September 25, 2026

The Honorable Andrew N. Ferguson
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

RE: Request for Comment on Proposed Enforcement Policy Statement Regarding Personalized Pricing, Docket ID: FTC-2026-1057

Dear Chairman Ferguson:

FMI – The Food Industry Association writes in response to the Federal Trade Commission's (Commission or FTC) Proposed Enforcement Policy Statement Regarding Personalized Pricing. FMI and our members are committed to promoting consumer trust through the responsible, transparent, and lawful use of retail pricing technologies while preserving innovation, competition, and independent business decision-making. Consumer confidence in retail pricing is fundamental to maintaining trust in our nation's food system. FMI welcomes the opportunity to share the perspectives of the grocery supply chain and insights about the value and services that our industry provides to grocery customers in every community across the country.

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 to consumers, to producers that supply food and other products, as well as the wide variety of companies providing critical services – to amplify the collective work of the industry.

FMI's membership manufactures, distributes, and sells food and consumer goods that are found in pantries, refrigerators, medicine cabinets, and laundry rooms across the country. Our retail members, which range in size from independent operators to regional and large national and international businesses and brands, 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 diverse industry that presents a unique set of challenges, considering the numerous daily functions a single store provides to its customers and communities. Grocery stores are the hub for everyday food and consumer goods, operating pharmacies that dispense life-depending medications, vaccines, and flu shots, and serving 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). These functions involve millions of financial transactions every day.

FMI shares the Commission's goal of promoting transparent and understandable pricing and interest in preventing undisclosed uses of personal data to set individualized prices that mislead or injure consumers. However, the Proposed Statement's operative language risks sweeping in established grocery pricing practices, customer loyalty programs, waste-reduction markdowns, and price-accuracy technology. Should the Commission move forward with issuing a final enforcement statement, FMI urges that revisions be made to provide clear and workable compliance standards for businesses across the grocery supply chain.

I. Food Prices, Inflation and Consumer Sentiment

Food prices are dictated by a complex and ever-evolving set of factors, including supply, consumer demand, transportation and logistical costs, input costs like energy and labor, severe weather, and geopolitical factors, among others.

The prices paid for groceries by consumers are visible in supermarkets, but they reflect the value of contributions of many diverse industry sectors, all of which make vital contributions to the process by which food travels from farms to our homes. There are three key aspects of the food supply chain: production, processing, and retail. Farmers and ranchers grow the agricultural commodities, manufacturers turn these raw commodities into consumer-ready foods, and retailers aggregate these foods and make them available to consumers all under one roof. The costs incurred by each of these sectors ultimately ripple outward to the consumer through changes in retail price.

Multiple factors can moderate wholesale and retail prices. Some are sector- or even firm-specific. These include menu costs, or the costs associated with changing prices, such as printing and placing new shelf tags. Another important example is consumer expectations and changes in demand tied to changes in eating habits and increases or decreases in price. For example, over the past decade, the younger age cohort entering the marketplace as consumers has increasingly focused on snacking and small eating experiences over "sit-down" meals eaten at specific times. These changes in demand can drive changes in price for specific food indexes.

The number of factors influencing food prices can lead to complexity in the supply chain and unpredictable changes in input costs. Despite this complexity, the grocery industry is among the most competitive in our economy. Grocers negotiate prices on every product they sell and every service they use with vendors and operate on razor-thin profit margins – about 2.1% percent on average[1]. Intense competition for consumer business and market share helps keep prices down for shoppers. As a result, U.S. consumers have faced significantly less volatility in food prices over the past twenty years than many in the rest of the world.

[1] Grocery Store Chains Net Profit

The U.S. is, however, in a period of comparatively high food price inflation dating back to COVID-related supply chain shocks in 2022. A number of intervening events – Russia's invasion of Ukraine, extreme heat and drought, and surging energy costs – have pushed the inflation rate above its 20-year average. The U.S. Department of Agriculture projects grocery price inflation of 2.5 percent in 2026[2], reflecting continued input-cost pressures across the food supply chain. Despite this higher inflation, consumers have remained resilient and engaged with their food dollar. Retailers compete vigorously with one another to attract and retain customers. Grocers place tremendous value on the relationships they have with their customers and strive every day to provide the best shopping experience possible.

FMI's *U.S. Grocery Shoppers Trends 2026*[3] survey found that 67% of consumers credited their grocery store with helping their household stay in budget. In today's marketplace, consumers have numerous choices about where to shop and can easily switch retailers based on price, convenience, product selection, and service. The survey also showed that the average consumer shopped at 5.4 different grocery banners within a 30-day period; while Generation Z shopped at 6.7 different banners, and Baby Boomers visited 4.1 different stores over a one-month period. These visits encompass the full scope and variety of different food retail channels in the marketplace, including traditional supermarkets (visited by 79% of shoppers), mass market stores (74%), club stores (46%), and online stores (25%). The result of these different trips is that consumers have more opportunity than ever before to compare prices and see which retailer offers the best value for their dollar.

II. Technology and the Changing Nature of the Food Retail Marketplace Benefits and Empowers Consumers

Investment in and adoption of new technology is a key component of the competitive strategy for many food retailers. FMI's annual survey, *The Food Retailing Industry Speaks 2026*[4], found that 91% of retailers were experimenting with new technology to improve operational efficiency and 82% were experimenting with technology to improve the consumer experience at the store and online. Both of these investment streams ultimately benefit American shoppers by controlling store-level costs and helping to lower prices, while also providing an enhanced and speedier shopping experience. For example, tools such as digital shelf labels (DSLs, also referred to as electronic shelf labels) can communicate additional product information to help customers make informed purchasing decisions, including allergen warnings, nutritional information, product origin or certifications, and additional savings / discounts.

Technology is an important tool for controlling costs, keeping prices low, and creating informed and engaged consumers. This benefits every step in the supply chain, from farm to fork, and consumers, in turn, recognize and benefit from these efforts. According to an FMI grocery

[2] USDA, Food Price Outlook, August 25, 2026
[3] FMI – The Food Industry Association, *U.S. Grocery Shopper Trends 2026*
[4] FMI – The Food Industry Association, *The Food Retailing Industry Speaks 2026*

shopper survey earlier this year, 74% of shoppers agree that grocery retailers try hard to provide options to help shoppers stay within budget[5].

The suite of digital tools that are available to consumers combined with the pricing insights of physical visits, make price discovery and comparison an even more simplified process. FMI's grocery shopper trends data shows that 51% of shoppers access digital coupons and discounts while planning their weekly shopping; 50% look up prices online; and 49% use digital tools to conduct price comparisons across different stores[6]. Consumers repeatedly demonstrate that they are sophisticated shoppers able to leverage all the tools available to them – including analog methods like newspaper circulars, which are still an important part of the food industry's advertising strategy.

Some observers try to portray the American consumer as unable to discern the market price of individual goods, but the exact opposite is true. In 2026, shoppers are more knowledgeable, empowered, and engaged in the marketplace than ever before. This is true across age cohorts and incomes. The fierce competitiveness within the food retail marketplace further empowers them – the most valuable commodity a retailer can achieve is customer loyalty, which drives not only price competition, but outreach focused on shopping experience, help with health and wellness concerns, and improving the speed and convenience of each shopping trip. In the current marketplace, the consumer is very much a price maker.

III. Consumers Embrace Personalization and Loyalty Programs

Affordability is a top consumer concern as inflation continues to be a factor in shopping decisions. But it is not the only factor driving trips to the store; consumers are also looking for insights into purchases that support their health and wellness goals, help avoid allergens, and are budget-friendly options for building meal plans and shopping lists. In light of these personalized concerns, loyalty programs have risen in popularity over the past several years. They provide personalized solutions that reflect an individual's everyday preferences.

Loyalty programs are an important tool retailers use to compete by delivering savings and value, not by increasing prices based on an individual's personal data. Participation in grocery loyalty programs is entirely voluntary. Customers affirmatively enroll in various programs to receive convenience, savings, and personalized offers that reflect their shopping preferences. Customers have complete discretion and control over which promotions and discounts they choose to redeem. For example, a customer who recently purchased diapers may receive a coupon for diapers or other baby products through her or his loyalty account.

Moreover, customers generally provide email addresses or phone numbers when signing up for loyalty programs. Grocers use this contact information to quickly communicate with customers about product recalls. This communication is essential for food safety. Customers, in turn,

[5] FMI – The Food Industry Association, *Grocery Shopper Snapshot: January 2026*
[6] FMI – The Food Industry Association, *U.S. Grocery Shopper Trends 2026*

recognize that a certain amount of transparent data collection is necessary to meet these personalized concerns and needs.

FMI members recognize the affordability challenges many of their customers face and continue to offer multiple ways to help them save. Collectively, food retailers offer various weekly and extended store promotions, including stock-up sales, coupons, locked-in savings, and holiday promotions (e.g., free turkeys), which help customers reduce how much they spend on groceries. Weekly circulars provide value opportunities within every department of the store, and loyalty programs offer additional savings. Private label brand items provide high-quality offerings at a value price and continue to be expanded to meet customer needs.

IV. Digital Shelf Labels Do Not Facilitate Surveillance Pricing

Customer opt-in loyalty programs offer discounts tied to individual shopping trends, needs, and preferences. Unfortunately, misinformation continues to proliferate regarding whether DSLs can be used to engage in surveillance pricing at the store. This is false. DSLs are not used to increase prices, or to set prices at all. DSLs do not determine prices based on individual customers. DSLs simply replace paper price tags with small digital price displays. These displays help ensure the price a customer sees on the shelf matches the price at checkout. Grocers use DSLs to maintain pricing accuracy, reflect promotions quickly, and provide better information to customers.

By reducing price discrepancies and ensuring consistency between the price on the shelf, in the system and at checkout, DSLs help retailers reduce pricing errors caused by manual price tag replacement and facilitate the faster implementation of sales and promotions. This improves regulatory compliance with state and local price accuracy rules, which is why the National Institute of Standards and Technology (NIST) recommends DSLs as an "an appropriate and acceptable means of conveying and affixing unit price labels to the shelf for consumers[7]."

Importantly, grocers do not use DSLs to enable surge pricing, surveillance-based pricing, or individualized pricing. DSLs do not collect personal information, do not track shoppers, and cannot change prices for individual shoppers while they browse. Retailers are required to maintain price accuracy so that the price displayed to a customer, whether on a shelf label, sign, or any other price display, regardless of the technology, matches the price charged at checkout. Price verification procedures established by NIST and adopted by weights and measures authorities nationwide are designed to ensure that customers are charged the correct price for the items they purchase.

In fact, with both paper tags and DSLs, the vast majority of price updates happen overnight. According to industry data, 92% of all price changes occur when stores are closed between 2-5AM. The remaining 8% of changes during open hours are made because of markdowns to reduce food waste, quickly move inventory to make space for new items, or compete with competitor prices.

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[7] NIST Special Publication 1181

Reducing food waste is a great example of the value DSLs provide. DSLs allow retailers to respond in real time to fresh and prepared foods approaching their expiration dates by offering targeted markdowns. These "flash discounts" – available to every shopper and not related to any use of personal data – encourage customers to purchase products that might otherwise go unsold, helping reduce food waste while providing shoppers with additional savings. Research suggests that time-triggered markdowns on perishable items can reduce food waste by up to 21% while helping shoppers access lower prices.

Additionally, updating paper tags by hand is slow and labor-intensive: the average grocery store changes more than 7,000 price tags per week, and large chains may print five million or more tags weekly. This labor-intensive process diverts store associates from higher-value work, such as supporting customers. Furthermore, with millions of paper tags being printed per week, that requires paper, ink, and transportation to stores, which generates significant waste and cost. DSLs offer a more sustainable alternative, requiring no paper or ink, using rechargeable, energy-efficient display technology and reducing printing and transportation costs.

Finally, modern DSLs promote transparency. They can communicate additional product information to help customers make informed purchasing decisions, including allergen warnings, nutritional information, product origin or certifications, and potential discounts.

V. Policy Considerations

a. Enforcement Actions Should Remain Anchored in Established Legal Standards.

FMI believes that enforcement actions under a final statement should remain anchored in the Commission's well-established unfairness standard under Section 5 of the FTC Act, which requires the Commission to demonstrate substantial consumer injury that is not reasonably avoidable and not outweighed by countervailing benefits. This standard has served consumers and businesses well for decades by ensuring that the Commission focuses on practices causing real harm rather than speculative injury.

FMI urges the Commission to reaffirm in a final statement that enforcement will be guided by the established unfairness and deception standards and will not expand the Commission's reach beyond those well-understood boundaries. The Commission should not treat the absence of a specific disclosure, standing alone, as presumptive evidence of an unfair practice. Under Section 5, the Commission must independently establish that a practice causes substantial consumer injury, that the injury is not outweighed by countervailing benefits, and that consumers cannot reasonably avoid it. A disclosure-based presumption would effectively bypass this statutory framework.

The Commission itself acknowledges in the Proposed Statement that the extent to which businesses currently use personalized pricing "is not well understood" and that the effects of personalized pricing on consumers "are unclear." The Commission further recognizes that the limited economic research on the question suggests ambiguous welfare effects. Given this acknowledged evidentiary uncertainty, the Commission should exercise caution before establishing enforcement positions that could be applied broadly across industries and business models where personalized pricing, as described in the Proposed Statement, may not even be occurring.

b. Established Industry Pricing Practices Are Not Deceptive.

Under the Commission's well-established deception framework, a practice is deceptive only if it involves a material misrepresentation or omission likely to mislead a consumer acting reasonably under the circumstances. Cohort-level promotions, inventory-based markdowns, and markdowns to reduce food waste are not personalized pricing. Consumers reasonably expect grocery prices to vary based on market and operational factors; the concern the Proposed Statement purports to address is undisclosed individualized pricing based on personal data. A final statement must draw this line clearly to avoid limiting established grocery pricing practices to the detriment of consumers.

The Proposed Statement distinguishes personalized pricing from price changes driven by supply and demand, local market conditions, and other factors affecting consumers in the same market. Price variations due to fluctuations in commodity costs, transportation, energy and labor costs, as well as perishability, inventory levels, delivery distance, and severe weather are also basic to pricing of food and consumer goods products. There is nothing individualized, personalized, or deceptive about price variations addressed above.

The Proposed Statement should also draw a clear distinction between individualized pricing based on personal data (the core concern of the Proposed Statement) and cohort-level or segment-based pricing. Retailers routinely offer different promotions to different customer segments based on general purchasing patterns, geographic region, or store format. A retailer that offers a promotion to all customers in a particular zip code, or to all members of a particular loyalty tier, is not engaging in personalized pricing. A final statement should expressly confirm that segment-based promotions and cohort-level pricing strategies, which do not rely on individualized personal data to set a unique price for a specific consumer, fall outside the scope.

c. Loyalty Programs, Customer Discounts, and Digital Shelf Labels Are Not Deceptive Pricing.

FMI urges the Commission to expressly state in a final statement that loyalty programs, customer-rewards and other discounts are not deceptive pricing. Unlike deceptive conduct, a loyalty program is voluntary, operates under publicly available terms, provides net savings or value, and permits consumers to opt-out. This bright-line exclusion is essential to avoid limiting the pro-consumer loyalty benefits that consumers actively seek and enjoy.

Likewise, a final statement should expressly state that shelf-display technology, standing alone, is not deceptive. A storewide promotion reflected on a DSL and a markdown on short-dated fresh foods are fundamentally different from a tool that identifies a specific shopper and changes that shopper's price. Failing to draw this distinction could chill adoption of technology that benefits customers through improved accuracy, transparency, and reduced food waste.

d. Disclosure Requirements Should Not Be Burdensome or Duplicative.

Should a final statement be issued, FMI urges that it must include clear, practical, and reasonable disclosure requirements that businesses of any size can comply with, and that are not duplicative of disclosures to which businesses already comply. Overly burdensome disclosure requirements that are operationally infeasible drive-up compliance costs for the already slim-margined food industry and may disproportionately burden small and independent grocers that lack the infrastructure, legal resources, and technology platforms to implement complex, transaction-level disclosures.

The Commission should take into account that retailers already comply with an array of state and federal privacy laws governing notice, consent, purpose limitation, and opt-out rights. The Commission should clarify that privacy policies, loyalty-program terms, and consumer-facing notices adequately disclose pricing-related data uses where they describe such uses. Retailers should not be required to re-obtain consent for data lawfully collected under existing privacy frameworks where the pricing use is adequately described in applicable notices.

In a fast-paced retail environment, overloading consumers with technical explanations can cause them to tune out important information. The Commission should prioritize clarity and usability over algorithmic detail.

e. A Final Statement Should Acknowledge the Consumer Welfare Benefits of Dynamic and Promotional Pricing.

The Proposed Statement focuses almost exclusively on the potential harms of personalized pricing but gives insufficient weight to its potential benefits for consumers and competition. Economic literature recognizes that price differentiation, including through targeted promotions and loyalty-based discounts, can expand output, increase competition, and make products accessible to price-sensitive consumers who might otherwise be priced out of the market. In the grocery sector specifically, targeted promotions help retailers compete for budget-conscious shoppers and reduce food waste by directing time-sensitive discounts to customers most likely to purchase perishable products. The Commission should take care to ensure that a final statement does not inadvertently discourage pro-competitive and pro-consumer pricing practices by creating a regulatory environment in which any departure from a single uniform price triggers disclosure obligations or enforcement risk.

VI. Legal and Jurisdictional Boundaries

a. The FTC Should Not Manufacture a Reasonable Consumer Expectation of Flat Pricing.

The FTC's deception theory hinges on a subjective premise that consumers "reasonably expect" a listed price to be static and identical for everyone. But an omission is deceptive under Section 5 only if it is likely to mislead a consumer acting reasonably. The Proposed Statement provides no empirical evidence that a modern digital consumer expects completely uniform pricing. The Commission should not invent an artificial baseline expectation of uniform pricing and then declare the absence of a transaction-specific disclosure "deceptive."

Modern consumers are well aware that prices vary across channels, platforms, and membership tiers. The proliferation of loyalty programs, subscription-based pricing, app-exclusive discounts, and real-time promotional offers has made variable pricing the norm, not the exception, in American retail. Rather than assuming that consumers expect flat pricing, the Commission should acknowledge this reality and ground its deception analysis in actual consumer understanding, supported by empirical evidence, rather than a hypothetical consumer expectation that may no longer reflect the modern marketplace.

b. The Statutory Three-Prong Test for Unfairness Under Section 5(n) Must be Met.

As noted above, the Proposed Statement risks sweeping in established grocery pricing practices, customer loyalty programs, waste-reduction markdowns, and price-accuracy technology, and we have requested that the language be reconsidered so that it does not incorporate these. Should the Commission fail to modify the language appropriately in a final enforcement statement, we note that to be considered an unfair practice, all three statutory limits in Section 5 of the FTC Act must still be satisfied in each case[8]. These established grocery pricing practices, customer loyalty programs, waste-reduction markdowns, and price-accuracy technology would fail on all three prongs. More specifically, they do not cause substantial injury to consumers, the Commission cannot show that any injury outweighs the benefits, and they are reasonably avoidable. FMI urges the Commission to reaffirm that the Proposed Statement cannot bypass this statutory framework and collapse these statutory inquiries into a disclosure presumption. Each element must be independently established through rigorous economic analysis[9].

c. De Facto Rulemaking via Policy Statement

The Commission frames the document as a non-binding Enforcement Policy Statement, but if it operates in practice as a binding rule, courts may set it aside under the Administrative

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[8] 15 U.S.C. § 45(n)

[9] *See* S. Rep. No. 97-831, at 32–33 (1982) (conference report on FTC Improvements Act of 1980, codifying the unfairness standard).

Procedure Act. By asserting that failure to provide three specific disclosures is "likely to constitute an unfair or deceptive act," the Commission is functionally establishing a mandatory regulatory regime. If the Commission seeks binding disclosure obligations, it should proceed through notice-and-comment rulemaking with a developed evidentiary record rather than using a policy statement to achieve the same result indirectly[10].

VII. Conclusion

America's grocery retailers earn consumers' trust every day by providing safe, affordable food in one of the most competitive and necessary sectors of the U.S. economy. The industry is also committed to the responsible use of new tools and technologies to support consumers and maintain the U.S. food system as the healthiest and most affordable in the world. FMI shares the goal of protecting consumers from undisclosed, data-driven individualized pricing that exploits personal information to extract the maximum price a consumer will bear.

Technology is moving quickly and new challenges like the deployment of artificial intelligence can seem freighted with uncertainty. However, these same tools are creating new opportunities for consumers to become more knowledgeable and businesses to become more efficient. For the food retail industry, these two goals are complementary and hold the promise of increasing competition, helping to control costs, and lowering prices for consumers. But for these tools to flourish, artificial constraints based on incorrect facts or doom-scrolled scenarios need to be avoided in favor of thoughtful, fact-based engagement.

As noted above, should the Commission develop a final statement, it should not sweep in established grocery pricing practices, customer loyalty programs, waste-reduction markdowns, and price-accuracy technology. Again, thank you for your consideration of these comments.

Sincerely,

Christine Pollack

Christine Pollack
Vice President, Government Relations

[10] *Perez v. Mortgage Bankers Association*, 575 U.S. 92 (2015); Kisor v. Wilkie, 139 S. Ct. 2400, 2415–18 (2019)