



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

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

Dear Secretary Tabor,

The National Restaurant Association appreciates the opportunity to provide comments in response to the Federal Trade Commission's (FTC's) "Rule on Unfair or Deceptive Fees in Online Food Delivery Services" advance notice of proposed rulemaking (ANPRM).

Founded in 1919, the National Restaurant Association ("the Association") is the leading business association for the restaurant industry, which comprises more than 1 million restaurant and foodservice outlets and a workforce of 15.7 million employees. We are a network of professional member organizations dedicated to serving every restaurant through advocacy, education, and food safety.

Despite rising fuel prices and falling consumer confidence, consumers continue to prioritize their spending in restaurants and operators continue National Restaurant Association economists forecast sales to reach \$1.55T nationwide, with real (inflation-adjusted) gains of 1.3%. However, persistent cost pressures such as uneven customer traffic and rising costs, continue to drag down revenue and profitability.

The restaurant and foodservice industry is the nation's second-largest private employer and has been one of the primary drivers of U.S. job growth this year. The industry has added jobs in three of the first four months of 2026. In our annual *State of the Restaurant Industry* report, our economists forecast 100,000 new industry jobs would be created this year and still expect to hit that.

The off-premises market has grown significantly in recent years, and now 3 in 4 of every order at a restaurant is consumed off-premises. According to the Association's *2025 Off-Premises Trends* report, 65% of limited-service operators say their restaurant offers delivery and 70% of this group say delivery represents a larger proportion of their sales now than it did in 2019. Thirty-seven percent of fullservice operators say their restaurant offers delivery and 57% of this group say delivery represents a larger proportion of their sales now than it did in 2019.

Customers can access a third-party delivery service at 58% of limited-service restaurants and 32% of fullservice restaurants. Most operators say their delivery is available through multiple third-party services. Among restaurants that allow customers to order delivery using third-party

service, 63% of limited-service operators and 41% of fullservice operators say they're available on 3 or more platforms.

Nearly 7 in 10 delivery customers (68%) ordered delivery using a third-party delivery service in the past 6 months. This was much more common among Gen Z adults (79%) and millennials (78%) than baby boomers (42%).

However, many restaurant operators report that third-party delivery is a less-profitable channel than it was even two years ago. Operators are forced to balance profitability while also investing in third-party delivery advertising.

In a May 2026 survey, almost half (47%) of fullservice restaurant operators and 43% of limited-service restaurants report they do not make a profit on third-party delivery orders. Two in three survey respondents say the average percentage fee paid to third-party delivery platform for a transaction is between 15 – 29.9%. This leads to higher menu prices on third-party delivery platforms. Eighty-three percent of limited-service operators and 66% of fullservice operators say their restaurant charges more for menu items that are ordered using a third-party provider than it does for the same items ordered for dining in or take out.

Restaurant Delivery Survey
Preliminary Results – Based on 830 Responses
 May 14, 2026

In general, are third-party delivery orders profitable for your restaurant?

	All restaurant s	Fullservice restaurants	Limited- service restaurants
Yes	55%	53%	57%
No	45%	47%	43%

Base: *Restaurants that offer third-party delivery*

On average, what percentage fee do you pay to third-party delivery platforms?

	All restaurant s	Fullservice restaurants	Limited- service restaurants
0 – 4.9%	4%	4%	5%
5 – 9.9%	6%	7%	6%
10 – 14.9%	11%	14%	8%
15 – 19.9%	21%	22%	20%
20 – 24.9%	28%	22%	34%
25 – 29.9%	17%	17%	18%
30 – 34.9%	10%	12%	8%
35 – 39.9%	2%	2%	2%
40% or more	1%	1%	1%

Base: *Restaurants that offer third-party delivery*

First-Party Delivery

Many restaurants utilize “first-party” delivery via the restaurant’s own mobile app or website service. A customer can access the restaurant menu, make selections, and request a meal/meals delivery at a desired location. This direct relationship allows customers to order directly from the restaurant, allowing the restaurant to offer limited time offers and promotions while reducing delivery commissions. Additionally, first-party delivery usually avoids any third-party delivery “batching” practices which encourage a delivery driver to make multiple stops and pickups. This practice delays and worsens the delivery process endangering product integrity, whether the customer has paid for a cold drink that has now begun to melt or crispy fries that have now gone cold. Under first-party delivery, restaurants can maintain service-level agreements with delivery drivers to protect product integrity and the customer experience.

This highly efficient, economically beneficial first-party delivery service should not be included in the FTC’s rulemaking process and the Association will be asking for clarity that first-party delivery is not included in the agency’s proposed rule.

Menu Pricing

Third-party delivery platforms cannot reasonably maintain menu prices identical to those offered in-store because the cost structure associated with off-premise fulfillment is materially higher. Restaurants pay for disposable packaging – often including insulated, tamper-evident, and single-use containers – which are not always required for dine-in service. Restaurants operating in multiple jurisdictions must also account for compliance with a growing patchwork of extended producer responsibility (EPR) laws, including comprehensive packaging EPR statutes now enacted in seven states (California, Colorado, Maine, Maryland, Minnesota, Oregon, and Washington) requiring producers to fund recycling systems, report packaging data, and pay associated fees. These regulatory and operational costs are directly tied to delivery orders and necessitate differentiated pricing to ensure restaurants can sustainably cover the added financial burden of packaging and environmental compliance.

More states are considering their own EPR laws requiring businesses to track, report, and pay fees based on packaging materials. Businesses now face a patchwork of requirements with varying definitions, benchmarks, enforcement mechanisms, and producer responsibility organization (PRO) structures. This fragmentation increases costs, administrative burdens, and undermines efforts to maintain consistent packaging and distribution practices.

The financial impact of EPR laws is substantial. Restaurants often bear significant costs despite having limited control over packaging design or end-of-life waste management. Compliance requires detailed tracking of packaging data—such as weight, recyclability, and plastic content—under differing deadlines and look-back periods. Legal and compliance teams must interpret evolving regulations across multiple states, while businesses invest in operational systems and consulting services to meet these demands.

The Association urges caution if the FTC is considering including so-called “all-in pricing” concept in its rulemaking. Restaurants already largely disclose fees for delivery on websites, menus, signage, receipts, and verbally during service. A single all-inclusive delivery fee could be unworkable since delivery fees can vary by customer location, order volume, and market conditions – like shipping charges which cannot feasibly be included in one all-in price. Limiting restaurants flexibility in the fees they charge for delivery would likely raise prices for all customers.

Many restaurants charge different amounts for delivery depending on the distance and purchase amount, among other factors. If the FTC creates a rule to make a variable expense into a stationary fee, restaurants would likely raise the price for all consumers, regardless of distance or purchase amount, or numerous menus to reflect the different fee structures.

Conclusion

The National Restaurant Association appreciates the FTC’s aim to provide increased price transparency for consumers in online food services. Restaurant operators are proud that 51% of consumers say that ordering takeout food or beverages is an essential part of their lifestyle. We look forward to working with the agency on this issue.

Best Regards,

Aaron Frazier

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