



State of California
Office of the Attorney General

ROB BONTA
ATTORNEY GENERAL

May 18, 2026

Submitted via Federal eRulemaking Portal

The Honorable April Tabor
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Mail Stop H-144 (Annex F)
Washington, D.C. 20580

RE: Food Delivery Fees ANPRM (Project No. P267101)

Dear Secretary Tabor:

I write to thank the Federal Trade Commission (FTC) for commencing rulemaking proceedings to address unfair and deceptive acts or practices related to fees and charges for online food delivery. California appreciates the FTC's efforts to prevent businesses from engaging in this conduct nationwide. This rulemaking will complement California's robust laws that protect consumers and honest businesses from this deceptive conduct across industries in our state, including food delivery. I applaud the FTC's interest in promulgating nationwide protections, and I also write to urge the FTC to follow its recent rulemaking history related to unfair or deceptive fees by making clear that any federal rule promulgated sets a floor, not a ceiling, for consumer protection in this area, such that states are able to provide additional protections to their residents and businesses that advertise prices truthfully.

I commend the FTC for commencing rulemaking to address nationwide problems in this area, as the FTC has previously noted widespread consumer dissatisfaction with deceptive price advertising. In promulgating its Trade Regulation Rule on Unfair or Deceptive Fees, the FTC received a multitude of comments from consumer and policy groups providing evidence that the deceptive act of misrepresenting the price of goods and services by advertising a price that does not include all mandatory fees is widespread across the nation, almost universally disliked by consumers, and on the rise. This conduct makes it difficult for consumers to compare prices and puts honest competitors – those that advertise their prices truthfully – at a disadvantage, which hurts competition and results in higher prices for consumers. This is no less true for online food delivery, which is one of the many industries not covered by the FTC's prior Trade Regulation

Rule on Unfair or Deceptive Fees.¹ As the FTC notes in its Advance Notice of Proposed Rulemaking, deceptive advertising in food delivery has been the subject of several investigations and enforcement actions by the FTC and state and local government agencies.

California has taken action to protect consumers from deceptive price advertising across industries, including food delivery. Deceptive price advertising violates longstanding California false advertising and unfair competition laws, yet there was widespread noncompliance with these laws and purported confusion about the legality of the practice. In response, the California Low-Income Consumer Coalition and my office co-sponsored California's Honest Pricing Law (SB 478), which makes clear that the advertised price must include all mandatory fees other than tax and shipping. This law went into effect on July 1, 2024, and, with limited exceptions, governs all companies doing business in California, including food delivery platforms. (California Civil Code, § 1770, subdivision (a)(29).) Moreover, in California food delivery platforms are subject to additional requirements under California's Business and Professions Code, including sections governing display of menu prices, disclosure and use of funds designated for tips or gratuity, and several other transparency requirements related to the delivery service. (See Cal. Bus. & Prof. Code, § 22598 et seq.) In short, among other requirements, when food delivery platforms advertise a price for a delivery service in California, it must be the full, all-in price of the delivery service. This is the rule, with limited exceptions, for advertising the price of any good or service throughout California.

Consumer protection in general, and false advertising in particular, are areas of state concern and fall within the states' historic police powers. It is appropriate, then, that the FTC in this rulemaking follows its recent history related to unfair and deceptive fees and does not preempt a state law unless the rule and the state law conflict and then only to the extent of the inconsistency, and further provides that the two do not conflict if the state's law provides greater protection to consumers. In its prior Trade Regulation Rule on Unfair or Deceptive Fees, the FTC included a savings clause that acknowledges and preserves the complementary role that state and federal agencies play in ensuring a fair marketplace for consumers and honest businesses.² Here too, the FTC's rule should respect the states' role in protecting consumers from deceptive price advertising, and create a federal floor, rather than a ceiling, for consumer protection.

¹ Trade Regulation Rule on Unfair or Deceptive Fees, 90 Fed. Reg. 2066 (January 10, 2025) [applying final rule to "live-event tickets" and "short-term lodging"].

² 16 C.F.R. § 464.4: Relation to State laws.

(a) *In general.* This part will not be construed as superseding, altering, or affecting any State statute, regulation, order, or interpretation relating to unfair or deceptive fees or charges, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under State law.* For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this part.

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I appreciate the FTC's continued interest and effort to protect consumers and honest businesses throughout the nation from the deceptive practice of unfair or deceptive fees, and to recognize and preserve the vital role of state consumer-protection laws.

Sincerely,

A handwritten signature in blue ink that reads "Rob Bonta". The signature is fluid and cursive, with the first letters of "Rob" and "Bonta" being capitalized and prominent.

ROB BONTA
Attorney General