commission is soliciting written comment, data, and argument concerning the need for such a rulemaking to prevent persons, entities, and organizations from engaging in such unfair or deceptive acts or practices.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

#### **ADDRESSES:**

Members of the public may file a comment online or on paper by following the instructions in the Comment Submissions part of the **SUPPLEMENTARY INFORMATION** below. Write “Food Delivery Fees ANPRM (Project No. P267101)” on your comment and file your comment online at <https://www.regulations.gov>. If you prefer to file your comment on paper, write “Food Delivery Fees ANPRM (Project No. P267101)” on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex F), Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Alan Bakowski ([abakowski@ftc.gov](mailto:abakowski@ftc.gov); 404-656-1363); Christopher Gleason ([cgleason@ftc.gov](mailto:cgleason@ftc.gov); 404-656-1352), Attorneys, Southeast Region, Federal Trade Commission.

**SUPPLEMENTARY INFORMATION:**

**I. General Background Information**

The Commission publishes this advance notice of proposed rulemaking (“ANPRM”) pursuant to section 18 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. 57a, the provisions of part 1, subpart B, of the Commission’s Rules of Practice, 16 CFR 1.7–1.20, and 5 U.S.C. 553. This authority permits the Commission to promulgate, modify, and repeal rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

**II. Objectives the Commission Seeks to Achieve and Possible Regulatory Alternatives**

**A. Description of the Area of Inquiry**

Over the last ten years, consumers’ use of online food delivery platforms has skyrocketed.<sup>1</sup> The number of households who order meals delivered from restaurants more than doubled from 2019 to 2024, and about one third of American adults (and more than half of those under 45) now say they order delivery from restaurants at least once a week.<sup>2</sup> Over 138 million Americans (more than half of American adults) bought groceries online in 2024, with average sales over \$9 billion each month, the majority of

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<sup>1</sup> For purposes of this ANPRM, the term “online food delivery platforms” is used to describe 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.

<sup>2</sup> See Ellen Cushin, *The Innovation That’s Killing Restaurant Culture*, *The Atlantic* (Oct. 27, 2025), <https://www.theatlantic.com/culture/2025/10/food-delivery-america/684700/>; Priya Krishna, *Freedom With a Side of Guilt: How Food Delivery Is Reshaping Mealtime*, *N.Y. Times* (Jan. 30, 2026), <https://www.nytimes.com/2026/01/30/dining/food-delivery-apps-doordash-uber.html>.

which is spent on delivery orders.<sup>3</sup> The market for online food and grocery delivery services is expected to continue growing over the next several years.<sup>4</sup>

As online food delivery platforms have grown, so have consumer complaints, especially about prices and fees. One study found that consumers ordering food from an online delivery platform paid nearly 80% more on average than they would pay picking up the same order directly from a restaurant, and others have reported total costs ranging from 25% to over 90% higher, depending on the platform.<sup>5</sup> Grocery delivery has proven to be similarly costly: at least one report found that ordering groceries through an online delivery platform resulted in total costs that were 30–50% higher than shopping in-store for the same groceries.<sup>6</sup>

One factor contributing to these inflated costs—which is not always apparent to consumers—is that the prices of items on food delivery platforms are frequently higher than the prices paid for those items at the restaurant or grocery store.<sup>7</sup> Media reports indicate that meal prices on delivery platforms can be over 20% higher than prices at the restaurant, while grocery items sold through delivery platforms can be on average 10%

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<sup>3</sup> See CapitalOne Shopping, *Online Grocery Shopping Statistics* (Dec. 11, 2025), <https://capitaloneshopping.com/research/online-grocery-shopping-statistics/>.

<sup>4</sup> See *id.*; DoorDash Merchant Blog: *Understanding the Rise of Food Delivery Services* (May 30, 2024), <https://merchants.doordash.com/en-us/blog/rise-in-food-delivery-and-why-it-is-popular>; cf. Coggins et al., McKinsey & Co., *State of the Consumer 2025: When Disruption Becomes Permanent* (June 9, 2025), <https://www.mckinsey.com/industries/consumer-packaged-goods/our-insights/state-of-consumer>.

<sup>5</sup> See Matt Schulz, *The Price of Lazy: Nearly 4 in 10 Americans Get Delivery Weekly — and It's Costing Them Nearly 80% More Than Pickup*, LendingTree (Oct. 28, 2025), <https://www.lendingtree.com/credit-cards/study/delivery-pickup/>; Brian X. Chen, *Up to 91% More Expensive: How Delivery Apps Eat Up Your Budget*, N.Y. Times (Feb. 26, 2020), <https://www.nytimes.com/2020/02/26/technology/personaltech/ubereats-doordash-postmates-grubhub-review.html>; Josh Koebert, *Food Delivery App Comparison: How Much Can Pick-Up Save You at Popular Chains?* [2026], FinanceBuzz (Jan. 23, 2026), <https://financebuzz.com/compare-costs-food-delivery-apps>.

<sup>6</sup> See Pamela Vachon, *We Did the Math: How Much More Expensive Is Grocery Shopping With Instacart, Really?*, CNET (Jan. 30, 2025), <https://www.cnet.com/home/kitchen-and-household/we-did-the-math-how-much-more-expensive-is-grocery-shopping-with-instacart-really/>.

<sup>7</sup> See, e.g., Chen, *supra* note [5].

higher than in-store prices, before taking into account the fees charged by the platforms.<sup>8</sup> And though some retailers may offer in-store pricing on delivery apps, there are other factors that can lead to different (and often higher) in-app prices, including whether a store’s loyalty program (and accompanying discounts) can be linked in the delivery app or whether the app syncs with weekly or daily changes in in-store pricing.<sup>9</sup> Perhaps most importantly, consumers are not always made aware that prices are marked up or that they would need to parse through disclosures to understand the various ways in which prices may vary between a restaurant or grocery store and a delivery platform. Additionally, there is evidence that food delivery platforms—like other online retailers—are sometimes charging different prices to different consumers for the same goods and services.<sup>10</sup> These pricing practices may not be fully disclosed to consumers and could pose problems for consumers seeking to effectively comparison shop across delivery platforms.

In addition to price markups, online food delivery platforms have been charging consumers increasingly higher fees to have their food and groceries delivered.<sup>11</sup> Often, the existence and cost of these fees are not disclosed until checkout, if at all, meaning that consumers frequently do not learn the true cost of getting their food delivered until the very end of the transaction.<sup>12</sup> These hidden fees force consumers to either abandon their

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<sup>8</sup> See *id.*; Vachon, *supra* note [6].

<sup>9</sup> See Vachon, *supra* note [6].

<sup>10</sup> See Ben Casselman, *Same Product, Same Store, but on Instacart, Prices Might Differ*, N.Y. Times (Dec. 9, 2025), <https://www.nytimes.com/2025/12/09/business/instacart-algorithmic-pricing.html>; Jay L. Zagorsky, *What Is Personalized Pricing, and How Do I Avoid It?*, The Conversation (July 31, 2025), <https://theconversation.com/what-is-personalized-pricing-and-how-do-i-avoid-it-262195>.

<sup>11</sup> See Justine Fisher, *Food Delivery Fees Are Rising, and Everyone’s Feeling the Pinch*, CNBC (July 27, 2024), <https://www.cnbc.com/2024/07/27/food-delivery-fees-are-rising.html>.

<sup>12</sup> See, e.g., Instacart Help Center, <https://www.instacart.com/help/section/360007902791/360039164252> (last visited Mar. 6, 2026) (stating that delivery fees, service fees, and priority fees are all shown “at checkout” and that some regulatory response fees may appear on a customer’s receipt or “in the order summary”); Groupon, *DoorDash Fees Explained – and How to Avoid Them* (Jan. 7, 2026), <https://www.groupon.com/coupons/blog/door-dash-fees-and-how-to-avoid-them> (suggesting that consumers seeking to avoid fees on DoorDash should “[c]ompare

order (thus wasting the time they spent preparing it) or pay unanticipated costs that sometimes exceed the amount they were prepared to spend. Indeed, research suggests that when consumers face these kinds of pricing practices, they frequently underestimate the total cost of the transaction<sup>13</sup> and are reluctant to restart their search due to the perceived futility of doing so.<sup>14</sup>

In addition to hidden or inadequately disclosed fees, consumers must also contend with other potentially unfair and deceptive fee practices. For example, as food delivery platforms compete for cost-conscious consumers, they have increasingly opted for advertising low-fee or no-fee delivery options.<sup>15</sup> But while platforms may purport to offer “free delivery” or “\$0 delivery,” they often tack on non-optional charges for delivery orders such as “service fees,” “small order fees,” or other mandatory fees that consumers do not expect to be charged. Some delivery platforms charge both “delivery” fees and “service” fees, leading many consumers to wonder what “service” they are paying for besides delivery. And delivery platforms routinely ask consumers to provide tips for delivery workers, but the manner in which those tips are solicited—especially when consumers are being charged separate fees to pay for delivery—often leaves consumers confused about how delivery workers are being paid, whether tips are being paid to drivers, and what level of tip is appropriate.<sup>16</sup>

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2–3 restaurants at cart stage — pick lower total fees”); *see also* Deanna Nila, *Deception by Delivery Fees: Demanding Consumer Protections and Transparency in the Face of Deceptive Fee Practices*, 30 Ill. Bus. L.J. 92, 93 (2005).

<sup>13</sup> *See* Alexander Rasch et al., *Drip Pricing and Its Regulation: Experimental Evidence*, 176 J. Econ. Behav. & Org. 353, 362–63 (2020).

<sup>14</sup> *See* Shelle Santana et al., *Consumer Reactions to Drip Pricing*, 39 Mktg. Sci. 188, 207 (2020), <https://doi.org/10.1287/mksc.2019.1207>.

<sup>15</sup> Notably, food delivery platform Grubhub placed a high-profile advertisement starring actor George Clooney during the 2026 Super Bowl to tell consumers they would not be charged delivery fees or service fees on restaurant orders over \$50. *See* Dianna Dilworth, *Behind Grubhub’s First-Ever Super Bowl Ad* (Feb. 2, 2026), <https://brand-innovators.com/behind-grubhubs-first-ever-super-bowl-ad/>.

<sup>16</sup> *See, e.g.*, Lauren Jackson, *Tipping Confusion*, N.Y. Times (April 9, 2023), <https://www.nytimes.com/2023/04/09/briefing/tipping-confusion-food-delivery-apps.html>.

These potentially deceptive and misleading practices harm consumers and competition. Practices that obscure the true price until the end of a transaction tend to harm consumers in two ways. First, seemingly lower prices artificially increase prices and lead some consumers to complete purchases at higher prices. Second, search costs increase when some consumers backtrack to find lower-price alternatives or forgo a purchase altogether.<sup>17</sup> Thus, when the cost of various fees is obscured or not clearly disclosed upfront, consumers are disadvantaged in understanding the true cost of the transaction and whether a better option exists. Relatedly, insofar as businesses that employ these deceptive practices are perceived as having lower prices, they gain an unfair advantage in the market over those who more transparently represent the costs of their goods or services.

As discussed further below, these pricing practices have been the subject of investigations and enforcement actions by the Commission and State and local government agencies, and numerous State and local governments have adopted laws or regulations to address these practices.

#### 1. Past Commission Actions

The Commission has brought several enforcement actions to address unfair and deceptive practices on food delivery platforms. In *FTC v. Grubhub Inc.*, No. 1:24-cv-12923 (N.D. Ill. Stipulated Final Order entered Dec. 31, 2024), the Commission alleged that Grubhub, one of the largest online food delivery platforms in the United States, violated section 5 of the FTC Act by, among other things, deceiving consumers about how much its services cost.<sup>18</sup> Specifically, the FTC alleged that Grubhub initially

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<sup>17</sup> See, e.g., David Adam Friedman, *Regulating Drip Pricing*, 31 Stan. L. & Pol’y Rev. 51, 55 & n.13 (2020); cf. Mary Sullivan, Fed. Trade Comm’n, *Economic Analysis of Hotel Resort Fees* 25–28 (2017), [https://www.ftc.gov/system/files/documents/reports/economic-analysis-hotel-resort-fees/p115503\\_hotel\\_resort\\_fees\\_economic\\_issues\\_paper.pdf](https://www.ftc.gov/system/files/documents/reports/economic-analysis-hotel-resort-fees/p115503_hotel_resort_fees_economic_issues_paper.pdf).

<sup>18</sup> See Press Release, Fed. Trade Comm’n, *FTC, Illinois Attorney General Take Action Against Grubhub for Harming Diners, Workers, and Small Businesses* (Dec. 17, 2024),

advertised a single, low-cost (or sometimes no-cost) charge for delivery to entice consumers to place an order and then charged additional undisclosed fees at checkout that significantly raised the price paid to use Grubhub’s services.<sup>19</sup> The FTC also alleged that Grubhub violated section 4 of the Restore Online Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. 8403, by, among other things, failing to clearly and conspicuously disclose all fees applicable to orders placed by consumers who enrolled in its Grubhub+ subscription plan. Specifically, the FTC alleged that Grubhub advertised “free delivery” or “\$0 delivery fees” for Grubhub+ members without adequately disclosing that Grubhub still charged so-called “service” and “small order” fees on orders placed by Grubhub+ members and “delivery” fees on orders from restaurants that did not participate in Grubhub+.<sup>20</sup> Grubhub was prohibited from misrepresenting material facts, including about the amount a consumer will pay in connection with a delivery order, the existence or amount of any fees, the nature and purpose of any fee, and whether a consumer will receive free delivery or delivery for a nominal fee. Grubhub also was ordered to change its practices to clearly and conspicuously disclose, on any page referencing the cost to place a delivery order at a particular restaurant, the amount or percentage (or range of amounts or percentages) of any additional fees that consumers must pay to place a delivery order (excluding government charges and optional tips). And Grubhub was ordered to clearly and conspicuously disclose all fees that consumers will incur based on selections they make on the Grubhub platform, including the nature and purpose of each fee, the amount of each fee, and the total amount a consumer must pay based on the selections.<sup>21</sup>

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<https://www.ftc.gov/news-events/news/press-releases/2024/12/ftc-illinois-attorney-general-take-action-against-grubhub-harming-diners-workers-small-businesses>.

<sup>19</sup> See Complaint ¶¶ 4, 7, 34–57, *FTC v. Grubhub Inc.*, No. 1:24–cv–12923 (N.D. Ill. Dec. 17, 2024).

<sup>20</sup> See *id.* ¶¶ 58–77.

<sup>21</sup> See Stipulated Order, *FTC v. Grubhub Inc.*, No. 1:24–cv–12923 (N.D. Cal. Dec. 31, 2024).

In *FTC v. Maplebear Inc. d/b/a Instacart*, No. 4:25–cv–10783 (N.D. Cal. Stipulated Final Order entered Jan. 13, 2026), the Commission alleged that Instacart, one of the largest online grocery delivery platforms in the United States, violated section 5 of the FTC Act by, among other things, falsely advertising “free delivery” on certain orders.<sup>22</sup> Specifically, the Commission alleged that Instacart waived its “delivery fees” on orders advertised to feature “free delivery” but still charged consumers mandatory “service fees” and sometimes additional fees to have their order delivered. The FTC also alleged that Instacart violated section 4 of ROSCA by failing to clearly and conspicuously disclose all material terms of its Instacart+ subscription membership program, which offered members reduced fees on certain orders.<sup>23</sup> Instacart was ordered to change its fee practices to clearly and conspicuously disclose the existence of other fees that apply whenever it advertises free delivery or delivery for a nominal or otherwise discounted fee. Instacart also was ordered to clearly and conspicuously disclose all material terms of its Instacart+ membership program before obtaining consumers’ billing information.<sup>24</sup>

In *In re Amazon, Inc.*, No. C–4746 (FTC June 9, 2021), the Commission alleged that Amazon violated section 5 of the FTC Act in connection with its “Amazon Flex” program, in which Amazon hired drivers to make same-day deliveries to customers, including groceries and restaurant meals, and gave customers the option to tip the drivers for certain deliveries.<sup>25</sup> The Commission alleged that Amazon misrepresented that 100%

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<sup>22</sup> See Press Release, Fed. Trade Comm’n, *Instacart to Pay \$60 Million in Consumer Refunds to Settle FTC Lawsuit Over Allegations it Engaged in Deceptive Tactics* (Dec. 18, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/12/instacart-pay-60-million-consumer-refunds-settle-ftc-lawsuit-over-allegations-it-engaged-deceptive>.

<sup>23</sup> See Complaint ¶¶ 3, 14–34, *FTC v. Maplebear Inc. d/b/a Instacart*, No. 3:25–cv–10783 (N.D. Cal. Dec. 18, 2025).

<sup>24</sup> See Stipulated Order, *FTC v. Maplebear Inc. d/b/a Instacart*, No. 4:25–cv–10783 (N.D. Cal. Jan. 13, 2026).

<sup>25</sup> See Press Release, Fed. Trade Comm’n, *FTC Returns Nearly \$60 Million to Drivers Whose Tips Were Illegally Withheld by Amazon* (Nov. 2, 2021),

of tips would be passed on to drivers, when in fact Amazon withheld nearly a third of customers' tips to subsidize its own payments to the drivers.<sup>26</sup> The Commission ordered Amazon to change its practices and prohibited, among other things, misrepresentations that any charge a customer pays is a "tip" for delivery drivers or about how tips are paid to drivers.<sup>27</sup>

In *FTC v. Walmart Inc.*, No. 3:26-cv-01655 (N.D. Cal. Stipulated Final Order entered Mar. 3, 2026), the Commission alleged that Walmart violated section 5 of the FTC Act in connection with its Spark Driver program in which Walmart hired drivers to make same-day deliveries to customers, including groceries and other items, and gave customers the option to tip the drivers for certain deliveries.<sup>28</sup> Among other things, the Commission alleged 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.<sup>29</sup> Walmart was enjoined from misrepresenting that the customers' tips would be paid to drivers.<sup>30</sup>

## 2. State and Local Laws and Regulations

States and municipalities have enacted various laws and regulations related to food delivery platforms, including with respect to how such platforms advertise and disclose pricing and fee information. Perhaps most notably, several States have recently

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<https://www.ftc.gov/news-events/news/press-releases/2021/11/ftc-returns-nearly-60-million-drivers-whose-tips-were-illegally-withheld-amazon>.

<sup>26</sup> See Complaint ¶¶ 6–9, 26–34, 50–52, *In re: Amazon.com, Inc.*, No. C–4746 (FTC June 9, 2021).

<sup>27</sup> See Decision and Order, *In re: Amazon.com, Inc.*, No. C–4746 (FTC June 9, 2021).

<sup>28</sup> See Press Release, Fed. Trade Comm'n, *Walmart Agrees to \$100 Million Judgment to Settle FTC, States' Charges Over Deceptive Earnings Claims Related to the Company's Spark Driver Delivery Service* (Feb. 26, 2026), <https://www.ftc.gov/news-events/news/press-releases/2026/02/walmart-agrees-100-million-judgment-settle-ftc-states-charges-over-deceptive-earnings-claims-related>.

<sup>29</sup> See Complaint ¶¶ 13, 18, 102–07, 123–25, *FTC v. Walmart Inc.*, No. 3:26-cv-1655 (N.D. Cal. Feb. 26, 2026).

<sup>30</sup> See Stipulated Order, *FTC v. Walmart Inc.*, No. 3:26-cv-1655 (N.D. Cal. Mar. 3, 2026).

enacted<sup>31</sup>—and others have considered or are considering enacting<sup>32</sup>—statutes and regulations requiring advertised prices to represent the total price of a good or service, inclusive of mandatory fees and other seller-imposed charges.<sup>33</sup> Most of these laws include industry- or business-specific provisions applicable to delivery platforms (including food and grocery delivery platforms), as well as to restaurants, grocery stores, and other food- or beverage-service facilities such as hotels or bars.

i. Requirements and Exceptions for Food and Grocery Delivery Platforms

States that have recently enacted “total price” or “price transparency” laws and regulations have generally included exceptions or separate requirements applicable to food and grocery delivery platforms. For example, two States have laws delineating particular disclosure requirements for food delivery platforms;<sup>34</sup> other States impose specific requirements for “delivery platform[s]” and “delivery network compan[ies]”

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<sup>31</sup> See Cal. Civ. Code 1770(a)(29) (2026); Colo. Rev. Stat. 6–1–737 (2026); 940 Mass. Code Regs. 38.00 *et seq.* (2025); Minn. Stat. 325D.44 *et seq.* (2025); Va. Code Ann. 59.1–607 *et seq.* (2025).

<sup>32</sup> See, e.g., S.B. 180, 33rd Leg. Reg. Sess. (Alaska 2023–2024); S.B. 363, 2025–2026 Gen. Assemb. (N.Y. 2025); S.B. 986, 2025 Reg. Sess. (Okla. 2025); S.B. 430, 2025 Reg. Sess. (Or. 2025).

<sup>33</sup> In most cases, “total price” excludes government-imposed charges like taxes, as well as shipping and postage fees. See, e.g., 940 Mass. Code Regs. 38.03 (2025). Some jurisdictions impose additional requirements, including that the total price be displayed more prominently than other pricing information and that information about charges not included within the total price be clearly and conspicuously disclosed to consumers. See 940 Mass. Code Regs. 38.04(6) (2025); Colo. Rev. Stat. 6–1–737(2)(a) (2026).

<sup>34</sup> Virginia’s Fair Food Delivery Act, Va. Code Ann. 59.1–586 (2025) *et seq.*, sets pricing and disclosure requirements for “food delivery platform[s],” and its requirements are expressly incorporated into Virginia’s recently enacted total price statute. See Va. Code Ann. 59.1–608(I) (2025). California likewise has a separate statutory provision detailing various requirements for food delivery platforms. See Cal. Bus. & Prof. 22598 (2025) *et seq.* Though California’s total price provision includes an exception that allows restaurants, bars, food concessions, grocery stores, and grocery delivery services to display mandatory fees or charges separately (so long as such fees or charges are clearly and conspicuously disclosed), that exception does not apply to “third-party food delivery platform[s]” or “any other food delivery platform[,]” meaning that, under California law, third-party food delivery platforms would likely have different disclosure requirements than grocery delivery platforms. See Cal. Civ. Code 1770(a)(29)(D)(i)–(iv) (2026).

(both of which would include food and grocery delivery platforms, along with other delivery platforms);<sup>35</sup> and at least one State imposes a limited exception that applies to food and grocery delivery platforms only.<sup>36</sup> Despite slight variations across jurisdictions, these approaches 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.<sup>37</sup>

For States that have pricing and fee disclosure requirements that are applicable to food and grocery delivery platforms (and other delivery platforms), at least two requirements are common: (1) the platform must clearly and conspicuously disclose upfront any mandatory fees or charges the consumer must pay as part of the transaction and, in some cases, the amount or percentage of any such fees; and (2) prior to checkout, the platform must provide the consumer with an itemized breakdown of the costs of the good or services in addition to the costs of any fees or surcharges.<sup>38</sup> Some States impose

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<sup>35</sup> See Minn. Stat. 325D.44 Subd. 1a(c) (2025); Colo. Rev. Stat. 6–1–737(2)(c) (2026).

<sup>36</sup> See 940 Mass. Code Regs. 38.04 (2025) (permitting a food delivery platform or grocery delivery platform “to Advertise the price of menu items set by a food store, restaurant, or grocery store” but requiring such platforms to “display Clearly and Conspicuously the maximum mandatory charges or fees that a consumer must pay to complete a transaction on their user interface any time any pricing information is displayed”).

<sup>37</sup> See, e.g., Minn. Stat. 325D.44 Subd. 1a(c), 1(a)(h) (2025) (setting out different compliance standards for “delivery platform[s]” and “food or beverage service establishment[s], including [] hotel[s]”); see also Office of the Minnesota Attorney General, *Frequently Asked Questions About Minnesota’s New Price Transparency Law* (January 1, 2025), [https://www.ag.state.mn.us/Price-Transparency/PriceTransparencyLaw\\_FAQ.pdf](https://www.ag.state.mn.us/Price-Transparency/PriceTransparencyLaw_FAQ.pdf) (providing that, under the Minnesota price transparency law, a pizza restaurant delivers its own pizzas is not a “delivery platform” for purposes of the law “because it makes itself the goods being delivered [sic] and sets the price of the goods being delivered”).

<sup>38</sup> See, e.g., Minn. Stat. 325D.44 Subd. 1a(c)(1)–(2) (2025); Va. Code Ann. 59.1–587(B)(1)–(2) (2025); Colo. Rev. Stat. 6–1–737(2)(c) (2026). In Massachusetts, these same requirements are broadly applicable and not specific to delivery platforms. See 940

additional requirements, including that the amount, nature, purpose, or recipient(s) of charged fees be disclosed at the point when a consumer is shown pricing information or selects either a vendor or items for purchase.<sup>39</sup> At least one State also requires that food and grocery delivery platforms display the maximum mandatory charges or fees a consumer must pay to complete a transaction whenever pricing information is displayed.<sup>40</sup> Additionally, some States expressly prohibit various misrepresentations, including with respect to the total price; the nature, purpose, or amounts of mandatory fees; the refundability of any amounts charged; and the recipient(s) of any amounts charged.<sup>41</sup>

ii. Requirements for Price-Variable Goods and Services

In addition to having pricing and disclosure requirements that apply to food delivery platforms, some States' total price statutes also include tailored requirements for price-variable goods and services—that is, goods or services for which the total price is at

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Mass. Code Regs. 38.04(2)–(3) (2025); *see also* Cal. Bus. & Prof. 22599.1(b)(1)–(4) (2026) (requiring food delivery platforms to provide customers with “an accurate, clearly identified, and itemized cost breakdown” of certain costs, including but not limited to “the purchase price of the food and beverage” and “[e]ach fee, commission, and any other cost charged to the customer by the food delivery platform”).

<sup>39</sup> *See, e.g.*, Colo. Rev. Stat. 6–1–737(c)(I)(A)–(B) (2026) (requiring disclosure of, among other things, the amount or percentage of fees as well as an accurate description of the purpose and recipients of such fees); Minn. Stat. 325D.44 Subd. 1a(c)(1) (2025) (requiring disclosure of amount or percentage of additional fees); *see also* 940 Mass. Code Regs. 38.04(2)(a), (3)(b) (2025) (requiring all entities, not just delivery platforms or food and grocery delivery platforms, to disclose, among other things, the nature, purpose, and amount of fees or other charges imposed on a transaction).

<sup>40</sup> 940 Mass. Code Regs. 38.04 (2025) (“Food delivery or grocery delivery platforms must display Clearly and Conspicuously the maximum mandatory charges or fees that a consumer must pay to complete a transaction on their user interface any time any pricing information is displayed.”).

<sup>41</sup> *See* 940 Mass. Code Regs. 38.04(1)–(3) (2025) (prohibiting misrepresentation of, among other things, the total price, as well as the nature, purpose, and amount of fees and charges); Colo. Rev. Stat. 6–1–737(3)(a) (2026) (prohibiting misrepresentation of, among other things, the refundability of any amounts charged, the identity of goods or services for which a consumer is charged; the recipient of an amount charged for a good or service; and the actual price of a good or service for which an amount is charged). In both cases, these requirements apply to delivery platforms, including food and grocery delivery platforms.

least partly based on consumer selections or other factors like distance and time.<sup>42</sup> For the jurisdictions that have adopted this approach, entities providing price-variable goods or services typically must clearly and conspicuously disclose (1) any fees or charges that are variable and will factor into determining the total price; (2) the existence of any mandatory fees associated with the transaction; and (3) the fact that the total price of the good or service may vary.<sup>43</sup> Many food and grocery delivery platforms currently charge variable fees, and the total price of a transaction typically varies based on a consumer’s selections, as well as on other factors such as the size of an order or the distance and time it will take to deliver the order. Indeed, at least one State expressly requires that, insofar as a food delivery platform is also a price-variable supplier, that platform must also comply with the disclosure requirements for price-variable suppliers.<sup>44</sup>

### 3. State, Municipal, and Private Party Lawsuits

In addition to the Commission’s enforcement actions discussed above, States and municipalities have brought lawsuits alleging unfair and deceptive practices by food and grocery delivery platforms. In *City of Chicago v. DoorDash, Inc.*, No. 1:21-cv-5162 (N.D. Ill. dismissed pursuant to joint stipulation Nov. 19, 2025), the City of Chicago alleged that delivery platform DoorDash violated city regulations by, among other things, misrepresenting, concealing, or failing to disclose or disclose adequately: (1) DoorDash’s

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<sup>42</sup> See, e.g., Va. Code Ann. 59.1–607 (2025) (“‘Price-variable supplier’ means a supplier that offers services the total price of which is determined by consumer selections or preferences or dependent on distance or time.”).

<sup>43</sup> See Va. Code Ann. 59.1–608(D) (2025) (“A price-variable supplier is compliant with this section if such supplier clearly and conspicuously discloses (i) the factors determining the final price, (ii) any mandatory fees or surcharges associated with the transaction, and (iii) that the total cost of services may vary.”); Minn. Stat. 325D.44 subd. 1a(g) (2025) (“A person offering services where the total cost of a service is determined by consumer selections and preferences, or where the total cost of the service relates to distance or time, is compliant with this subdivision if the person discloses in a clear and conspicuous manner (1) the factors that determine the total price, (2) any mandatory fees associated with the transaction, and (3) that the total cost of the services may vary.”); Colo. Rev. Stat. 6–1–737(2)(b)(II) (2026) (same).

<sup>44</sup> See Va. Code Ann. 59.1–587(D) (2025).

delivery fee, including by advertising “free delivery” when the true price of delivery service was higher; (2) the full extent and amount of service fees; (3) that its “Chicago Fee” was imposed by the City of Chicago as opposed to DoorDash; (4) terms and conditions related to promotional discounts; (5) that DoorDash had an authorized business relationship with certain restaurants; (6) information about how tips paid by consumers on the DoorDash platform were used with respect to driver pay; and (7) that the prices shown on DoorDash’s platform contained markups from the prices available on restaurants’ own menus.<sup>45</sup> Under the terms of the settlement resolving the case, DoorDash agreed to pay \$18 million, which included payments (or credits being made available) to eligible restaurants, DoorDash users, and drivers.<sup>46</sup>

In *District of Columbia v. Grubhub Holdings, Inc.*, No. 2022 CA 001199 B (D.C. Super. Ct. Consent Judgment and Order entered Jan. 4, 2023), the District of Columbia alleged that Grubhub violated D.C. law by, among other things, misrepresenting or failing to disclose: (1) its business relationship with certain restaurants listed on the Grubhub app; (2) that the “delivery fee” was the only fee consumers would have to pay for orders on the Grubhub platform; (3) that Grubhub+ users would receive “free delivery” when they in fact had to pay a “service fee” on delivery orders; (4) the existence of “service fees” and “small order fees” that Grubhub charged, and that such charges were separate from taxes; (5) that Grubhub’s “order online for free” representations were only applicable to pickup orders; and (6) that the prices shown on Grubhub’s platform were in fact higher for certain items than on restaurants’ own menus.<sup>47</sup> Grubhub was ordered to pay \$2.7 million to affected consumers and \$800,000

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<sup>45</sup> See Complaint ¶¶ 188–210, *City of Chicago v. DoorDash, Inc.*, No. 1:21-cv-5162 (N.D. Ill. Aug. 27, 2021).

<sup>46</sup> Press Release, Office of the Mayor of the City of Chicago (Nov. 14, 2025), [https://www.chicago.gov/city/en/depts/mayor/press\\_room/press\\_releases/2025/november/door-dash-practices-settlement.html](https://www.chicago.gov/city/en/depts/mayor/press_room/press_releases/2025/november/door-dash-practices-settlement.html).

<sup>47</sup> See Complaint ¶¶ 104–110, *District of Columbia v. Grubhub Holdings, Inc.*, No. 2022 CA 001199 B (D.C. Super. Ct. Mar. 21, 2022).

to the District of Columbia.<sup>48</sup> Grubhub also was ordered to, among other things: (1) prominently disclose that additional fees may apply to a consumer’s order and provide information about such fees on the same page or via a hyperlink or similar method; (2) list the names and amounts of fees as separate line items at checkout; (3) stop the practice of combining taxes and fees as a single line item on the Grubhub platform; (4) stop representing that Grubhub+ users receive “free delivery” and disclose that other fees may apply; and (5) stop displaying and charging prices on the Grubhub platform that are higher than those offered directly from a restaurant’s menu unless Grubhub clearly and conspicuously discloses, both on the platform menu and at checkout, that prices on the Grubhub platform may be higher than those offered directly from restaurants.<sup>49</sup>

In *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), the District of Columbia alleged that Instacart violated D.C. law by misleading Instacart users, through a variety of misrepresentations and material omissions, into believing that an optional service fee was a tip that would be paid to Instacart delivery workers, when, in fact, the money collected from these fees was used to pay Instacart’s operating expenses and was not paid to workers.<sup>50</sup> Instacart was ordered to pay \$1.8 million and was enjoined from, among other things, making any misrepresentations or omissions of material fact regarding the nature and purpose of any fees applied by Instacart.<sup>51</sup> In a similar case, the

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<sup>48</sup> See Consent Judgment and Order ¶¶ 32–36, *District of Columbia v. Grubhub Holdings, Inc.*, No. 2022 CA 001199 B (D.C. Super. Ct. Jan. 4, 2023); see also Press Release, Office of the Attorney General for the District of Columbia (Dec. 30, 2022), <https://oag.dc.gov/release/ag-racine-secures-35-million-grubhub-illegally>.

<sup>49</sup> See Consent Judgment and Order ¶¶ 22–31, *District of Columbia v. Grubhub Holdings, Inc.*, No. 2022 CA 001199 B (D.C. Super. Ct. Jan. 4, 2023).

<sup>50</sup> See Complaint ¶¶ 79–92, *District of Columbia v. Maplebear, Inc. d/b/a Instacart*, No. 2020 CA 003777B (D.C. Super. Ct. Aug. 27, 2020).

<sup>51</sup> See Consent Order and Judgment ¶¶ 9–14, *District of Columbia v. Maplebear, Inc. d/b/a Instacart*, No. 2020 CA 003777B (D.C. Super. Ct. Aug. 22, 2022); see also Press Release, Office of the Attorney General for the District of Columbia (Aug. 19, 2022), <https://oag.dc.gov/release/ag-racine-announces-instacart-must-pay-254-million>.

New York State Attorney General investigated DoorDash for allegedly misleading consumers and delivery workers about how tips were paid to workers, including by using tips to subsidize delivery workers' pay (that is, using tips to offset workers' base pay instead of paying the full tips to workers). DoorDash was required to pay \$16.75 million as part of a settlement resolving the investigation.<sup>52</sup>

Private parties also have brought lawsuits aimed at allegedly deceptive acts and practices by food and grocery delivery platforms. For example, in *Hecox v. DoorDash, Inc.*, No. 1:23cv1006 (D. Md. filed Apr. 14, 2023), the plaintiffs alleged in part that DoorDash deceived and misled consumers about DoorDash's prices and fees. And in *Watson v. Crumbl LLC*, No. 2:23cv1770 (E.D. Cal. dismissed pursuant to joint stipulation Feb. 26, 2026), the plaintiffs alleged that Crumbl, a retailer that sells cookies for takeout or delivery through its own app, violated California law by misrepresenting the price of its products, including by failing to adequately disclose a service fee on all orders and bundling the service fee within a line item for "taxes and fees" at checkout.<sup>53</sup>

#### 4. Unfair or Deceptive Fees Rulemaking

In 2022, the Commission published an advance notice of proposed rulemaking requesting public comment on a potential rulemaking proceeding to address certain unfair or deceptive acts or practices relating to fees across the economy.<sup>54</sup> In response to that ANPRM, the Commission received numerous comments expressing concerns about fees imposed by prepared food and grocery delivery services. As the Commission noted in its notice of proposed rulemaking ("NPRM") for the Trade Regulation Rule on Unfair or

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<sup>52</sup> See Press Release, Office of the New York State Attorney General (Feb. 24, 2025), <https://ag.ny.gov/press-release/2025/attorney-general-james-secures-1675-million-doordash-cheating-delivery-workers>.

<sup>53</sup> See *Watson v. Crumbl LLC*, 736 F. Supp. 3d 827, 840–46 (E.D. Cal. 2024).

<sup>54</sup> Advance Notice of Proposed Rulemaking, Unfair or Deceptive Fees Trade Regulation Rule, 87 FR 67413 (Nov. 8, 2022), <https://www.federalregister.gov/documents/2022/11/08/2022-24326/unfair-or-deceptive-fees-trade-regulation-rule-commission-matter-no-r207011>.

Deceptive Fees, published on November 9, 2023, commenters stated that delivery apps charge fees that are not reflected in advertised food prices and that the nature or purpose of these fees is not always clear or is misrepresented, such as when fees identified as delivery fees do not go to delivery personnel.<sup>55</sup> Some commenters raised concerns about mandatory add-on fees that were not disclosed until checkout.<sup>56</sup> One commenter also noted that prepared food and grocery delivery apps have been the subject of law enforcement actions challenging misrepresentations relating to fees.<sup>57</sup>

In the NPRM, the Commission proposed a rule that would require businesses to clearly and conspicuously disclose the total price for goods and services upfront, including all mandatory fees that consumers must pay except for “government charges” and “shipping charges” (as defined in the proposed rule).<sup>58</sup> The Commission explained in the NPRM that the proposed rule’s exception for “shipping charges” did “not include the cost of delivery through couriers, such as those in mobile delivery applications.”<sup>59</sup> Some commenters supported the proposed rule, noting the consumer harms caused by hidden or misleading fees on food delivery platforms.<sup>60</sup> However, several commenters raised concerns that upfront pricing would be impractical for third-party delivery platforms, threaten dynamic pricing practices, or make it harder for consumers to distinguish

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<sup>55</sup> Notice of Proposed Rulemaking, Trade Regulation Rule on Unfair or Deceptive Fees, 88 FR 77420, 77426 & nn.66–68 (Nov. 9, 2023), <https://www.federalregister.gov/documents/2023/11/09/2023-24234/trade-regulation-rule-on-unfair-or-deceptive-fees>.

<sup>56</sup> See 88 FR at 77421 & n.9 (citing FTC–2022–0069–1437).

<sup>57</sup> 88 FR at 77426 & n.68 (citing FTC–2002–0069–6095 (comment of Consumer Federation of America)).

<sup>58</sup> See 88 FR at 77438–40, 77483–84.

<sup>59</sup> 88 FR at 77439.

<sup>60</sup> See, e.g., FTC–2023–0064–0067 (comment of Michael Fede); FTC–2023–0064–0096 (comment of Emily Richardson); FTC–2023–0064–1194 (comment of Kelly Feenan); FTC–2023–0064–1939 (comment of Tzedek DC); FTC–2023–0064–1957 (comment of Tiffany Lewis); FTC–2023–0064–2568 (comment of Stephanie Burdick). Publicly posted comments on the NPRM can be located at <https://www.regulations.gov/document/FTC–2023–0064–0001/comment>.

between the prices charged by retailers for items sold and the prices charged by the platforms for delivery services.<sup>61</sup>

In the preamble for the final Unfair or Deceptive Fees Rule, the Commission determined, in its discretion, to proceed incrementally and not include food delivery platforms as part of that rule.<sup>62</sup> Based on the relevant information discussed above, the Commission's view is that unfair and deceptive fee practices like those the Commission challenged in *Grubhub*, *Instacart*, *Amazon*, and *Walmart*, those that have been the subject of State and local regulation and law enforcement and private lawsuits, and others identified by commenters to the Unfair or Deceptive Fees Rulemaking and in recent surveys and reports, appear to be prevalent and may require additional Commission action.

## **B. Objectives and Regulatory Alternatives**

The Commission believes a rule addressing unfair or deceptive fees practices in online food delivery platforms could help reduce the level of unlawful activity in this area, serving as a deterrent against these practices because such a rule would allow for civil penalties to be sought against violators.<sup>63</sup> It also would enable the Commission to more readily obtain redress for consumers through section 19(a)(1) of the FTC Act, 15 U.S.C. 57b(a)(1). Further, a rule could help level the playing field and provide regulatory certainty by establishing clearer guidelines for fee transparency across all online food delivery platforms and across States and localities, reducing or eliminating incentives to engage in unfair or deceptive fee practices to gain competitive advantages.

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<sup>61</sup> See, e.g., FTC–2023–0064–3263 (comment of the Flex Association); FTC–2023–0064–3137 (comment of Chamber of Progress); FTC–2023–0064–3238 (comment of Gibson, Dunn & Crutcher LLP); FTC–2023–0064–3202 (comment of TechNet).

<sup>62</sup> See, e.g., Statement of Basis and Purpose, Rule on Unfair or Deceptive Fees, 90 FR at 2089, 2119.

<sup>63</sup> See 15 U.S.C. 45(m)(1)(A).

Although the Commission has brought cases that challenge delivery fee practices under section 5 of the FTC Act, 15 U.S.C. 45, its current remedial authority is limited. The U.S. Supreme Court held that equitable monetary relief, including consumer redress, is unavailable under section 13(b) of the FTC Act.<sup>64</sup> Consumer redress under section 19(a)(2), 15 U.S.C. 57b(a)(2), is limited and challenging to obtain, significantly diminishing the Commission's ability to provide timely relief to injured consumers in this critical area. Moreover, to the extent that these practices are prevalent, unlawful pricing practices and an unfair playing field persist despite the Commission's actions to date.

The Commission requests input on whether and how it can most effectively use its authority under section 18 of the FTC Act, 15 U.S.C. 57a, to address deceptive or unfair acts or practices involving fees and charges for food and grocery items ordered through online delivery platforms. Specifically, the Commission proposes addressing the following practices, which have been the subject of previous Commission investigations, enforcement actions, research, or rulemaking proceedings, among other activities: (a) misrepresenting or failing to disclose clearly and conspicuously the total price for food or grocery items ordered for local delivery or pickup; (b) misrepresenting or failing to disclose clearly and conspicuously the existence, nature, purpose, amount, refundability, or recipient of any fees, charges (including optional charges such as tips), or other costs for a delivery or pickup order; (c) misrepresenting or failing to disclose clearly and conspicuously the factors that determine any fees, charges, or other costs that are contingent or variable based on consumer selections such as the number or type of items purchased or delivery location; (d) misrepresenting or failing to disclose clearly and conspicuously whether fees, charges, or other costs are mandatory or optional, or any material restriction, limitation, or condition concerning any good or service that may result in a mandatory fee or charge in addition to the cost of the good or service or that

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<sup>64</sup> See *AMG Cap. Mgmt., LLC v. FTC*, 593 U.S. 67, 82 (2021).

may diminish the consumer's use of the good or service, including the amount the consumer receives; (e) misrepresenting or failing to clearly and conspicuously disclose whether the prices of items ordered through online food delivery platforms, exclusive of fees and charges imposed by the platform, are the same as, or different from, the prices for the same items offered in the store or restaurant or the prices for the same items offered to other consumers on the platform; (f) misrepresenting or failing to clearly and conspicuously disclose any material restriction, limitation, or condition concerning any applicable discount or promotion; (g) misrepresenting that a consumer owes payments for any product or service the consumer did not agree to purchase; and (h) billing or charging consumers fees or charges, or for goods or services, without express, informed consent.

The Commission seeks comment on, among other things, the prevalence of each of the above practices, the costs and benefits of a rule that would address them, and alternatives to or additional actions to supplement such a rulemaking, such as the publication of additional consumer and business education. In their replies, commenters should provide any available evidence and data that supports their position, such as empirical data, consumer perception studies, and consumer complaints.

### **C. The Rulemaking Process**

The Commission seeks the broadest participation from the public in response to this ANPRM. The Commission encourages all members of the public to submit written comments. The Commission also expects affected interests to assist the Commission in analyzing various options and in drafting any proposed rule. After reviewing responsive comments, the Commission may proceed with further steps outlined in section 18 of the FTC Act and Part 1, Subchapter B, of the Commission's Rules of Practice.

### **III. Request for Comments**

Members of the public are invited to comment on any issues or concerns they believe are relevant to the Commission's consideration of the proposed rulemaking. In

addition to the issues raised above, the Commission solicits public comment on the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted. For all questions, the Commission seeks commenters' views, arguments, experiences, and the qualitative and quantitative data that support or inform their answers.<sup>65</sup> The Commission requests that commenters be specific, explain their reasoning, and submit all factual data, evidence, and analyses such as the empirical data upon which the comments are based. For questions that ask about potential rule requirements (for example, Questions 32–63), the Commission requests that commenters discuss how any such changes differ from current practices, how such requirements would benefit consumers, including data, evidence, and analyses on both monetary and nonmonetary benefits, and what such requirements would cost delivery service providers and merchants, including data, evidence, and analyses on capital and labor costs, and how such costs vary with the size and type of delivery service providers and merchants. The Commission must receive comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**A. Questions About the Market for Online Food Delivery Platforms**

1. What is the type and role of each person, entity, or organization involved in advertising and providing local delivery of food, beverage, or grocery items to consumers through online platforms (“online food delivery platforms”), and how many such persons, entities, or organizations participate in each role or category?

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<sup>65</sup> See Fed. Trade Comm’n, Public Participation in the Rulemaking Process, <https://www.ftc.gov/enforcement/rulemaking/public-participation-rulemaking-process>. Commenters who filed comments on other rulemaking dockets that address related issues, such as the notice of proposed rulemaking concerning a Trade Regulation Rule on Unfair or Deceptive Fees, 88 FR 77420 (Nov. 9, 2023), and who want to ensure their comments are considered in response to this ANPRM should update them, as commenters think appropriate, and re-file them on this rulemaking docket.

- a. Of those affected, how many are small businesses?
2. What different types of arrangements exist between the persons, entities, or organizations identified in response to Question 1 to facilitate delivery to consumers through online food delivery platforms, and how common are each of these types of arrangements? For example:
    - a. What percentage of restaurants, grocery stores, or other food and beverage retail establishments (together, “food and grocery merchants”) operate their own online food delivery platforms, use third-party online food delivery platforms, or some combination?
    - b. What are the different means that online food delivery platforms use to provide delivery services (for example, employing delivery workers, using independent contractors, operating autonomous vehicles)?
    - c. To what extent do agreements exist between third-party online food delivery platforms and food and grocery merchants, and are such agreements exclusive or nonexclusive?
  3. To what extent do food and grocery merchants have control over (or visibility into) the manner in which third-party online food delivery platforms display prices, charge fees, or otherwise operate their platforms and provide delivery services to consumers?
    - a. Do third-party online food delivery platforms offer delivery services for food and grocery merchants without notice to or consent from the food and grocery merchants?
    - b. How prevalent is the practice of listing unaffiliated food and grocery merchants on third-party online food delivery platforms?

- c. What are the costs and benefits for consumers and food and grocery merchants of listing unaffiliated food and grocery merchants on third-party online food delivery platforms?
4. What is the size of the market for online food delivery platforms, and how is this market expected to grow or change in future years?
  - a. What innovations (technological, financial, etc.) are expected in the food and beverage and delivery service industries, and how are these innovations expected to affect the market for, and the pricing practices of, online food delivery platforms?
5. To what extent do online food delivery platforms provide local delivery services for goods other than food, beverage, and grocery items?
  - a. To what extent are such delivery services provided from food and grocery merchants that sell items other than food, beverage, and grocery items?
  - b. To what extent are such delivery services provided from merchants that do not sell food, beverage, and grocery items?
  - c. What share of revenues from online food delivery platforms come from delivering food, beverage, and grocery items versus other types of goods (or from servicing food and grocery merchants versus other types of merchants), and how are these shares expected to change in future years?
6. What are the market shares of the largest online food delivery platforms in the United States and in any relevant geographic submarkets?
  - a. How have these market shares changed in recent years?
  - b. How are these market shares expected to change in future years?

7. How does the market share of third-party online food delivery platforms compare to the market share of food and grocery merchants that operate their own online food delivery platforms, and how are these market shares expected to change in future years?
8. How is revenue shared between online food delivery platforms and food and grocery merchants or types of merchants for which they provide delivery services?
  - a. What are the different components of revenue that may be shared (such as price markups, fees, tips, or other charges), and how is revenue shared for each of these components?
9. What are the different types of fees and charges (including optional charges such as tips and government-mandated charges such as taxes) that online food delivery platforms charge to consumers?
  - a. What is the nature and purpose of each of these fees or charges?
  - b. To what extent can consumers reasonably avoid these fees and charges?
  - c. To what extent are these fees or charges refundable?
  - d. To what extent are these fees and charges fixed before an order is placed (such as a flat fee or percentage of the order total)?
  - e. To what extent are these fees and charges contingent or variable based on a consumer's selections (such as delivery location or number and types of items ordered)?
  - f. Do the types of fees and charges tend to vary based on the nature of the online food delivery platform (for example, whether it focuses on restaurants versus grocery stores; whether it is operated by the food

and grocery merchant or by a third party; or whether it employs delivery workers directly or uses independent contractors)?

10. How are the fees and charges that online food delivery platforms charge to consumers determined?

- a. Do online food delivery platforms use fixed formulas or equations to set the amount of fees and charges?
- b. To what extent do factors such as time of delivery, distance traveled, or driver availability affect these fees and charges?
- c. To what extent are these fees and charges affected by refunds or substitutions of items or order cancellations?

11. Is there any academic research or data source(s) that illuminates the size and structure of fees and charges (including optional charges such as tips) for online food delivery platforms? If so, please provide references to any such sources, including:

- a. Any research or data on the size of fees and charges; fees and charges as share of total price; the size of different fee or charge components; the size of different fee or charge components as a share of total fees; the variation in fees and charges by delivery platforms; the variation in fees and charges between first-party and third-party delivery platforms; or the variation in fees and charges within delivery platforms across different food and grocery merchants.
- b. Any research or data on the relationship between fees and distance traveled, time spent traveling, and/or speed of delivery (including priority delivery options).

12. In what manner, and at what times, do online food delivery platforms disclose the existence, nature, purpose, amount, refundability, and recipient of fees and

charges (including optional charges such as tips and government-mandated charges such as taxes)?

13. How common is it for online food delivery platforms to advertise reduced or free delivery costs (for example, “free delivery” or “\$0 delivery fees”) while still charging additional mandatory fees or charges (excluding government charges) on delivery orders?

a. How common is it for online food delivery platforms to charge both a “delivery” fee and an additional mandatory fee (such as a “service” fee) on delivery orders?

14. How widespread is the practice of failing to clearly and conspicuously disclose the existence and/or amount of all mandatory fees or charges (excluding government charges) until checkout?

15. How widespread is the practice of failing to clearly and conspicuously disclose the existence and/or amount of all mandatory fees or charges (excluding government charges) before consumers begin placing an order?

a. How widespread is the practice of failing to clearly and conspicuously disclose the amount of all mandatory fixed fees or charges (excluding government charges) before consumers begin placing an order?

b. How widespread is the practice of failing to clearly and conspicuously disclose the amount of all mandatory variable fees or charges (excluding government charges) before consumers begin placing an order?

16. How widespread is the practice of failing to clearly and conspicuously disclose the factors that determine any contingent or variable fees or charges before consumers begin placing an order?

17. How widespread is the practice of misrepresenting in any offer, display, or advertisement for online food delivery services any fee or charge, including: the nature, purpose, amount, refundability, or recipient of any fee or charge; and the identity of the good or service for which the fee or charge is imposed?
18. How widespread is the practice of misrepresenting mandatory fees or charges as optional and vice versa?
  - a. How widespread is the practice of misrepresenting that fees or charges are imposed by a government entity?
19. How do promotional offers, discounts, or subscription membership programs affect the fees and charges that online food delivery platforms charge to consumers or the manner in which such fees and charges are disclosed?
  - a. For promotional offers based on delivery times, how do fees change, if at all, if advertised delivery times are not met?
20. How do online food delivery platforms collect and distribute tips for delivery workers?
  - a. At what stage(s) of the purchase process are tips solicited from consumers?
  - b. To what extent are tip amounts suggested to or selected for consumers by default?
  - c. To what extent (and for what periods of time) are consumers permitted to change the amount of a tip?
  - d. What representations, if any, are made to consumers regarding how tips will be paid to delivery workers (for example, that the delivery driver will receive 100% of tipped amount, that tips will be shared between the delivery driver and restaurant employees, etc.) or how tips will affect delivery worker compensation (for example, that tips will

be paid in addition to wages), and in what manner are such representations made?

- e. What representations, if any, are made to consumers regarding how tips will affect the status of their orders (for example, that placing a tip before delivery will or will not help get an order delivered faster), and in what manner are such representations made?
- f. To what extent are online food delivery platforms' practices with respect to tips subject to Federal, State, or local laws and regulations?

21. How common is it for consumers to be confused about whether service fees or other fees and charges on online food delivery platforms will be treated as tips or other types of compensation for delivery workers?

22. How do online food delivery platforms alter their practices to conform with varying national, State, or local laws governing fees and charges to consumers?

- a. For example, do online food delivery platforms create customized fee or charge disclosures to match the law of the jurisdiction where delivery services are offered, or do they implement uniform procedures that follow the most stringent regulations applicable?
- b. What incremental costs do online food delivery platforms incur in complying with varying national, State, or local regulations, and to what extent are these costs incurred by or shared with food and grocery merchants or others (such as delivery workers)?
- c. Are there any studies or data on the incremental costs and benefits to consumers and businesses of such laws that have been implemented?

23. What impediments, if any, exist that impact the ability of online food delivery platforms to disclose all mandatory fees and charges before a consumer begins placing an order and every place where price is displayed?
- a. What impediments, if any, exist that impact the ability of online food delivery platforms to disclose the factors that determine any contingent or variable fees or charges before consumers begin placing an order and every place where price is displayed?
24. To what extent do online food delivery platforms offer alternatives to delivery (such as in-store pickup)?
- a. How are these alternatives advertised and disclosed to consumers?
  - b. To what extent do the fees and charges for these alternatives vary from the fees and charges imposed on delivery orders?
25. To what extent do online food delivery platforms charge prices that are different from the prices offered by food and grocery merchants to consumers in person (“in-store prices”), and how do these pricing practices vary across platforms or across different food and grocery merchants?
- a. To what extent do online food delivery platforms disclose the differences between prices of items sold through the platform and in-store prices?
  - b. To what extent are the prices charged by online food delivery platforms raised above in-store prices to eliminate or reduce the amount of separate fees on the platform?
  - c. What are the different reasons that the prices charged by online food delivery platforms may differ from in-store prices?
26. To what extent do online food delivery platforms charge different prices, fees, or charges to individuals for the same goods or services based on

individualized consumer data (such as geolocation, demographics, purchasing history, app usage, browser history or other online behavior, device hardware, IP address) (“personalized pricing”)?

- a. What types of consumer and merchant data are used by online food delivery platforms to develop personalized pricing, and what are the sources of such data?
- b. How do online food delivery platforms use different data elements in assigning personalized prices?
- c. To what extent are personalized prices lower or higher than non-personalized prices on online food delivery platforms?
- d. To what extent, and in what manner, do online food delivery platforms disclose their use of personalized pricing, the data they use to assign personalized prices, and the sources of such data?
- e. How does the use of personalized pricing affect the amount of fees and charges on online food delivery platforms?
- f. To what extent do online food delivery platforms enable consumers or merchants to opt out of personalized pricing or the collection or use of their data for personalized pricing?
- g. What are the different reasons that online food delivery platforms use personalized pricing?
- h. How are food and grocery merchants impacted by personalized pricing?
- i. What are the costs and benefits of personalized pricing to consumers, food and grocery merchants, and online food delivery platforms; how are such costs and benefits distributed across consumers, food and grocery merchants, and online food delivery platforms; and to what

extent do these costs and benefits depend on the extent to which the collection and use of consumer data for personalized pricing is disclosed or not disclosed?

27. For each of the potentially unfair or deceptive practices described in Section II.B. of this ANPRM, does the practice harm consumers or competition?

a. If so, how does the practice harm consumers or competition?

28. For each of the potentially unfair or deceptive practices described in Section II.B. of this ANPRM, are there circumstances in which such practices would not be unfair or deceptive?

a. If so, what are those circumstances?

29. How widespread are the potentially unfair and deceptive practices described in Section II.B. of this ANPRM in the United States and in any relevant geographic submarkets?

a. Are there competition effects such that the adoption of such practices by one or more online food delivery platforms leads other online food delivery platforms to adopt the same practices?

b. Are online food delivery platforms using such practices as a way to appear cheaper relative to competitors?

30. How has the Commission's Rule on Unfair or Deceptive Fees (16 CFR part 464) impacted the markets for live-event ticketing and short-term lodging, including, but not limited to:

a. What benefits and costs have arisen?

b. Has consumer search time changed?

c. Have market prices and quantities shifted as a result of total price disclosures?

- d. What costs have firms borne to satisfy the rule's disclosure requirements?
- e. Please provide evidence, data, and analyses on both monetary and non-monetary benefits and costs.

31. How would the Commission's earlier proposal of an economy-wide rule on unfair and deceptive fees<sup>66</sup> have impacted relevant markets, including, but not limited to:

- a. Have benefit-cost analyses been performed on the proposed total price disclosures either across the economy or with a specific focus on the online delivery market?
- b. Would consumer search time change?
- c. Would market prices and quantities shift as a result of the proposed total price disclosures?
- d. What costs would firms bear to satisfy the proposed disclosure requirements?
- e. Please provide evidence, data, and analyses on both monetary and non-monetary benefits and costs.

**B. Questions About Potential Rule Provisions and Other Potential Commission Action**

32. Is there a need for new rule provisions to prevent the potentially unfair or deceptive practices described in Section II.B. of this ANPRM?

- a. If so, should the Commission issue a new rule and add a new part to 16 CFR chapter 1, subchapter D, or should the Commission amend the Rule on Unfair or Deceptive Fees (16 CFR part 464)?

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<sup>66</sup> NPRM, Trade Regulation Rule on Unfair or Deceptive Fees, 88 FR 77420 (Nov. 9, 2023).

- b. How should the Rule on Unfair and Deceptive Fees (16 CFR part 464) be amended, if necessary, to apply to online food delivery platforms?
- 33. How should such a rule be crafted to maximize the benefits to consumers and minimize the costs to businesses, including small businesses?
- 34. What terms would such a rule need to define (for example, delivery, food and grocery merchants, or online food delivery platforms) and how should such a rule define those terms? For example:
  - a. Should delivery services covered by such a rule be defined to exclude certain methods of delivery (such as delivery by mail, private mail and shipping services, or freight) or applied to only certain types of deliveries (for example, same-day deliveries)?
  - b. Should food and beverage merchants be defined to include establishments that exclusively sell items through online food delivery platforms (such as ghost kitchens and grocery warehouses)?
- 35. Should such a rule prohibit online food delivery platforms from offering, displaying, or advertising a combined price for goods or services (*e.g.*, that a consumer can get a product delivered for a specific price) without clearly and conspicuously disclosing the total price that includes all mandatory fees and charges?
  - a. If so, should such a rule permit delivery charges to be excluded from total price, the way that shipping charges may be excluded from total price under the Rule on Unfair or Deceptive Fees (16 CFR part 464)?
- 36. Should such a rule prohibit online food delivery platforms from offering, displaying, or advertising any price for delivery services (or price for alternatives to delivery services such as in-store pickup) without clearly and

conspicuously disclosing the total price of such services, including all mandatory fees and charges?

37. Should such a rule require online food delivery platforms, in any offer, display, or advertisement that represents the total price of goods or services, to disclose the total price including all mandatory fees and charges more prominently than any other pricing information?
38. Should such a rule prohibit online food delivery platforms from failing to disclose clearly and conspicuously, before consumers consent to pay for goods or services, the nature, purpose, amount, refundability, and recipient of any fee or charge that they have excluded from advertised prices and the identity of the good or service for which the fee or charge is imposed?
39. Should such a rule prohibit online food delivery platforms, in any offer, display, or advertising for goods or services, from misrepresenting any fee or charge, including: the nature, purpose, amount, refundability, or recipient of any fee or charge; and the identity of the good or service for which the fee or charge is imposed?
40. Should such a rule require total price to include government-imposed fees and charges, including taxes?
41. Should such a rule require online food delivery platforms to disclose the amount or range of amounts (actual or estimated) of contingent or variable fees or charges?
  - a. Should such a rule require online food delivery platforms to include such fees or charges in the total price or in the price of delivery services (or price of alternatives to delivery services)?

- b. Should such a rule require online food delivery platforms to disclose the factors that determine any contingent or variable fees or charges before consumers begin placing an order?
  - c. Should such a rule require online food delivery platforms to disclose the amount of contingent or variable fees or charges as soon as consumers provide the information needed to determine the applicability or amount of such fees and charges?
42. Should such a rule require online food delivery platforms to itemize all fees and charges?
- a. When and how should such a rule require such itemizations?
  - b. In such itemizations, should such a rule require online food delivery platforms to explain the nature and purpose of each fee or charge?
43. Should such a rule require fees or charges to accurately reflect the actual cost of the goods or services covered by the fee or charge?
44. Should such a rule require online food delivery platforms to disclose the extent to which fees or charges will or will not be paid to delivery workers (or to food and grocery merchants)?
- a. When and how should such disclosures be made?
  - b. Should such a disclosure be required when an online food delivery platform uses a term (such as “service fee”) that could be construed by a reasonable consumer as a fee or charge that will be paid to delivery workers?
45. How, if at all, should such a rule address tips or gratuities paid to delivery workers?
46. How, if at all, should such a rule address tips or gratuities paid to food and grocery merchant staff?

47. How, if at all, should a rule address changes in prices or fees and charges based on issues relating to order fulfillment such as refunds, substitutions, order cancellations, or delivery problems?
48. Should such a rule require all mandatory fees and charges to be disclosed before a consumer begins placing an order on an online food delivery platform?
- a. When and how should such mandatory fees and charges be disclosed?
49. Should such a rule require any disclosures concerning optional fees and charges?
- a. If so, what disclosures should be required?
50. Should such a rule require online food delivery platforms to disclose how promotional offers, discounts, or subscription membership programs affect the fees and charges that online food delivery platforms charge?
- a. If so, when and how should such disclosures be made?
51. Should such a rule require online food delivery platforms to disclose whether the prices of items are the same as (or different from) the prices offered by food and grocery merchants to consumers in person (in-store prices)?
- a. If so, what disclosures should be required?
52. Should such a rule require online food delivery platforms to disclose whether they use personalized pricing and/or the extent to which consumers' data is collected or used in connection with personalized pricing?
- a. If so, what disclosures should be required?
53. Should the requirements of such a rule apply equally to orders placed for delivery and orders placed with an alternative to delivery (such as in-store pickup)?

54. Should the requirements of such a rule apply equally to all food and grocery merchants?

- a. If not, how should the requirements of such a rule vary among different types of merchants (such as restaurants, grocery stores, or other food and beverage retail establishments)?

55. Should such a rule exempt or exclude any type of online food delivery platforms (for example, platforms operated directly by a food and grocery merchant, platforms that serve only a limited number of consumers, or platforms that serve only a limited number of food and grocery merchants) from compliance with the rule, in whole or in part?

- a. If so, please identify such platforms, provide a justification for exempting or excluding them, and specify the type or types of potential requirements from which they would be exempted or excluded.

56. If such a rule applied only to orders for delivery of food, beverage, and grocery items (and not to orders for delivery of other goods), or if such a rule applied only to orders for delivery from food and grocery merchants (and not to orders from other merchants), what challenges might arise in implementing such a rule, and how should those challenges be mitigated?

57. Should such a rule exempt or exclude any type of orders placed on online food delivery platforms (for example, orders that are not for food, beverage, or grocery items or orders from merchants that are not food and grocery merchants) from compliance with the rule, in whole or in part?

- a. If so, please identify such orders, provide a justification for exempting or excluding them, and specify the type or types of potential requirements from which they would be exempted or excluded.

58. How would such a rule intersect with existing industry practices, norms, rules, laws, or regulations?
- a. Are there any existing laws or regulations (including any of those described in Section II of this ANPRM) that would affect or interfere with the implementation of such a rule?
  - b. Should such a rule preempt State and local laws and regulations governing online food delivery platforms, in whole or in part?
59. How would a rule requiring the disclosure of mandatory fees and charges before a consumer begins placing an order and/or every place where price is displayed affect platform and participating merchant costs, either directly (in terms of time, labor, design, and programming) or indirectly (through responses from consumers, competitors, or intermediaries)?
- a. How, if at all, would these costs differ for small businesses?
  - b. What studies or data are available to quantify these costs?
60. How would a rule requiring the disclosure of mandatory fees and charges before the consumer consents to pay affect advertising?
61. How would a rule requiring the disclosure of total price including all mandatory fees and charges affect platform and participating merchant costs, either directly (in terms of time, labor, design, and programming) or indirectly (through responses from consumers, competitors, or intermediaries)?
- a. How, if at all, would these costs differ for small businesses?
  - b. What studies or data are available to quantify these costs?
62. How would a rule requiring the disclosure of total price including all mandatory fees and charges affect advertising?

63. What are the anticipated benefits of a rule requiring that mandatory fees and charges be disclosed before a consumer begins placing an order and/or every place where price is displayed?
- a. How can these benefits be quantified, and to what extent might they include time savings, improved consumer decision-making, or other measurable outcomes?
  - b. What studies or data are available to quantify these benefits?
  - c. Would the anticipated benefits differ if a rule were to require disclosure of total price as opposed to clear and conspicuous disclosure of mandatory fees and charges?
64. What are the anticipated benefits of a rule requiring the disclosure of total price including all mandatory fees and charges?
- a. How can these benefits be quantified, and to what extent might they include time savings, improved consumer decision-making, or other measurable outcomes?
  - b. What studies or data are available to quantify these benefits?
65. Should the Commission consider publishing additional consumer and business education materials or hosting public workshops to reduce consumer injury or harm associated with the potentially unfair and deceptive practices described in Section II.B. of this ANPRM?
- a. If so, what should such education materials and workshops include, and how should the Commission communicate that information to consumers and businesses?

#### **IV. Comment Submissions**

The public is invited to submit comments on this document. The Commission will consider all timely and responsive comments it receives on or before [INSERT DATE 30

DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Because of the agency's heightened security screening, postal mail addressed to the Commission will be delayed. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. If you prefer to file your comments on paper, write "Food Delivery Fees ANPRM (Project No. P267101)" on your comment and on the envelope, and mail your comment by overnight service to: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex F), Washington, DC 20580.

For comments submitted online through the <https://www.regulations.gov> website, you are solely responsible for making sure your comment does not include any sensitive personally identifiable or health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website. Once your comment has been posted there—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website unless you submit a written confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request. Such requests must be clearly labeled "Confidential," must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c).

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

**V. Regulatory Review**

E.O. 14215 requires all executive branch departments and agencies to submit all their proposed and final significant regulatory actions to the Office of Management and Budget (OMB) for review. E.O. 12866 says that agencies should assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and distributive impacts).

By direction of the Commission.

**Joel Christie,**

*Acting Secretary.*

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