



May 18, 2026

Chairman Andrew Ferguson
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Request for Comment on Rule on Unfair or Deceptive Fees in Online Food Delivery, Project No. P267101

Dear Chairman Ferguson,

FMI – The Food Industry Association (FMI) writes in response to the Federal Trade Commission’s (FTC) advance notice of proposed rulemaking titled, Rule on Unfair or Deceptive Fees in Online Food Delivery, 91 FR 20381 (April 16, 2026) (“ANPRM”). FMI welcomes the opportunity to share the perspectives of the grocery supply chain and insights about the value that services like online ordering, curbside pick-up, and on-demand delivery provide to our grocery customers. As the FTC considers whether to propose a rule pertaining to online food delivery, FMI urges consideration of the benefits that these services provide to consumers and avoid imposing requirements that could stifle food retailers’ ability to innovate.

As the food industry association, FMI works with and on behalf of the entire industry to advance a safer, healthier, and more efficient consumer food supply chain. FMI brings together a wide range of members across the value chain—from retailers that sell groceries to consumers, to producers that supply food and other products, as well as a variety of companies providing critical services—to amplify the work of the industry. Collectively, FMI’s members manufacture, distribute, and sell food and consumer goods that are found in pantries, refrigerators, medicine cabinets, and laundry rooms across the country. Our retail members range in size from independent operators to regional and large national and international businesses and brands. Together, they operate 45,000 grocery stores and 12,000 supermarket pharmacies. The food industry produces and supplies over 30,000 different food and consumer good products found on store shelves, employs over 6.3 million individuals, and ultimately touches the lives of more than 100 million U.S. households per week.

Food retailing is a very diverse industry and brings a unique set of challenges when considering the numerous daily functions that a single store provides to its customers and



communities. Grocery stores are the hub for everyday food and consumer goods, operate pharmacies that dispense life-depending medications, vaccines, and flu shots, and serve the community of Americans who rely on critical food assistance programs like the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

The grocery industry is also among the most competitive sectors in our economy. Grocers negotiate prices with vendors on every product they sell and every service they use, and operate on very slim profit margins, about 1.7% annually on average. Grocers are doing everything they can to avoid passing on inflationary costs to shoppers. Competition in the grocery sector is fierce, and the battle for market share helps keep prices down for shoppers.

I. Consumers regularly rely upon grocery pick-up and delivery services, which provide significant benefits to consumers and businesses.

Online ordering, curbside pick-up, and on-demand delivery services provide convenience and access for grocery customers in communities around the country. Consumers have come to rely on online ordering and delivery services offered by FMI members and third-party platforms, and in turn, grocery delivery is a growing and important part of the food retailing industry. Overbroad or overly rigid regulations could impose a significant burden on food retailing and deprive consumers of these important services.

The pandemic fundamentally altered how consumers shop for food and accelerated interest in online ordering, curbside pick-up, and on-demand delivery services. In the period before the pandemic, FMI's annual membership survey indicated that about 50% of retail members reported having online sales. In 2022, this figure jumped to 91%. According to our most recent annual survey of our membership in 2024,¹ 85% of FMI retail members report having online sales.

According to a recent consumer survey described in the FMI publication *U.S. Grocery Shopper Trends 2025: The Logic of Food Shopping*, two-thirds of U.S. shoppers reported buying their groceries online at least occasionally.² Of these shoppers, nearly a third shop online fairly often or almost every time, and 12% are online-reliant or shop online almost every time. The report further notes that the overall reach of online shopping is slightly higher than at the height of the pandemic in 2021 (64%), and frequency has remained fairly

¹ FMI – The Food Industry Association, *The Food Retailing Industry Speaks 2025*, available at: <https://www.fmi.org/our-research/research-reports/food-retailing-industry-speaks>.

² FMI – The Food Industry Association, *U.S. Grocery Shopper Trends 2025: The Logic of Food Shopping* (2025), available at <https://www.fmi.org/forms/store/ProductFormPublic/u-s-grocery-shopper-trends-2025>.

constant (from 35% shopping online at least fairly often in 2021 to 31% in 2025). The sustained frequency of online grocery shopping in the post-pandemic era suggests that this method of grocery procurement is now a firmly embedded habit for consumers.

While most grocery customers continue to enjoy the in-store experience, online ordering and curbside pick-up or on-demand delivery services offer another avenue to meet shoppers' essential needs. In particular, these services offer significant convenience and accessibility benefits that customers—including seniors, caregivers, individuals with limited mobility, and consumers faced with travel time or transportation barriers—have come to rely on. When shopping online, families on a budget can make their grocery dollars go further by adjusting the contents and size of their basket in real time before they get to the checkout. SNAP recipients can also quickly and discreetly identify which items are SNAP eligible. Online grocery services also enable retailers to reach new consumers and promote innovation to satisfy a diversity of customers' needs.

II. Online ordering, curbside pick-up and on-demand delivery services take a variety of forms across retailers and impose specific demands and costs on retailers.

Online purchasing and fulfillment are different operational models with distinct costs and structurally lower margins than in-store purchases. The grocery industry has invested heavily in technology and operational capacity to expand online purchase and fulfillment options. Online ordering may be supported by third parties, in-house logistics, first-party ecommerce platform teams, or a combination of these avenues. Fulfillment also occurs in multiple ways. Most retailers with online ordering services offer pick-up at the store (curbside and/or inside the store), and many offer delivery supported by a mix of third-party or on-demand delivery services and retailer employees. The cost to a specific retailer of providing this service depends in part on what platform mix they offer and which services the customer elects.

Providing online ordering and fulfillment introduces incremental costs that do not exist when a customer shops in-store. When shopping in-store, the customer selects his or her own items, assembles his or her own basket, and provides his or her own transportation of the goods to the home. When a shopper places an order online for curbside pick-up, the retailer incurs additional costs for the time and effort to pick the items, assemble the order, stage and hold the completed order, and hand off the order to the customer on the curbside or in the store. When a customer selects online ordering with on-demand or third-party delivery services, costs are also incurred for the delivery from the store to the customer's home.

These operational components are significant enough that many retailers are reallocating labor to ecommerce, adding staff, or both to handle online orders. In addition to these

direct fulfillment costs, where ordering, payment, delivery logistics, and consumer-facing experiences are managed across a retailer and one or more third-party platform or on-demand delivery services, grocers may incur additional technology integration and data-reconciliation costs.

As previously noted, the food industry operates on slim profit margins, and the costs for online ordering and on-demand or third-party delivery services can be significant. Any regulation in this space should recognize these operational realities and ensure that grocery stores can recoup their legitimate business costs associated with offering online fulfillment options and continue providing these services to customers as an alternative or supplement to in-store shopping.

III. Any proposed regulation must be flexible to account for variability of online grocery order fulfillment.

Online ordering and fulfillment differ from other types of online purchases where the final price and any fees are knowable at checkout. With an online grocery cart, certain price components can only be determined after checkout, for reasons that are neither unfair nor deceptive, and customers are accustomed to receiving final itemization and price disclosure after fulfillment selections are made. Requiring a single “all-in” price at an earlier stage of an online grocery transaction may confuse, rather than enhance, consumer understanding.

The final price of a grocery cart may depend on variable-weight items, such as produce, deli items, and meat. Priced by weight, one bag of three apples does not cost the same as a different bag of three apples. A shopper might make authorized substitutions to address out-of-stocks, or only partially fill an item request if a store has some but not all of a requested product. Certain taxes or bag-related charges may also be dependent on the size and final contents of an order. These necessary adjustments, which take place after the shopper has checked out and the order is shipped, are expected by customers and do not pose the same concerns as the “hidden fees” discussed in the ANPRM.

Customers also have the ability to select certain service options, such as scheduled delivery or expedited delivery, with pricing disclosed at the point of selection. Again, these customer-selected options differ fundamentally from mandatory fees of the sort discussed in the ANPRM that are unavoidable and only disclosed late in a transaction.

Any proposed regulation must allow for reasonable mechanisms to disclose estimated totals at checkout and then provide accurate final total price and itemization at the time of fulfillment. Flexibility is particularly important given the range of fulfillment models employed by the food industry and the unique use case of grocery shopping.

IV. Conclusion

FMI appreciates the opportunity to provide the FTC with the grocery industry's perspective on online ordering, fulfillment, and delivery. These services have become an important and enduring part of how consumers access and purchase groceries. These services also require significant operational investment by grocery retailers. FMI urges the FTC to ensure that any proposal is carefully tailored to address clearly deceptive practices without impairing retailers' ability to recover legitimate costs, innovate, and continue offering convenient, accessible ordering and fulfillment options for customers. Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in blue ink that reads "Jessica Tanner". The signature is written in a cursive style with a large initial "J".

Jessica Tanner
Senior Counsel