

Federal Trade Commission
Supporting Statement for Rule on Unfair or Deceptive Fees
16 CFR Part 464
OMB Control No. 3084-0176

The Federal Trade Commission (“FTC” or “Commission”) is promulgating a trade regulation rule titled Rule on Unfair or Deceptive Fees under the authority of section 18 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. 57a, which grants the FTC the authority to promulgate, modify, or repeal trade regulation 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).

The final rule includes disclosure obligations that, under certain circumstances, may constitute a collection of information for the purpose of the PRA. Specifically, final § 464.2(a) provides it is an unfair and deceptive practice for a business to offer, display, or advertise any price of a covered good or service—defined to mean live-event tickets or short-term lodging—without clearly and conspicuously disclosing the total price, which is defined in final § 464.1 to permit the exclusion of government charges, shipping charges, and fees or charges for any optional ancillary good or service. While businesses may exclude these charges from total price in offers, displays, and advertisements, final § 464.2(c) provides that, before a consumer consents to pay, a business must disclose clearly and conspicuously (1) the nature, purpose, and amount of any fee or charge imposed on the transaction that has been excluded from total price and the identity of the good or service for which the fee or charge is imposed and (2) the final amount of payment for the transaction. Final § 464.2(b) relatedly provides that total price must be disclosed more prominently than any other pricing information; however, where the final amount of payment for the transaction is displayed, it must be more prominent than, or as prominent as, total price.

As part of this rulemaking, the Commission issued a Notice of Proposed Rulemaking (“NPRM”) in November 2023.¹ Upon publication of the NPRM, the Commission submitted an associated clearance request with Supporting Statement to OMB. In response, OMB filed a comment on December 11, 2023 (OMB Control No. 3084-0176), requesting that the Commission resubmit the clearance request upon the finalization of the proposed rule. Accordingly, simultaneously with the publication of this final rule, the Commission is resubmitting its clearance request and a Supporting Statement to OMB for review. For the reasons discussed below, the Commission has made adjustments to its initial burden analysis.

(1) & (2) Necessity for and Use of the Information Collection

Final rule § 464.2(a)–(c) will ensure that consumers have the information that they need to understand the cost of live-event tickets and short-term lodging and the nature, purpose, and amount of fees and charges, information that is material to consumers’ decisions about whether or not to purchase such live-event tickets and short-term lodging and consent to the charges. As

¹ 88 FR 77420 (Nov. 9, 2023).

explained in Part III of the Statement of Basis and Purpose (“SBP”), comments received in response to the previously issued ANPR and NPRM indicate that consumers often make purchases without an accurate understanding of the price they will pay or the nature, purpose, and amount of excluded fees and charges. Disclosures of the total price, the nature, purpose and amount of fees and charges excluded from total price, and the final amount of payment are necessary for consumers to decide whether to consummate a transaction.

The NPRM required disclosures of “the nature and purpose of any amount a consumer may pay that is excluded from Total Price, including the fee’s refundability and the identity of the good or service for which the fee is charged.” As discussed in Section III of the SBP, the Commission responded to comments that these disclosure requirements were vague and burdensome by modifying the language for clarity and eliminating the disclosure requirement pertaining to the fee’s refundability. The final rule now requires disclosure of (1) the nature, purpose, and amount of any fee or charge imposed on the transaction that has been excluded from the total price and the identity of the good or service for which the fee or charge is imposed, but not the fee’s refundability; and (2) the final amount of payment for the transaction.

In addition, the overall scope of the final rule is significantly narrower than the proposed rule. While the NPRM’s proposed disclosure requirements would have applied to businesses economy-wide, the final rule only applies to offers, displays, and advertisements for live-event tickets or short-term lodging. Although the Commission found that bait-and-switch pricing, including drip pricing and misleading fees and charges, are prevalent across industries, the Commission declined to adopt an industry-neutral final rule. Instead, it chose, in its discretion, to first apply the final rule’s requirements to the two industries where the Commission first began evaluating drip pricing more than a decade ago and where consumer harm has been longstanding and continues to be pronounced.

(3) **Consideration of the Use of Improved Information Technology to Reduce Burden**

Businesses subject to the final rule are free to offer, display, or advertise their goods and services using whatever technology they wish to use. Nothing in the final rule prescribes disclosures pursuant to final § 464.2(a)–(c) be made on paper or in any format that would preclude the use of improved technology.

(4) **Efforts to Identify Duplication**

The Commission has reviewed the final rule as a whole for any potential duplications of, or conflicts with, other federal statutes, rules, or policies currently in effect. As discussed in Section III of the SBP, the FTC has not identified any other federal statutes, rules, or policies currently in effect that may directly duplicate or conflict with the disclosure requirements of final § 464.2(a)–(c).

(5) **Impact on Small Businesses**

Final § 464.2(a)–(c) would impact only a subset of small businesses: those that do not clearly and conspicuously disclose the total price when offering, displaying, or advertising the

price of live-event tickets or short-term lodging and those that mislead consumers about the nature, purpose, and amount of fees and charges. Most small businesses will already be aware of whether they are currently excluding any fees and charges from their total price displays, and if so, whether they disclose the nature, purpose, and amount of such fees and charges in a manner that is easily noticeable (*i.e.*, difficult to miss) and easily understandable by ordinary consumers. Small businesses will have the option to either include such fees and charges in the total price that they display, advertise, or offer to consumers or to clearly and conspicuously disclose such fees and charges. The Commission adopts the final rule with certain revisions to reduce any compliance burdens incurred by small businesses. First, because this final rule is limited to covered goods and services, many industries that have significant small business participants are not covered. Second, the Commission adopts an extended timeline for compliance—120 days—to ensure that small businesses that are covered have adequate time to come into compliance with the rule’s requirements. Third, as discussed in Section III of the SBP, in response to feedback from commenters representing the interests of small businesses, the Commission clarifies that businesses may exclude from the total price pass-through credit card or other payment processing fees if they provide consumers a viable payment alternative without a fee (*e.g.*, cash is accepted). Finally, as discussed in Section III of the SBP, the final rule adopts a definition of government charges that increases flexibility for businesses, including small businesses.

(6) Consequences of Conducting Collection Less Frequently

Failing to display the true cost of goods and services and misleading consumers about the nature, purpose, and amount of fees and charges would undermine the purpose of the final rule. Every consumer benefits from receiving truthful, timely, and transparent pricing information, including the true total cost of goods and services. Requiring a less frequent disclosure of this information would mean that some consumers would not have the same ability as others to make informed purchasing decisions. Businesses that offer, display, or advertise the price of live-event tickets or short-term lodging must provide consumers with the total price they will pay. Businesses are free to exclude certain fees or charges from total price—government charges, shipping charges, and fees or charges for any optional ancillary good or service—but if businesses choose to exclude these fees and charges, they must clearly and conspicuously disclose the true final amount of payment before the consumer consents to pay. Thus, the rule was drafted in a manner that limits the number of covered businesses and the circumstances in which businesses would be required to make these disclosures.

(7) Circumstances Requiring Collection Inconsistent with Guidelines

None. The collection of information in the rule is consistent with all applicable guidelines contained in 5 CFR 1320.5(d)(2).

(8) Public Comments/Consultation Outside the Agency

As part of the NPRM, the Commission assumed that, except for the proposed affirmative refundability disclosure requirement, the Commission’s proposal was limited to disclosure activities that businesses already perform in the course of their regular business activities.

However, following its review of the comments,² the Commission has determined that, although businesses may already make the disclosures required by final § 464.2(a)–(c) in the usual course of their regular business activities, it is possible that some businesses may nonetheless incur incremental labor costs in ensuring that their disclosure activities are fully aligned with the timing, prominence, and clarity requirements that are set forth in final § 464.2(a)–(c).

The Commission received comments about the NPRM’s Preliminary Regulatory Analysis from industry groups, law firms, consumer advocacy groups, think tanks, consumers, and business owners concerning the Commission’s cost estimates. As Part V of the SBP details, a number of commenters, including a law firm and various groups representing different industries, such as live-event ticketing, movie theater ticketing, delivery apps, restaurants, hotels and short-term lodging, bowling, cable and broadband, and franchising, argued that estimated costs in the NPRM were too low because the analysis underestimated the number of attorney, data scientist, and web developer hours needed to comply with the proposed rule.³ These commenters contended that some businesses will require more time than the assumed average estimates of labor hours used in the Preliminary Regulatory Analysis.

For example, Vivid Seats stated that, from its experience implementing upfront pricing as a ticket seller in three states, the Commission underestimated the employee hours needed for live-event ticket sellers by at least a factor of five.⁴ Conversely, another live-event ticket seller, TickPick, commented that, for the most part, live-event ticketing companies would incur an immaterial cost to implement all-in pricing because “the technology already exists within ticketing platforms to eliminate drip pricing and would simply need to be applied to events in the

² See, e.g., FTC-2023-0064-3238 (Gibson, Dunn & Crutcher LLP argued that businesses would need to hire, among other professionals, web designers or software engineers “to rebuild entire websites.” In addition, it argued that the Preliminary Regulatory Analysis did not account for costs needed to replace physical ads, subway ads, and billboards and speculated that would take “thousands of hours.”); FTC-2023-0064-2856 (National Football League called on the Commission to reexamine the estimated compliance costs because it did not adequately take into account “the additional legal, developer, and data personnel time that would be required from live-event industry participants – and especially industry participants dealing in large volumes of live-event ticket sales in complying with a final rule.”); FTC-2023-0064-3122 (Vivid Seats commented: “We believe that the FTC is underestimating the amount of employee time required by at least a factor of five.”).

³ FTC-2023-0064-2856 (National Football League); FTC-2023-0064-3127 (U.S. Chamber of Commerce); FTC-2023-0064-3238 (Gibson, Dunn, & Crutcher LLP); FTC-2023-0064-3263 (Flex Association); FTC-2023-0064-3122 (Vivid Seats); FTC-2023-0064-3300 (National Restaurant Association); FTC-2023-0064-3094 (American Hotel & Lodging Association); FTC-2023-0064-3217 (Bowling Proprietors’ Association of America); FTC-2023-0064-3233 (NCTA—The Internet & Television Association); FTC-2023-0064-3292 (National Association of Theatre Owners); FTC-2023-0064-3293 (Travel Technology Association); FTC-2023-0064-3294 (International Franchise Association).

⁴ FTC-2023-0064-3122 (Vivid Seats).

U.S.”⁵ The Office of Advocacy of the United States Small Business Administration (“SBA Office of Advocacy”) argued that costs estimated in the Preliminary Regulatory Analysis were too low because data scientist and web developer hours should be ongoing costs, rather than one-time costs.

As a result, out of an abundance of caution, the Commission updates its burden analysis in recognition of these comments. The estimated costs of its revised Paperwork Reduction Act analysis may be overestimated for the reasons discussed in Section VI of the SBP.

(9) Payment or Gift to Respondents

Not applicable.

(10) Assurances of Confidentiality

No assurance of confidentiality is necessary as the businesses that are subject to the rule do not have to register or file any documents with the Commission. Disclosing to consumers the total price of covered goods and services, the nature, purpose, and amount of any excluded fees and charges, and the final amount of payment for the transaction does not involve confidentiality concerns.

(11) Sensitive or Private Information

Disclosing to consumers the total price of covered goods and services, and the nature, purpose, and amount of any excluded fees and charges, and the final amount of payment for the transaction does not require the disclosure of any information of a private or sensitive nature.

(12) Estimated Annual Hours Burden and Associated Labor Costs

A. Number of Respondents: 12,393

The Commission estimates that there are 12,393 entities that will incur additional incremental labor costs to refine their disclosure activities so that they are fully compliant with final § 464.2. This estimate of 12,393 entities takes the high-end estimate of the number of firms in the United States in the live-event ticketing industry (9,440 firms) and the number of firms in the United States in the short-term lodging industry (2,953) that will incur additional compliance costs related to disclosure activities.⁶

⁵ FTC-2023-0064-3212 (TickPick, LLC).

⁶ To calculate the number of entities that will incur additional costs, the Commission used data from U.S. Census Bureau, *2021 SUSB Annual Datasets by Establishment Industry* (Dec. 2023), <https://www.census.gov/data/datasets/2021/econ/susb/2021-susb.html>. The live-event ticketing industry does not have a unique NAICS code; live-event ticketing sellers are classified as NAICS codes 7113 and 561599. As a high-end estimate of the number of live-event ticket sellers, the Commission’s analysis uses the sum of the firms within these two NAICS code and assumes there are 9,440 firms potentially impacted by the final rule. The Commission notes this is likely

B. Estimated One-Time Hours Burden: 743,580

The Commission assumes that firms not presently compliant with the final rule will employ a low end of 40 hours and a high end of 80 hours of web developer time to become compliant with the final rule. Thus, for purposes of this PRA analysis, the Commission uses the midpoint of the range of web developer hours; that is, the Commission assumes 60 hours of web developer time will be necessary to adjust advertised prices and purchase processes to comply with final § 464.2's disclosure requirements.⁷ Once firms adjust advertised prices and purchase process displays to be compliant with the final rule, any future changes to pricing displays or purchasing systems are the regular course of business and not a direct consequence of the rule. The Commission finds that any ongoing additional costs associated with these activities are de minimis. Thus, the Commission estimates the total web developer hours to adjust price displays and purchase processes is 743,580 hours (12,393 firms × 60 web developer hours per firm).

C. Estimated One-Time Labor Costs: \$32,990,931

The estimated one-time labor cost that firms will incur to comply with the final § 464.2 is \$32,990,931. The labor cost for the live-event ticketing industry is calculated by applying the hourly wage for web developer time in the live-event ticketing industry of \$45.95 to the estimate of 60 hours of web developer time multiplied by the number of U.S. firms in the live-event ticketing industry that incur additional compliance costs (\$45.95/hour × 60 hours per firm × 9,440 firms) resulting in \$26,026,080.⁸ The labor cost for the short-term lodging industry is calculated by applying the hourly wage for web developer time in the short-term lodging industry of \$39.31 to the estimate of 60 hours of web developer time multiplied by the number of U.S. firms in the short-term lodging industry that incur additional compliance costs (\$39.31/hour × 60 hours per firm × 2,953 firms) resulting in \$6,964,851. The total for the two industries is \$32,990,931 (\$26,026,080 + \$6,964,851).⁹

an overestimate of the number of entities in the live-event ticketing industry that will incur additional costs. The short-term lodging industry is associated with NAICS code 721100. Of the 49,216 firms associated with this NAICS code, six percent impose resort fees (*see* FTC-2023-0064-3094; American Hotel & Lodging Association), bringing the high-end number of U.S. firms affected to 2,953.

⁷ Brick-and-mortar firms that do not currently comply with the rule would update the price presentation and purchase process by printing new price displays, revising advertising campaigns, adding required disclosures, and potentially updating websites. The Commission uses web developer hours as a proxy for any costs associated with updating the price presentation and purchase process to become compliant with the final rule.

⁸ U.S. Bureau Lab. Stat., *Occupational Employment and Wage Statistics, Occupational Employment and Wages, May 2023: 15-1254 Web Developers* (May 2023), <https://www.bls.gov/oes/current/oes151254.htm> ("OEWS Web Developers") (establishing that the mean hourly wage rate for web developers is \$45.95).

⁹ U.S. Bureau Lab. Stat., *Occupational Employment and Wage Statistics, May 2023 National Industry-Specific Occupational Employment and Wage Estimates: NAICS 721100 - Traveler Accommodation* (May 2023), https://www.bls.gov/oes/current/naics4_721100.htm ("OEWS Traveler Accommodation").

(13) Estimated Capital/Other Non-Labor Costs Burden

The capital and start-up costs associated with the final rule’s disclosure are de minimis. Any disclosure capital costs involved with the final rule, such as equipment and office supplies, would be costs borne by Businesses in the normal course of business.

(14) Estimated Cost to the Federal Government

FTC staff estimates that the Federal Government will not incur any costs from final § 464.2(a)–(c) except for monitoring for compliance and taking enforcement action. FTC staff estimates that the cost to the FTC’s Bureau of Consumer Protection of enforcing the disclosure requirements will be approximately \$211,951.92 per year. FTC staff estimates that approximately half of the time spent enforcing the final rule as a whole would involve disclosure requirements. The estimate of the cost of the final rule includes the cost of two full-time employees (“FTEs”) (salary and benefits for one full-time attorney, one half-time investigator, and one half-time economist) annually to monitor, investigate, and enforce violations of the rule. Approximately half of these FTEs would be applied to the disclosure requirements. FTC staff does not expect the agency to incur additional costs.

(15) Adjustments/Changes in Burden

This request is for a new rule.

(16) Plans for Tabulation and Publication

The rule does not require businesses to provide information to the FTC. There are therefore no plans to publish any information obtained pursuant to this information collection.

(17) Failure to Display Expiration Date for OMB Approval

Not applicable.

(18) Exceptions to Certification

The FTC certifies that this collection of information is consistent with the requirements of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), and is not seeking an exemption to these certification requirements.