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# Subscription Shake-Up: Navigating the FTC's Click-to-Cancel Rule

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In October 2024, the Federal Trade Commission ("FTC") updated its 1973 Negative Option Rule to address unfair and deceptive online subscription practices. *See* 16 C.F.R. § 425 (2024) (the "Negative Option Rule" or the "Rule"). The Rule sparked significant debate, with the original proposal garnering over 16,000 comments. Following some revisions based on this feedback, the Rule went into effect in January 2025. Originally slated for enforcement on May 14, the FTC announced on May 9 that enforcement would be deferred by 60 days, giving businesses until July 14, 2025 to review and comply. This post outlines key aspects of the updated Rule and how companies can reduce legal and reputational risk.

Who Does the Rule Affect: The Negative Option Rule, also known as the "Click-to-Cancel Rule", implements certain requirements for businesses offering subscription or recurring billing programs. This includes, for example, businesses that offer automatically renewing contracts and subscriptions (e.g., monthly or annual streaming services), free trials that transition into paid subscriptions, and continuity plans with recurring shipments.

How the Rule Works: The Rule outlines four main requirements:

- *Prohibition on Misrepresentation*: Businesses must not mislead consumers regarding any material fact when marketing negative option features. This includes misleading claims about pricing, cancellation terms, trial periods, or subscription details. 16 C.F.R. § 425.3.
- *Clear and Conspicuous Disclosures*: Before obtaining billing information, sellers must clearly and conspicuously disclose all material terms, including the frequency of the recurring payment, the amount they will be charged, and cancellation information. These disclosures must appear immediately before the request for affirmative consumer consent. 16 C.F.R. § 425.4.
- *Affirmative Consumer Consent*: Sellers must obtain express informed consent for negative option programs and their material terms. This consent must be separate from other general terms and conditions and must be express (e.g. a checkbox that the consumer needs to affirmatively check). It cannot be inferred through pre-

checked boxes, silence, or inactivity. 16 C.F.R. § 425.5.

- *Simple Cancellation Process*: Cancellation must be as easy as the sign-up process. If a consumer can sign up online, they must also be able to easily cancel online, such as via an easy to find, clearly labeled "Cancel Subscription" button. 16 C.F.R. § 425.6.

Interaction with State Law: Businesses should also monitor state laws related to negative option and auto-renewal programs. The FTC permits states to implement broader protections, and some have incorporated provisions that were not adopted at the federal level. For example, the California Automatic Renewal Law (effective July 1, 2025) requires businesses to send annual reminders of subscription auto-renewals. Minnesota's Updated Automatic Renewal Law (effective January 1, 2025) also mandates annual renewal reminders, and prohibits sellers from presenting additional "save" offers during the cancellation process.

Consequences for Non-Compliance: The stakes for ignoring the FTC's Negative Option Rule can be high. The FTC can impose a penalty of $53,088 per violation, with single transactions potentially accruing multiple fines. Additionally, the FTC may seek court injunctions or consumer refunds, which can be costly and cause reputational harm. Class actions alleging deceptive auto-renewal practices have also been popular in recent years, and are often premised on alleged failures to comply with FTC negative option requirements or related state laws.

Looking Ahead: The FTC has demonstrated a strong commitment to enforcing consumer protection laws related to negative option programs. Even before the updated Click-to-Cancel Rule, the agency pursued enforcement actions against companies that it alleged failed to secure clear consumer consent or made cancellation excessively difficult. Note that the FTC is currently defending a legal challenge to the updated Click-to-Cancel Rule in the Eighth Circuit, with oral argument set for June 10, 2025. However, absent an adverse ruling in that case before July 14, the new Rule remains set for enforcement beginning on that date.

Businesses should be prepared for continued scrutiny and enforcement efforts in this area, as well as the possibility of an uptick in related class actions.  Proskauer has extensive experience advising clients on compliance with both federal and state laws governing negative option and auto-renewal programs. Our team helps clients implement clear and conspicuous disclosures, obtain valid affirmative consent, and design compliant cancellation processes. In addition, Proskauer regularly defends companies facing FTC investigations, state attorney general enforcement actions, and private litigation. Our renowned Class Action Defense Team are leaders in representing clients in high-stakes consumer protection class actions, including those involving automatic renewal and subscription practices.

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