NACS

Advancing Convenience & Fuel Retailing | convenience.org

September 25, 2026

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

Re: Docket ID FTC-2026-1057-0001 – Federal Trade Commission's Proposed Enforcement Policy Statement Regarding Personalized Pricing

Dear Chairman Ferguson:

I am submitting these comments on behalf of the National Association of Convenience Stores ("NACS") to share our views on the Federal Trade Commission's ("FTC's" or "Commission's") Proposed Enforcement Policy Statement Regarding Personalized Pricing ("Proposed Statement").[1] NACS shares the Commission's commitment to protecting consumer privacy and ensuring that businesses do not engage in deceptive or unfair conduct. We agree that consumers should not be misled about pricing practices, and we support enforcement against businesses that use personal information to charge consumers higher prices in a deceptive manner. However, the Commission's proposal appears to conflate individualized price increases with commonplace and consumer-beneficial discounts, rewards, and loyalty programs that have long been a feature of competitive retail markets. The Proposed Statement would benefit significantly from clearer definitions and greater recognition of how pricing and promotions operate in the real world in ways that enhance competition.

I. Background on the Convenience and Fuel Retailing Industry and on NACS

NACS is an international trade association representing the convenience store industry, which includes nearly 152,000 stores across the United States.[2]

The convenience and fuel retailing industry has become a fixture in American society and a critical component of the nation's economy. In 2025, the industry employed approximately 2.74 million employees and generated $817.5 billion in total sales, representing approximately 2.66% of U.S. Gross Domestic Product.

[1] *Federal Trade Commission's Proposed Enforcement Policy Statement Regarding Personalized Pricing*, hereinafter "Proposed Statement"
[2] Background data on NACS comes from the NACS State of the Industry Annual Report of 2025 (available at NACS State of the Industry Enterprise | NACS).

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The industry, however, is truly an industry of small business. More than 60% of convenience stores are single-store operators. Less than 0.2% of convenience stores that sell gas are owned by a major oil company and about 4% are owned by a refining company. More than 95% of the industry, then, are independent businesses.

Members of the industry process more than 160 million transactions every single day, the equivalent of serving about half of the U.S. population. In fact, 93% of Americans live within 10 minutes of one of our industry's locations. These businesses are particularly important in urban and rural areas of the country that might not have as many large businesses. In these locations, the convenience store not only serves as the place to get fuel but is often the grocery store and center of a community.

II. The FTC Should Establish a Precise, Operable Definition of "Personalized Pricing"

The Proposed Statement does not provide a sufficiently precise or operable definition of "personalized pricing." Without such a definition, the phrase could be read to include any offer that varies across consumers, including a coupon or discount selected for a group of customers based on purchasing behavior. This lack of clarity is particularly consequential because the Proposed Statement explicitly suggests that the Commission will take an "aggressive" enforcement posture, while at the same time acknowledging that the extent of personalized pricing and its effects on consumers are not well understood.

Other similar terminology has been used to describe digital pricing practices that are perceived by consumers, policymakers and regulators as predatory, unfair, or deceptive. Numerous states have recently passed laws that use terms such as "algorithmic pricing," "dynamic pricing," and "surveillance pricing," that are not well defined and can cause confusion for businesses and their customers alike. For instance, California's *Assembly Bill 325* outlaws "common pricing algorithms," Maryland's *Protection from Predatory Pricing Act* focuses on restrictions around "dynamic pricing," and both New Jersey's *Fair Price Protection Act* and New York's pending *One Fair Price Act* prohibit "surveillance pricing."[3] To make matters worse, these state laws also vary by industry application, product, disclosure duties, exceptions, enforcement mechanisms, remedies, and effective dates.[4] This patchwork of state laws and their varying definitions, prohibitions, and disclosure requirements creates myriad unintended consequences and confusion for well-intended businesses.

Given these circumstances, it is of paramount importance that the FTC establish a precise and operable definition for "personalized pricing" so that businesses have a clear understanding of what this practice means and when they may be encroaching upon an unfair or deceptive trade practice in the eyes of the Commission. Such a definition will also allow Congress, the states, and other enforcement authorities to create a uniform and enforceable framework that is workable for Main Street businesses and avoids potential confusion for consumers.

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[3] *Algorithmic Pricing Under Fire: State Restrictions on Personalized and Surveillance Pricing*, Greenberg Traurig LLP, September 3, 2026 [available at https://www.gtlaw.com/en/insights/2026/9/algorithmic-pricing-under-fire-state-restrictions-on-personalized-and-surveillance-pricing]

[4] Id.

III. The Proposed Statement Should Clearly Distinguish "Personalized Pricing" from Consumer Discounts

Despite leaving the term "personalized pricing" undefined, the Proposed Statement is principally concerned with businesses setting unique prices for individual consumers based on the personal information it collects and resulting estimates about the highest amount an individual consumer is "willing to pay." But this concern is not reflected in how the convenience store industry, or any other Main Street business of which we are aware, actually operates in today's economy.

NACS members and Main Street businesses generally do not use personal information to determine the base price of products. Instead, a diverse array of well-known factors, very much outside the control of small businesses, have the biggest impact on how market prices are determined. Such factors often include wholesale prices set by manufacturers or other producers, the terms and length of supplier contracts, complex global supply chain dynamics and transportation costs to get goods to market (which increase with the cost of diesel fuel), seasonality affecting the supply and demand for consumer goods and services, and other regulatory frameworks and relevant geopolitical circumstances.

Once retailers take into account these ever-changing market conditions, they establish the base prices that are typically seen on the shelf and then use loyalty or rewards programs, digital coupons, and promotions to provide discounts to groups of consumers who may find particular product offers valuable. Many convenience store brands typically administer a combination of rewards, digital coupons, fuel-related promotions, category offers, win-back campaigns, and other promotions through voluntary loyalty programs. The information collected through these affirmative consent-based programs generally includes some combination of purchase history, loyalty status, redemption history, visit frequency, engagement, preferences, and customer-provided location data. The ways in which this data is collected and processed are disclosed within the terms and conditions of a company's loyalty program or privacy policy in accordance with varying state and federal data privacy and consumer protection laws.

It is critical to note here that consumer data itself does not determine the prices of the discounts or rewards being offered. Instead, that data is used to decide which new or existing offers are relevant to or likely to be most desired by a segment of consumers, as well as where and how to market and deliver them. And, the value is always delivered as a reward or discount, not as a higher, targeted price. Consumers therefore receive savings opportunities tailored to their interests and preferences, while the publicly available base price remains for customers who do not participate in the loyalty program or checkout purchases as "guests" online. From this perspective, these savings opportunities are not very different from traditional coupon offers whereby consumers receive coupons in newspaper circulars or through direct mail and select the ones they want to redeem to achieve savings. These programs have been an accepted part of the retail landscape in the United States for nearly 150 years.[5]

Finally, the FTC should not conflate customer rewards or discounts with a potential

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[5] See "How Americans Started Clipping Coupons," by Yara Simon, History (May 27, 2025) (available at How Americans Started Clipping Coupons | HISTORY).

"surcharge" on non-members. Retailers set publicly available base prices in response to market conditions and competition from nearby businesses, not by inflating prices to accommodate loyalty programs. In other words, a customer who does not participate pays the same competitive market price that would apply if the loyalty program did not exist, while program members receive an additional discount. Fuel rewards illustrate this distinction particularly well because highly visible street prices are disciplined by intense local competition, and loyalty programs further reduce that competitive price rather than establish a higher one for non-members.

IV. Consumers Understand and Value Loyalty and Rewards Programs, and Those Programs Should be Preserved

Another core premise of the Proposed Statement is that consumers reasonably expect that “the price on the shelf” is the same price available to every customer shopping at the same time.[6] But while consumers very clearly expect that common shelf prices in-store do not change based on their personal identity, they also routinely understand that coupons, membership discounts, loyalty programs, app-based discounts, and accumulated rewards provide additional savings opportunities to participating customers.

American consumers have long encountered a marketplace featuring loyalty, rewards, and membership programs; manufacturer and store coupons; segmented discounts for seniors, members of the military, students, employees, or bulk purchases; other promotional rebates or bonus offers; and, more recently, app-based electronic discount and coupon offers that all seek to increase the amount of goods and services purchased by customers. Just because these programs are administered through digital channels today rather than through the mass-mailed catalogs of yesterday does not mean that consumers do not understand, accept, and desire these offers. Prohibiting them would upend a central piece of the U.S. consumer economy and serve only to pretend that modern technology should not exist as a medium to provide discount offers to consumers.

The affordability challenges facing American households make preserving discounts and savings opportunities critical. Across the nation, consumers continue to face significant pressure from rising costs for housing, food, energy, healthcare, transportation, and other necessities. Families are increasingly price-sensitive and actively seek discounts wherever possible. Loyalty programs, coupons, promotions, and other technology-enabled savings tools help consumers stretch their budgets and manage household expenses. Restricting the ability of retailers to administer and offer these programs through electronic means would have the unintended consequence of reducing access to discounts at precisely the moment when many families need them most.

Furthermore, loyalty programs are immensely popular. Industry research shows that consumers actively participate in numerous loyalty programs and view them as valuable.[7] In fact, a survey from Ernst & Young indicated that 92% of consumers are enrolled in at least one

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[6] Proposed Statement at p.2

[7] *The Bond Loyalty Report 2024 press release*, published by Bond Brand Loyalty, Inc., July 25, 2024.

loyalty program and nearly 50% are enrolled in five or more such programs.[8] These programs are also inherently privacy protective because participation is voluntary and requires an affirmative consent from consumers who wish to receive discounts and rewards. Customers who choose not to participate can purchase products without enrolling in a loyalty program and, of course, are free to shop elsewhere altogether.

Experience with these programs demonstrates that consumers do not have questions or concerns about how discount prices are determined. Instead, common questions relating to loyalty programs generally concern points-accumulation, reward redemption, expiration dates, or other program mechanics. An enforcement approach that creates uncertainty around providing discounts could chill the use of loyalty programs and deprive consumers of savings they actively seek.

We therefore respectfully urge the Commission to expressly state that the following practices do not constitute "personalized pricing" solely because personal information is used to determine eligibility to participate in or receive them or simply which customers should receive one type of offer rather than another:

- Loyalty rewards programs;
- Digital coupons;
- Promotional offers;
- Fuel rewards;
- Audience-segmented discounts;
- Customer retention campaigns;
- Geographically targeted discounts;
- Bonus offers;
- Rewards points programs; and
- Similar programs that reduce, rather than increase, the otherwise available "base" or market price.

V. Retail Competition Limits Any Ability to Engage in Harmful Pricing Practices

Notably, the Proposed Statement acknowledges that "real-world personalized pricing would be less than perfect in its ability to identify consumers and determine their willingness to pay and, in the vast majority of circumstances, would have to contend with competitive pressures that limit pricing power."[9] We couldn't agree more. Convenience retailers operate in highly competitive markets where consumers can readily compare prices and choose alternatives. This is particularly true in fuel retailing, where the price for a gallon of gas appears on large signs visible by passing motorists from long distances.

Approximately 40 million Americans purchase fuel every day, and convenience stores sell roughly 80 percent of the fuel purchased in the U.S. Fuel retailers compete aggressively on

[8] "2025 EY Loyalty Market Study" EY at 3 (available at https://www.ey.com/content/dam/ey-unified-site/ey-com/en-us/campaigns/cmo/documents/ey-loyalty-market-study-2025.pdf).
[9] Proposed Statement at p.4

price, particularly because fuel sales primarily drive traffic rather than profits. Approximately 90% of the cost of a gallon of gasoline is determined before the retailer takes possession of the fuel, and retailers generally earn a pre-tax net of only 10 to 20 cents per gallon after operating expenses, including credit card swipe fees, are considered.

Consumers are highly sensitive to fuel prices—in fact, they have effectively become one of the key barometers for the overall health of the U.S. economy. Seventy-two percent of consumers report that price is the primary reason they choose a fueling location, and nearly 70% of consumers are willing to drive out of their way to save only a few cents per gallon. These competitive realities make convenience retailing an unlikely venue for the type of individualized price discrimination described in the Proposed Statement.[10] Retailers that attempt to raise prices above market levels quickly lose customers to competing businesses located down the street. Convenience stores can only succeed by offering value, discounts, and promotions that attract repeat customers, not by exploiting them with higher, individualized prices.

In-store retailing has similar dynamics. While those prices typically cannot be seen from the street, there is fierce price competition among retailers of all sorts for market share. That competition keeps retail profit margins notoriously low—typically in the range of 3% or less.

The truth is that personalized pricing in brick-and-mortar retailing does not seem to exist. There are many discounts and promotional offers, but those appear to be nearly universally available to groups of customers—not just to single individuals.

VI. Disclosure Requirements Should be Practical and Workable

The Proposed Statement also suggests that businesses should disclose not only that prices are personalized, but also the basis for personalization and the types of data used.[11] For pricing practices that genuinely constitute personalized pricing, disclosure may be appropriate. Yet the proposal provides little guidance regarding when disclosure is required, where it must appear, how detailed it must be, or whether disclosures contained in privacy policies, loyalty program terms, apps, or other program materials are sufficient.

The Commission should also consider the practical limits of what a disclosure framework might look like, particularly in settings where individualized pricing has long been a recognized feature of commerce. In markets such as automobile sales, flea markets, and other negotiated transactions, prices often reflect a fluid mix of bargaining, inventory, timing, competing offers, and customer-specific circumstances. Even when consumers understand that prices may vary, it

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[10] The Proposed Statement raises the Fair Credit Reporting Act as an example of where consumer disclosure is required under certain circumstances. However, we would note here that personalized pricing may be occurring in the financial lending space, potentially across a range of loan-based products, including credit cards. Lending rates are based on personal data such as a credit score and the way that is done is opaque to most consumers, yet also clearly accepted as a common practice by consumers and regulators alike. There is also credible evidence that financial institutions have actively devalued their credit card rewards programs. See CFPB Report Highlights Consumer Frustrations with Credit Card Rewards Programs | Consumer Financial Protection Bureau. To this end, NACS respectfully urges the Commission to work with banking regulators to ensure that financial institutions are not making price determinations based on individuals' personal data that could be considered unfair or deceptive.

[11] Proposed Statement at p.6

would be difficult to provide an intelligible disclosure in advance explaining all the factors that could influence the final purchase price. So, in situations in which it is accepted practice that pricing becomes individualized and context-dependent, disclosures may become less practical and less informative. Recognizing and defining those situations should be part of any approach to the issue of personalized pricing.

Finally, we would note that there are often many factors that determine which promotions are shown to a particular customer participating in a loyalty program, including third-party manufacturer inventory, marketing campaigns, consumer preferences, purchase history, or analytical tools. Requiring businesses to disclose every factor influencing every promotional offer could result in lengthy, confusing notices that provide little practical benefit to consumers. The Commission should therefore focus on what meaningful disclosure standards look like and how to implement them so that businesses and consumers alike can have clarity and consistency in this space. If loyalty programs become a risk to run, retailers will back off and stop them or heavily curb them in order to protect the core business, which ultimately leaves consumers paying higher prices, trading down in quality to a lower-priced product, or just foregoing their preferred products all together.

VII. The FTC Should Not Enforce Against Practices with Limited Evidence

The Commission itself acknowledges that "the extent to which businesses currently use personalized pricing is not well understood, and the effects of personalized pricing on consumers are unclear."[12] That is right because this is a concept in search of actual evidence in the physical world. Given this uncertainty about the concept and its existence, NACS is concerned by the Proposed Statement's aggressive enforcement posture and the suggestion that broad new disclosure obligations could be imposed across retail sectors without a stronger factual basis that personalized pricing is occurring and deceptive or unfair. Where harmful conduct exists, existing consumer protection laws, antitrust laws, anti-discrimination laws, and privacy laws should be vigorously enforced. But the Commission should avoid creating ambiguity that sweeps in longstanding promotional practices that benefit consumers and have operated successfully for decades. And, the Commission might consider establishing some type of safe harbor mechanism for well-intended businesses striving to comply with any future regulations in this space.

Furthermore, NACS respectfully urges the Commission to avoid suggesting that the mere use of personal data, the mere existence of differing discounts, or the absence of a detailed explanation of how discounts are offered by themselves establish deception or unfairness. The FTC's Section 5 authority requires an assessment of the challenged representation, omission, or practice, consumer expectations, materiality, consumer injury, and countervailing benefits. Loyalty programs and targeted discounts produce direct consumer benefits that must not be overlooked in that analysis, and there should be more criteria required to determine whether a pricing practice is deceptive or unfair rather than presuming harm from audience segmentation itself.

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[12] Proposed Statement at p.3

VIII. Conclusion

NACS supports the Commission’s goal of protecting consumers from hidden, data-driven price increases and urges the Commission to find evidence of those things actually occurring. At the same time, the Commission should not blur the line between increasing a consumer’s base price and using personal data to deliver a discount, reward, or promotion to consumer groups or segments. As such, the Proposed Statement has a number of shortcomings that must be addressed before the Commission pursues enforcement in this space, particularly with respect to establishing a foundational yet precise definition of “personalized pricing,” distinguishing between price-setting and audience selection, creating an express exclusion for loyalty and other rewards or discount programs, and providing more detailed guidance on consumer disclosures and a compliance safe harbor. NACS appreciates the opportunity to comment and would welcome continued engagement with the Commission on these issues.

Sincerely,

Brennan Duckett
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National Association of Convenience Stores