

ALERT

FTC Adopts Final “Click-to-Cancel” Rule with Requirements for Recurring Subscriptions

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Introduction

On October 16, 2024, the Federal Trade Commission (FTC or Commission) announced its adoption of a final “click-to-cancel” Rule that regulates both sign-up and cancellation processes for subscriptions or other recurring charges. In particular, the Rule requires companies to make cancellation methods for subscription services or other recurring charges as easy as it was when the consumer signed up. The Rule adds to existing requirements that apply to certain online subscription services, including under the Restore Online Shoppers’ Confidence Act (ROSCA). Certain provisions of the Rule will be effective 60 days after Federal Register publication, with the rest of the Rule effective 180 days after publication.

The FTC adopted the Rule following its March 2023 announcement of a notice of proposed rulemaking, which resulted in more than 16,000 public comments from various stakeholders. The FTC approved publication of the final Rule in the Federal Register by a 3-2 vote, with Commissioners Melissa Holyoak and Andrew Ferguson dissenting. The final Rule amends the FTC’s existing Negative Option Rule, which is much more limited in scope.

New Requirements Under the Final Rule

The Commission’s final Rule applies to services with “negative option” features, in which a customer’s lack of affirmative action or silence is treated as acceptance or continuing acceptance of an offer. These include automatically renewing subscriptions or membership programs, continuity plans, and “free trial” offerings that convert to

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FTC and Consumer Protection

paid services.

The final Rule will prohibit sellers of such negative option programs from:

- (1) Misrepresenting any material fact made while marketing goods or services with a negative option feature;
- (2) Failing to clearly and conspicuously disclose all material terms – including specific information outlined in the Rule – prior to obtaining a consumer’s billing information in connection with a negative option feature;
- (3) Failing to obtain a consumer’s express informed consent to the negative option feature before charging the consumer; and
- (4) Failing to provide a “simple mechanism” to cancel the negative option feature, avoid charges, and immediately stop any recurring charges.

The “simple cancellation” requirement has a number of prescriptive elements. These requirements depend on whether cancellation is obtained by (a) “Interactive Electronic Medium,” (b) telephone call, or (c) in-person.

- (1) For cancellation by Interactive Electronic Medium, the simple cancellation mechanism must be “easy to find” when the consumer requests to cancel. An “Interactive Electronic Medium” is defined as “any electronic means of communicating (except via telephone calls), including Internet, mobile application, text, chat, instant message, email, software, or any online service.” Consumers must not be required to interact with a live or virtual representative to cancel if the consumer did not do this to consent to the negative option feature.
- (2) For cancellation by a telephone call, the seller must promptly effectuate cancellations requested by the consumer via a telephone number that is answered or records messages, is made available during normal business hours, and is not more costly to use than the telephone call the consumer used to consent to the negative option feature.
- (3) For cancellation of consent obtained in person, the negative option seller must (a) offer the simple mechanism through an Interactive Electronic Medium or (b) provide a telephone number. If a negative option seller offers the alternate mechanism by providing a telephone number, the seller cannot impose any “unnecessary or unreasonable” costs for the cancellation call.

Differences from the Proposed Rule

The final Rule the Commission approved differs in some ways from what was originally proposed. After evaluating public comments, the Commission removed two previously proposed requirements: (1) a requirement that sellers provide annual reminders to consumers of the negative option feature of their subscription, and (2) restrictions on sellers being able to communicate “save” offers to consumers seeking cancellation. The Commission indicated that it may seek further comment through a supplemental NPRM (SNPRM) on the “save” issue.

The final Rule also includes a severability provision and a provision allowing for requests for exemptions from the final Rule. While the final Rule provides 180 days from the date of publication to come into full compliance, certain provisions will be effective within 60 days after publication of the Rule. Specifically, provisions prohibiting sellers from misrepresentations in connection with a negative option feature and other procedural requirements will be effective within 60 days of publication of the final Rule.

Implications for Businesses

The new requirements of the final Rule add to existing requirements for subscription services under federal laws like ROSCA as well as state laws. Businesses should evaluate whether any of their services have negative option features under the law, including any subscription services or “free trials,” and evaluate disclosures, sign-up processes, and cancellation options. For cancellation options, businesses should closely evaluate whether processes are sufficiently “simple,” including the relative time and burden required to cancel in relation to sign-up options, and make any changes before the Rule is effective. Once the Rule is effective, the FTC can seek civil penalties for violations.

Our FTC Regulation practice advises companies on regulatory compliance and represents companies in responding to FTC requests and advocating before the agency. Please reach out to any of the authors with questions.