

ALERT

With “Click-to-Cancel” Rule Now Vacated by 8th Circuit, What’s Next for FTC?

July 15, 2025

The U.S. Court of Appeals for the Eighth Circuit on July 2 issued a decision vacating the Federal Trade Commission’s (FTC) revised Negative Option Rule, which the previous Administration called the “Click to Cancel” Rule. After enforcement delays from the current FTC, the Rule was set to come into full effect on July 14, 2025. Although the court’s decision impacts FTC enforcement of the rule, other similar federal and state laws still apply in this area – including the Restore Online Shoppers Confidence Act (ROSCA), which the FTC continues to enforce.

The court vacated the rule for procedural reasons without addressing the substantive merits.

The parties challenging the Rule advanced three arguments: the FTC failed to satisfy a procedural requirement by declining to conduct a preliminary regulatory analysis during the rulemaking process, the Rule exceeded the scope of the FTC’s statutory authority, and the FTC acted arbitrarily and capriciously in issuing this Rule. The court only addressed the FTC’s procedural failures and did not reach the more substantive questions. The court agreed with the petitioners that the FTC should have conducted a preliminary regulatory analysis, which is required for FTC rulemakings with an economic impact exceeding \$100 million. According to the court, this failure impacted participation in the rulemaking by businesses and other interested parties. The court also noted that the FTC’s Commissioners voted to forgo the preliminary regulatory analysis even after the Administrative Law Judge overseeing the rule issued a contrary decision, which the court heavily quoted.

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FTC Regulation

What’s next for the FTC on negative options, subscriptions, and auto-renewals?

Moving forward, the FTC has a number of options, and it could pursue them in parallel: it can further appeal the court’s opinion, restart the rulemaking process, and/or bring similar enforcement actions as it would under the Rule under different statutory authorities.

In evaluating whether the FTC would appeal the Eighth Circuit’s opinion or restart the rulemaking process, it is notable is that two of the FTC’s three current Commissioners initially voted against adopting the rule. Commissioner Holyoak, in her dissent from the original Rule, argued that the rulemaking process was improper and also overbroad. And Chairman Ferguson has been vocal in emphasizing that the FTC should prioritize enforcement rather than rulemakings.

On the enforcement side, the FTC’s primary enforcement tool in this area has been ROSCA, which requires that companies selling services online using negative options provide clear and conspicuous disclosure of all material terms, obtain express informed consent from consumers enrolling in the negative option plan, and provide a “simple” cancellation method. The FTC has repeatedly brought actions under ROSCA. Under the previous Administration, the FTC took the position that ROSCA’s requirement to provide clear and conspicuous disclosure of material terms applied to all material elements of a transaction, not just those related to negative options. Current FTC leadership has indicated it will continue this approach. And ROSCA authorizes the FTC to pursue civil penalties of up to \$53,088 per violation.

In addition to ROSCA, the FTC has two other tools related to negative option marketing. For any transactions that occur through telemarketing, the FTC’s Telemarketing Sales Rule has disclosure and consent requirements similar to ROSCA. The FTC has also brought claims under the FTC Act in negative option matters.

State laws also present compliance challenges and enforcement risk.

Along with federal requirements, many states also have auto-renewal laws that add additional regulatory requirements beyond those imposed by the Click to Cancel Rule. For example, many states require yearly notices before annual subscriptions renew. Other states, including California, impose requirements around methods of cancellation. And at least one state, Minnesota, has begun regulating how companies may offer discounts or incentives to retain customers seeking to cancel services. Many state laws regulating cancellation of automatic renewals also include a private right-of-action.

Wiley’s FTC Regulation Practice has substantial experience advising and representing clients in matters related to the Click-to-Cancel Rule, ROSCA, and subscription services. Our team routinely advises on regulatory compliance and represents companies in responding to FTC requests and advocating before the agency. Please reach out to either of the authors with questions.

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