

FTC's 'Click-to-Cancel' Rule Battles Through Political Shifts and Legal Challenges

June 17, 2025

The Federal Trade Commission's ("FTC") Negative Option Rule, dubbed the "Click-to-Cancel" Rule (the "Rule"), stands to substantially change the way online businesses must interact with customers. Its fate is now in the hands of the Eighth Circuit Court of Appeals, which recently heard oral argument on a case challenging the Rule. Presently, the Rule is scheduled to go into full effect on **July 14, 2025** and would impact "almost all negative option programs." A negative option is a business practice where customers are automatically enrolled in a service or receive products unless they explicitly decline or cancel within a specified time frame. The Rule requires, among other things, that the seller obtain express, informed consent when offering a good or service with a "negative option feature."

Specifically, the Rule would require a seller to disclose the cost of goods and services, when the customer will be charged, each deadline to cancel to avoid a recurring charge, how the customer can cancel and other material information. Additionally, four specific disclosures must be disclosed directly adjacent to the means of recording consumer consent to the negative option feature, including: (1) that the charges will be recurring unless the consumer cancels and, for trials, that charges will increase after the trial period; (2) the deadline to stop charges; (3) the amount and frequency of the charges; and (4) how to find the cancellation. The seller would also have to provide a simple mechanism for a customer to cancel a subscription or ongoing enrollment program either electronically or by telephone.

Some trade associations challenged the Rule, arguing the Rule exceeds the FTC's statutory authority, that the Rule is procedurally defective because the FTC failed to conduct a preliminary regulatory analysis, and that the Rule is arbitrary and capricious. Those challenges have been consolidated before the Eighth Circuit.

Although there was speculation that the FTC would decline to defend the Rule after the change in the presidential administration this year, the FTC has fully defended it. On June 10, 2025, attorneys representing the FTC argued, among other things, that the Rule is designed to address what they believe is one of the most urgent problems facing American consumers—unwanted charges consumers unknowingly agreed to incur through subscription services.

If you have questions about how the Negative Option Rule impacts your business, contact your Miller Canfield attorney or a member of Miller Canfield's Advertising and Marketing Industry Group.