

May 18, 2026

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue NW  
Washington, D.C. 20580

RE: Advance notice of proposed rulemaking; request for public comment: “Rule on Unfair or Deceptive Fees in Online Food Delivery Services” Docket (FTC-2026-0463), Project No. P267101

*Via regulations.gov*

Dear Commissioners:

Consumer Federation of America appreciates the opportunity to submit these comments on the Federal Trade Commission’s proposal 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. As we stated in our previous comments on the FTC’s Notice of Proposed Rulemaking (NPRM) addressing unfair and deceptive practices relating to fees,<sup>1</sup> food delivery companies have engaged in deceptive conduct that has frustrated consumers, undermined the financial health of delivery workers, and put honest delivery companies at a disadvantage.<sup>2</sup> We write now to urge the FTC to act expeditiously to extend the protections in its final Unfair or Deceptive Fees Rule to food delivery platforms, with an unambiguous prohibition on algorithmic or surveillance-based pricing practices.

As the proposed rule makes clear, a significant and growing segment of Americans depends on food delivery platforms like Instacart and Grubhub, as well as the delivery arms associated with major retailers like Walmart and Amazon, to feed their households. Yet these companies have repeatedly betrayed the public’s trust. They have forced the FTC and state regulators to bring enforcement actions to correct deceptive bait-and-switch pricing tactics, and engaged in outright theft of workers’ tips. We agree with the Commission that 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 an important deterrent by allowing for civil penalties to be sought against violators.

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<sup>1</sup> <https://www.regulations.gov/document/FTC-2023-0064-0001>

<sup>2</sup> See <https://www.regulations.gov/comment/FTC-2023-0064-3160> (submitted jointly by 52 national and state consumer advocacy groups).

Civil penalties to deter algorithmic and surveillance-based pricing in the online food and grocery delivery market and elsewhere are sorely needed. Food and grocery delivery platforms have a strong economic incentive to charge different consumers different prices for the same goods based on what an algorithm predicts each consumer is willing to pay. This predictive capacity is made possible by intimate behavioral data gathered from ordering histories, geolocation, devices, and inferred household composition. Food sellers can effectively weaponize this data through multi-layered fee structures that thwart consumers' efforts to comparison-shop.

Late last year, a joint investigation by Consumer Reports and the Groundwork Collaborative documented this practice operating at scale on Instacart's platform. Researchers tracked prices quoted to more than 400 Instacart shoppers across four U.S. cities and found that roughly three-quarters of the items tested were offered at different prices to different customers at the same store at the same time.<sup>3</sup> Price variations for the same product reached as high as twenty-three percent, and the researchers estimated that the observed variations could cost a typical household of four approximately \$1,200 per year. The investigation traced the practice to Eversight, an artificial-intelligence pricing tool that Instacart acquired and integrated into its platform to enable grocery retailers and consumer-packaged-goods brands to run "live" price experiments on unwitting shoppers.

In response to public backlash, Instacart pledged that it was "ending all item price tests on our platform."<sup>4</sup> State lawmakers have introduced more than 40 bills across at least 24 states to regulate personalized algorithmic pricing in 2026 alone.<sup>5</sup> But consumers should not have to depend upon a patchwork of state laws for protection against predatory pricing schemes on basic necessities. FTC should step up without further delay to take a leading role in restoring consumer confidence and ban algorithmic and surveillance-based pricing for online food and grocery delivery.

This proposed rulemaking focuses on fees, which are an important driver of unfair pricing schemes. However, research shows that unfair menu pricing can play a similar role as fees, and the Commission should expand its proposed rule to cover these predatory tactics. For example, a New York Times reporter found that even before taxes, fees and tips, the same sandwich cost \$11.98 on one food delivery app, \$12.58 in the store, and \$14.78 on another app.<sup>6</sup> If the FTC fails to address menu pricing

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<sup>3</sup> <https://www.consumerreports.org/money/questionable-business-practices/instacart-ai-pricing-experiment-inflating-grocery-bills-a1142182490/>

<sup>4</sup> <https://www.instacart.com/company/updates/ending-item-price-tests-on-instacart>

<sup>5</sup> <https://www.insideprivacy.com/artificial-intelligence/state-lawmakers-introduce-new-wave-of-personalized-algorithmic-pricing-bills/>

<sup>6</sup> <https://www.nytimes.com/2020/02/26/technology/personaltech/ubereats-doorDash-postmates-grubhub-review.html>

practices, companies may respond by merely shifting their unfair pricing practices from fees to menu pricing.

A ban on algorithmic and surveillance-based pricing for online food and grocery delivery should build on the Commission's final Unfair or Deceptive Fees Rule, adopted for live-event tickets and short-term lodging in December 2024.<sup>7</sup> Consistent with that rule, consumers should have a right to see the total price of the food they are buying up front, without hidden mandatory fees. For millions of Americans — including the elderly, people with disabilities, and rural households — online delivery is not a convenience but the principal means of putting groceries on the table.<sup>8</sup> Accordingly, the 2024 rule's "all-in price" and truthful-disclosure principles should apply to online food and grocery delivery.

The ban should go beyond merely an all-in-price rule, however, to prevent the type of harm identified in the Instacart investigation. The Commission should make clear that food sellers may not vary the "all-in price" on the basis of personally identifiable data about the individual consumer or any inference drawn from such data. FTC's rules should also clarify that the prohibition applies regardless of whether the individualized price is disclosed to the consumer or presented as a "discount" from a reference price, and regardless of whether the price variation is implemented directly by the platform or by a retailer, brand, or pricing-software vendor operating through the platform. The rule should apply to all online food and grocery delivery, whether operated by third-party delivery platforms (such as Instacart, DoorDash, Grubhub, and Uber Eats), or by retailers themselves. In other words, to quote Instacart, FTC should ensure that "if two families are shopping for the same items, at the same time, from the same store location on Instacart [or on any other online food seller's platform], they see the same prices — period."

Disclosure alone does not suffice to protect consumers from surveillance-based pricing. Individualized pricing practices exploit informational asymmetries, and so consumers cannot realistically avoid the unfair scheme, or make up the price difference through comparison shopping. Even if a platform technically discloses that prices may vary from person to person, consumers have no meaningful way to determine whether they are receiving a fair price, what personal data is driving the variation, or whether similarly situated shoppers are being charged less for the same goods at the same time. In markets for essential goods such as groceries and prepared food — particularly where consumers may face mobility, disability, geographic, or time constraints — individualized pricing can function as a form of economic discrimination that consumers are powerless to negotiate around. The Commission has long recognized that disclosures cannot cure inherently unfair or deceptive practices where consumers lack a practical ability to understand, monitor, or avoid the harm. Accordingly, the rule should

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<sup>7</sup> <https://www.federalregister.gov/documents/2025/01/10/2024-30293/trade-regulation-rule-on-unfair-or-deceptive-fees>

<sup>8</sup> <https://pmc.ncbi.nlm.nih.gov/articles/PMC6902750/>

prohibit surveillance-based and algorithmic pricing practices outright, rather than merely requiring their disclosure.

In enacting a ban on these unfair and deceptive pricing practices in online food delivery services, the FTC should signal its intent to take enforcement actions against similar schemes throughout the economy. Holding one set of companies accountable for unfair practices while letting others escape accountability is not only bad for consumers, but also for companies that have to navigate different rules across business lines or at different points of sale. An economy-wide ban is clearer, easier to follow for companies, and allows consumers to make the choices that are best for them.

Consistent with the Commission's recent enforcement actions against Instacart, Walmart, and Grubhub, as detailed in the proposed rule, the Commission should preserve, and where possible strengthen, the rule's approach to junk fees and bait-and-switch advertising — including by making explicit that representations of "free delivery" are deceptive where any mandatory service, platform, long-distance, "regulatory response," or similar fee is nonetheless charged.

Finally, we urge the Commissioners to work with the Administration to restore the FTC's bipartisan, independent status, consistent with the congressional imperatives establishing the FTC more than 100 years ago. We applaud the type of pro-consumer rulemaking initiated by this notice and encourage the agency to finalize it. However, we must acknowledge that the unprecedented, and legally dubious, firing of Commissioners Becca Slaughter and Alvaro Bedoya in March of last year has eroded confidence in the Commission's commitment to protecting consumers. Under the law, the Commission "shall be composed of five Commissioners," with "not more than three" members of the same political party.<sup>9</sup> Operating without these structural safeguards undermines the Commission's ability to fulfill its mission to lower prices, protect consumers, and ensure a fair marketplace, at a time when those goals are critical. A full slate of bipartisan commissioners would help to assure consumers that this rulemaking, once finalized, offers adequate protection.

In conclusion, we commend the FTC for initiating this rulemaking, and urge the agency to avoid delay in finalizing a rule that formalizes consumer protections applicable to food delivery platforms, with an unambiguous prohibition on algorithmic or surveillance-based pricing practices. The final rule should apply not only to fees but also unfair and deceptive menu pricing practices, and the Commission should use its rulemaking on online food delivery apps to dissuade other industries from engaging in algorithmic or surveillance-based pricing schemes, pending further rulemaking. We urge the FTC to release the full results of its 6(b) study on surveillance-driven pricing to allow

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<sup>9</sup> 15 U.S. Code § 41

policy-makers and enforcers to better understand an increasingly prominent pricing strategy.

Thank you again for your attention to this important matter. Please do not hesitate to reach out to us if there is any further assistance we can provide.

Respectfully,

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