Click-to-Cancel

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The Federal Trade Commission (FTC) issued a new rule (89 Fed. Reg. 90476; 16 C.F.R. Part 425) governing negative option features, like subscription or membership agreements with automatic renewal and recurring payment options. The rule, nick-named "click-to-cancel," requires sellers to clearly and conspicuously disclose the material terms of any negative option plan for the sale of goods or services before consumers subscribe. The rule also requires that companies make canceling a subscription as easy as it is to sign up and provide a cancellation mechanism in the "same medium" offered to sign up. The rule took effect on January 14, 2025, however, regulated entities have until July 14, 2025 to comply, unless a federal court or the new FTC administration delays enforcement.

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This will have a far-reaching impact on businesses that utilize electronic forms to automatically enroll and/or subscribe, use “check boxes” to sign up, and electronically process recurring payments. From gym or tanning salon memberships to music streaming or recurring food service or magazine subscriptions, these transactions commonly include some negative option features. Negative option sellers should carefully evaluate their current marketing, user interfaces and cancellation practices to ensure compliance with the rule. The below provides information on the rule and guidance on ensuring compliance for businesses.

Scope

The requirements of the click-to-cancel rule apply to any form of negative option program in any media, including, but not limited to, internet, telephone, print, and in-person transactions, and in the context of both business-to-individual and business-to-business transactions.

A negative option feature is a provision of a contract under which the consumer’s silence (or failure to take affirmative action to reject a good/service or to cancel the agreement) is interpreted by the seller as acceptance or continuing acceptance of the offer.

Four types of negative option features are covered by the rule:

1. **An automatic renewal** – Sellers automatically renew consumers’ subscriptions when they expire, unless consumers affirmatively cancel the subscriptions.
2. **A continuity plan** – Consumers agree in advance to receive periodic shipments of goods or provision of services which they continue to receive until they cancel the agreement.
3. **A free-to-pay conversion or fee-to-pay conversion** – Consumers receive goods or services for free (or at a nominal fee) for a trial period. After the trial period, sellers automatically begin charging a fee (or higher fee) unless consumers affirmatively cancel or return the goods or services.
4. **A pre-notification negative option plan** – Sellers provide periodic notices offering goods to participating consumers and then send—and charge for—those goods only if the consumers take no action to decline the offer.

Key Compliance Requirements

Disclosures

Sellers must disclose the material terms of a negative option offer including the existence of the negative option offer and how to cancel the offer. These required material term disclosures must be clear and conspicuous, must stand out from other elements, and be readable and understandable by the average consumer.

Four specific material term disclosures are enumerated by the rule: (1) the charges will be recurring unless the consumer takes action to cancel and, for trials, that charges will increase after the trial period, (2) the deadline to cancel to avoid charges, (3) the amount to be billed and frequency of the recurring charges, and (4) how to find the cancellation mechanism.

These required disclosures must appear immediately adjacent to the means of recording the consumer's consent, but prior to obtaining billing information from a consumer.

No Misrepresentations

Further, sellers cannot make any material misrepresentations regarding any portion of the transaction. Sellers must avoid misrepresenting any "material fact," meaning those likely to affect the consumer's buying decision.

Consent

Sellers must obtain the consumer's "unambiguously affirmative consent" to the negative option feature – separate from other elements of the agreement.

For written offers (including online), the rule states that businesses will be deemed in compliance if consent is obtained via a checkbox, digital signature or other "substantially similar method," which the consumer actively selects or signs to accept the subscription – separately from other aspects of the transaction.

Sellers should avoid including any information that could interfere with the consumer's ability to provide informed consent. And sellers must maintain a record of the consumer's consent for at least three years or be able to demonstrate by a preponderance of evidence that subscriptions cannot happen without unambiguously affirmative consent.

Cancellation

Sellers must offer a simple mechanism for a consumer to: (1) cancel the negative option feature (i.e., "click-to-cancel"); (2) avoid being charged, or charged an increased amount, for the good or service; and (3) immediately stop any recurring charges.

At a minimum, sellers must provide a simple mechanism through the same medium the consumer used to consent to the negative option feature/subscription.

For online cancellations or those through a mobile app, a simple cancellation method must be easy to find, and sellers must not require interaction with a live or virtual rep (e.g., chatbot) if no such interaction was required to consent.

In order to consent to the negative option or otherwise enroll in a subscription feature, the cancellation mechanism must appear immediately adjacent to the means of first recording the consumer's consent, and prior to where the seller obtains billing information from a consumer. Although the rule makes no mention of authentication, presumably requiring a user to log in before accessing the cancellation process is likely acceptable, so long as this doesn't create an unreasonable barrier to cancel. Surveys, incentives or other advertising deflections are allowed, although aggressive tactics that create barriers to cancel are prohibited.

For telephone cancellations, sellers should make available a number to answer or record messages during normal business hours, and ensure a call to this number is no more "costly" than the call used to consent to the subscriptions. All cancellations should process promptly. For consent obtained in-person, an in-person cancellation option should be provided.

No Preemption of State Laws

The rule does not preempt any state laws which require higher protection for consumers. Most U.S. states have existing automatic renewal laws or are presently slated to codify the same. Therefore, if any state laws or regulations impose additional requirements, businesses must also comply with those, which may vary in scope and across states.

For questions about click-to-cancel or to learn about Clark Hill, email Lindsay at lfouse@clarkhill.com.

Meet Lindsay

LINDSAY S. FOUSE-HOPKINS is a Clark Hill partner and nationally recognized trial attorney, leading high-stakes litigation, pro bono advocacy, and advancing women in law and business.