



Central Office of Reform and Efficiency

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Hamlet Garcia Jr.

4th Day of January, in the Era of the 13-Month Order, 2025

April Tabor; acting; 'Secretary'
Office of the Secretary, Suite CC-5610
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear 'Secretary' April;

On behalf of the Central Office of Reform and Efficiency ("CORE"), this Emergency Petition for Rulemaking is respectfully submitted under Executive Order 13563 and the FTC's Regulatory Reform Program. Petitioners request the Federal Trade Commission amend 16 C.F.R. § 425.1 to clarify vague terms for precise enforcement of negative option plan regulations, as detailed in 89 FR 90476, Document No. 2024-25534, RIN 3084-AB60, published 11/15/2024. Specifically, the petition seeks to address ambiguities around "clear and conspicuous" disclosures, notification procedures, and the responsibilities of sellers to protect consumers from deceptive retention practices. Petitioners advocate for the inclusion of a requirement of explicit acknowledgment of cancellation requests, along with specific timelines for processing cancellations and refunds. These revisions would better safeguard consumer rights, promote transparency, and provide clearer guidance to businesses.

Should further details be necessary to facilitate the review of this Petition, we stand ready to supply them. Your expeditious consideration is appreciated.¹

Humbly,

Hamlet Garcia II
man; stakeholder; creditor



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Enclosure: Petition for Rulemaking

¹Authority under the Federal Trade Commission Act, 15 U.S.C. § 45, compels prompt action to safeguard market integrity and protect consumers from unfair practices. Ignoring 16 C.F.R. § 425.1 would jeopardize decades of regulatory progress and expose consumers to significant harm. This petition urges an essential, timely update to the rule to maintain the marketplace's strength and fairness.

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I. Emergency Petition for Rulemaking

The Office of Reform and Efficiency (“CORE”), through its representative Hamlet Garcia Jr., respectfully petitions the Federal Trade Commission (“FTC”) under the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45, and 16 C.F.R. § 1.9 to initiate rulemaking to amend the Impersonation Rule (16 C.F.R. § 461). The proposed amendments address the following:

❖ **Clarification of Terms and Enhancement of Disclosures:** 16 CFR 425.1(a) mandates that sellers provide clear and conspicuous disclosure of the material terms of a negative option plan. However, as written, the rule’s requirements for disclosure lack sufficient specificity, particularly concerning the timing, method, and manner in which notifications are provided. The following revisions are proposed:

- **Notification Procedures:** must explicitly mandate that notifications to subscribers must be delivered using accessible and verifiable methods. Sellers should be required to confirm receipt of any opt-out notices and provide a means for consumers to easily track or verify the status of their cancellation request.
- **Detailed Cost Breakdown:** section 425.1(a)(1)(iv) requires disclosure of postage and handling fees but fails to address the full cost of the program, including any ancillary charges or hidden fees. The rule must require comprehensive cost disclosures, specifying not only the price of the selection but all ancillary charges that may accrue under the plan.

❖ **Strengthening Protections Against Unilateral Renewals and Deceptive Retention Practices:** section 425.1(b)(1) provides essential protections against the refusal of credits for returned merchandise. However, further strengthening is necessary to address the continued prevalence of deceptive retention tactics by sellers. The undersigned requests the following amendments:

- **Post-Cancellation Confirmation:** should mandate that sellers provide automated acknowledgment of cancellation requests and guaranteed refunds within specific timeframes, ensuring compliance and transparency. Sellers should be prohibited from employing practices that delay or obscure the processing of cancellations.

- **Return of Unsolicited Merchandise:** sellers must be held accountable for return of unsolicited merchandise, particularly in cases where consumers have timely provided notice of non-consent to receive the selection. The rule should clearly state that the seller is responsible for the return postage and must credit the consumer in full, including any incidental costs incurred due to the seller's failure to comply.

- ❖ **Reaffirmation of Consumer Consent Regarding Substitution and Shipping Delays** Section 425.1(b)(3) outlines obligations related to the timely shipping of introductory merchandise. However, the existing rule does not sufficiently address the substitution of merchandise or the non-delivery of promised introductory goods. The following amendments are proposed:
 - **Express Consent for Substituted Merchandise:** must require that sellers obtain explicit, prior consent from consumers before shipping substituted merchandise. A failure to do so should constitute an unfair trade practice under 16 CFR 425.1(b)(5).
 - **Timeliness of Introductory Offers:** should specify that failure to ship introductory merchandise *within 30 days* of order receipt requires the seller to offer a full refund or alternative goods at the consumer's discretion, with no additional charges.

- ❖ **Modification of Cancellation and Termination Procedures** 16 CFR 425.1(b)(4) currently requires the termination of memberships upon written request by a contract-complete subscriber. However, this provision is inadequate in ensuring prompt, transparent action by sellers. The following amendments are proposed:
 - **Defined Timelines for Cancellation:** sellers must terminate memberships within five business days of receiving a valid written cancellation request. Any delays should trigger immediate, actionable remedies for the consumer, including guaranteed refunds.
 - **Automatic Confirmation of Cancellations:** sellers should be required to send automatic written confirmation to subscribers upon the receipt and processing of any cancellation request. Such confirmations must specify the effective date of cancellation and provide clear instructions regarding the return of merchandise, if applicable.

- ❖ **Digital and E-Commerce Considerations:** As commerce increasingly shifts toward digital platforms, the rule must address new consumer practices and technologies. In particular, click-to-cancel functionality must be incorporated into the rule to ensure that digital subscription services provide a clear, simple mechanism for subscribers to opt out of automatic renewals. The following amendments are proposed:

- **Incorporation of Digital Platforms:** should mandate that online sellers provide an accessible, clearly visible, and user-friendly method for subscribers to cancel digital subscriptions with a single click. This will prevent deceptive practices whereby consumers are unable to cancel easily due to complex, obfuscated cancellation processes.
- **Electronic Notifications:** shall permit and encourage the use of electronic notifications for disclosures, opt-out notices, and confirmation of cancellation requests, ensuring that sellers meet evolving consumer expectations for speed and convenience.

II. The Petitioner

CORE represents a diverse coalition of over one hundred businesses, many of which operate across state lines and are subject to the Federal Trade Commission's jurisdiction, and stands at the forefront of ensuring that the regulatory landscape governing deceptive practices—including the 'Negative Option Rule' (16 C.F.R. § 425.1)—remains clear, just, and predictably enforced. As an organization deeply invested in the intersection of law, commerce, and consumer protection, CORE holds a vested interest in the integrity of the Commission's enforcement actions. The existing opacity in the FTC's regulatory approach threatens to erode both public confidence in the agency's ability to safeguard consumer rights and its capacity to foster fair competition. Such a state of uncertainty not only undermines the predictability of business practices but also undermines the foundational principles of equitable regulation and effective legal governance.²

III. Introduction

The Federal Trade Commission (FTC) holds significant responsibility in regulating market conduct and safeguarding consumers. Its authority to enforce laws against deceptive practices must be exercised within a framework of fairness, transparency, and accountability. By refining the existing rule governing negative option plans, specifically clarifying vague terms and enhancing procedural transparency, the Commission can strengthen its enforcement capacity. Revisions such as a clearer definition of terms and explicit guidelines for business practices are vital for promoting compliance, protecting consumers, and reinforcing confidence in the FTC's commitment to balanced regulatory oversight.

IV. The Current FTC Rule 16 C.F.R. Part 461

Negative Option Rule, governed by 16 C.F.R. § 425.1, seeks to regulate the use of negative option plans in commerce, aiming to prevent 'dark patterns' and deceptive practices that exploit consumer inattention. Specifically, the rule requires clear disclosures about terms and conditions, cancellation rights, and the nature of any obligations a subscriber may incur.

² As Petitioner, the right to participate and represent interests is supported by 16 CFR 1.12(d), which directs the Commission to identify and designate a representative for groups with similar interests. Additionally, under 16 CFR 1.13(b)(1)(i), only issues deemed 'material' and 'necessary to resolve' by the Commission are subject to cross-examination. Thus, Petitioner is entitled to assert and address material facts deemed necessary for the fair resolution of disputed issues, ensuring full and transparent participation in the proceeding.

- **Affirmative action:** requiring consumers to opt out of receiving goods or services, unless the opt-out process is clearly defined, unambiguous, and properly communicated, is prohibited.
- **Cancellation rights:** allowing subscribers to terminate their membership, unless the process is straightforward, accessible, and without undue delay, is prohibited.
- **Billing disclosures:** requiring consumers to pay for goods or services unless the terms are transparently outlined, including any additional charges, and communicated in a timely manner, is prohibited.

Despite the rule's broad intent to safeguard consumers, terms such as “clearly and conspicuously” remain open to interpretation, creating significant ambiguity in its enforcement. This lack of clarity has led to inconsistent application and confusion for businesses trying to comply. The proposed revisions aim to remedy these issues by providing more precise definitions, clearer guidelines for permissible business practices, and ensuring a more predictable, transparent enforcement process.

V. Deficiencies in the Current Rule

Several significant deficiencies plague the current Negative Option Rule:

1. **Unclear Terminology:** terms such as "selection" and "return date" remain vague, causing confusion in both enforcement and compliance. This lack of precision undermines the rule's effectiveness and leaves businesses uncertain of their obligations.
2. **Absence of Scienter Requirement:** without a clear intent standard, businesses could face penalties for inadvertent mistakes, imposing undue liability on those acting in good faith. This omission risks unjust consequences for businesses unaware of the nuances of the rule. — mention *mens rea* or common law guilty mind
3. **Lack of Clear Compliance Guidelines:** the rule's failure to provide specific examples of permissible practices increases the risk of inadvertent violations. Without actionable guidance, businesses face heightened uncertainty regarding compliance, which could lead to widespread confusion.
4. **Inconsistent Enforcement Standards:** procedural requirements in the rule are unclear, which fosters a lack of transparency in enforcement. Establishing consistent, straightforward standards is necessary to ensure that the rule is applied equitably and predictably across industries.
5. **Gender-Inclusive Language:** its use of outdated, gender-specific pronouns like "he" and "his" in the Negative Option Rule reflects a disregard for modern standards of gender inclusivity. Such language risks legal challenges under the Equal Protection Clause, as highlighted in *United States v. Virginia*, 518 U.S. 515, 532 (1996). Ignoring inclusive language could also invite scrutiny under Title VII and other anti-discrimination laws—because, evidently, the world has moved on.

VI. Erosion of Public Trust Due to Vague Standards and Insufficient Enforcement

Vague standards within the Negative Option Rule, coupled with a lack of transparency and insufficient enforcement, undermine public trust. Ambiguities such as "clear and conspicuous" create uncertainty for both businesses and consumers, weakening regulatory clarity. The absence of defined timelines for enforcement exacerbates inconsistencies, leaving violations unaddressed or delayed.

Revisions to enforcement practices are critical. Defining compliance criteria and establishing firm timelines for action will promote fairness and predictability. Written justifications for decisions will enhance transparency, strengthen consumer protection, and restore confidence in the FTC's regulatory process.

a. Clarity in Disclosure of Material Terms

Ambiguity in how promotional materials must disclose the material terms of negative option plans presents enforcement challenges. The requirement that terms be "clear and conspicuous" should be bolstered with specific guidelines that eliminate subjective interpretation. For example, sellers should be required to provide a minimum font size or standardized formatting to ensure that critical information is not overlooked. This approach will help prevent deceptive tactics where sellers obscure cancellation rights or billing obligations.

Explicit guidelines defining what constitutes a sufficiently "conspicuous" disclosure are essential to guarantee consistent enforcement across all jurisdictions. Establishing uniform standards for visibility, coupled with a strong emphasis on cancellation terms, will prevent potential misrepresentation or manipulation by sellers.

i. Due Process in FTC Adjudication of Negative Option Violations

FTC adjudication under the Negative Option Rule must align with fundamental due process protections to preserve fairness. The current lack of clarity regarding rule application erodes transparency and hinders public trust. Specific, actionable guidelines are necessary to define when enforcement actions are appropriate, ensuring that businesses understand potential legal consequences. Without such transparency, businesses face an unpredictable regulatory environment, compromising due process and diminishing the rule's efficacy.

Reliance on principles set forth in *Cinderella Career & Finishing Schools, Inc. v. FTC*, 425 F.2d 583, 591 (D.C. Cir. 1970), would provide essential guidance, allowing businesses to scrutinize potential bias or prejudice in enforcement actions. Without well-defined and clear boundaries for enforcement, the FTC risks eroding procedural fairness and cultivating public skepticism regarding its impartiality.³

For the FTC to maintain public trust, it must implement policies ensuring the prevention of any bias in its proceedings, both actual and perceived. Furthermore, before pursuing legal action, the FTC should issue a *cease and desist* notice, offering a final opportunity for corrective action before formal proceedings are initiated. This approach will fortify integrity, ensuring that

³ Failure to establish clear enforcement standards threatens the integrity of regulatory processes and undermines the very due process the FTC is mandated to uphold. See, e.g., *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 233, 249 (1972).

ii. Ethical Standards in Negative Option Marketing

The Negative Option Rule requires explicit ethical guidelines to combat deceptive practices that undermine consumer trust. Currently, the lack of clear ethical boundaries enables businesses to exploit loopholes and vague language within the rule. Practices such as inadequate disclosure of cancellation rights or coercive tactics pose a serious risk to consumer protections. These manipulative behaviors erode market confidence and diminish the FTC's credibility as a protector of ethical business practices.

Without enforceable ethical standards, businesses may inadvertently harm consumer trust by relying on misleading tactics. The FTC must establish precise guidelines that define acceptable marketing practices within the scope of the Negative Option Rule to protect consumers and preserve marketplace integrity.

b. Transparency in Addressing Violations

Clear, formalized procedures for addressing violations of the Negative Option Rule are crucial for maintaining public trust. The absence of standardized decision-making practices leads to inconsistent enforcement, reducing transparency and accountability. Requiring written explanations for enforcement actions involving negative options will promote consistency and demonstrate the FTC's commitment to transparency. This documentation will enhance the predictability of enforcement, offering businesses a clearer understanding of regulatory expectations.

c. Lack of Enforceable Deadlines

Uncertainty within regulatory timelines compounds the negative effects of the Negative Option Rule's vague provisions. Without enforceable deadlines for resolving violations, businesses face prolonged uncertainty, leading to increased financial strain. Setting binding deadlines for investigating and addressing complaints would significantly improve the effectiveness of the FTC's enforcement efforts. The absence of such timelines undermines accountability and delays corrective action, leaving businesses with limited recourse in addressing potential violations.

d. Ambiguity in Regulatory Language

The complex legal terminology embedded in the Negative Option Rule creates substantial challenges for businesses seeking compliance. Phrases like "clear and conspicuous" are often open to interpretation, leading to inconsistent enforcement and confusion about compliance requirements. This legal opacity perpetuates misunderstanding, risking inadvertent violations. Simplifying the language and providing specific examples would reduce ambiguity and offer clearer guidance for businesses navigating the regulatory landscape.

i. Complexity of Legal Terms in the Negative Option Rule

Legal terminology within the Negative Option Rule frequently proves difficult for non-legal professionals to fully comprehend. Terms like "affirmative consent" or "clear and conspicuous" demand precise and unambiguous definitions, as their vague usage currently fosters confusion. Offering explicit examples alongside clearer, more detailed definitions would allow businesses to more effectively understand their obligations, thereby minimizing the risk of unintentional violations and bolstering public confidence.

ii. **Vagueness in Key Legal Concepts**

Terms like "affirmative consent" and "informed consent" remain vague, complicating efforts to comply with the Negative Option Rule. While the general intent of these terms may be understood, their lack of precise legal definitions creates significant challenges for businesses and consumers alike. Clearer, uniform definitions are essential to reduce confusion and promote effective enforcement, ensuring that businesses meet compliance standards and that consumers fully understand their rights.

iii. **"Shall" and the Erosion of Immediate Obligation**

Use of "shall" in the Negative Option Rule introduces ambiguity regarding compliance timelines. Often interpreted as future-oriented, "shall" implies a conditional obligation, leaving businesses uncertain about immediate duties. Such vagueness undermines the regulatory goal of timely action. Replacing "shall" with clearer terms will establish unambiguous obligations and prevent unnecessary delays in enforcement.

iv. **Judicial Integrity and Legal Clarity**

Ambiguities in the Negative Option Rule undermine the integrity of the FTC's adjudication process. When businesses are unable to rely on clear definitions, they face increased difficulty in determining their legal obligations. This undermines both compliance efforts and public confidence in the FTC's enforcement actions. Ensuring consistent, clear regulatory language is essential to upholding judicial integrity and guaranteeing fairness in enforcement. By simplifying and clarifying the rule's language, the FTC can restore trust in its ability to fairly enforce regulations and protect consumer rights.

VII. **Recommendations to Enhance Transparency**

a. *Proposal*

Absence of enforceable deadlines for addressing petitions alleging misrepresentation within the Negative Option Rule creates a significant gap in accountability. Delays in adjudication, particularly when companies may be misleading consumers or failing to comply with disclosure requirements, invite confusion and legal uncertainty. Clear, binding timelines are essential to ensuring swift resolution, upholding regulatory integrity, and maintaining public confidence in the FTC's enforcement of consumer protection laws.

1. **Independent Oversight of Negative Option Adjudication:** establish an independent body to review decisions related to negative option violations. By introducing an external review mechanism, impartiality can be guaranteed, and accountability strengthened. Such oversight would ensure that no conflicts of interest interfere with the application of fair and transparent enforcement.
2. **Public Disclosure of Enforcement Actions:** enforce written, publicly available explanations for all enforcement decisions under the Negative Option Rule. Transparency in how violations are handled would foster trust and provide businesses with clear expectations for compliance. Public disclosure of decisions also supports informed engagement by stakeholders, ensuring regulatory actions align with ethical standards.

3. **Automatic Review for High-Profile Cases:** cases involving substantial consumer harm or high-profile violations should automatically trigger expert reviews by ethics professionals. Such measures ensure that decisions receive the highest level of scrutiny, particularly when they may affect significant numbers of consumers or market practices.
4. **Enforceable Deadlines for Decision Making:** clear, enforceable deadlines for addressing allegations under the Negative Option Rule would prevent delays that hinder timely regulatory responses. Effective enforcement requires decisive action, and failure to establish formal timelines weakens the efficacy of the rule. Timely resolution of complaints must become a priority to enhance both regulatory function and consumer protection.
5. **Regular Public Reporting of Enforcement Outcomes:** instituting regular, public reports summarizing enforcement actions under the Negative Option Rule provides greater visibility and clarity regarding the FTC's activities. Such reports would allow the public and businesses to understand trends, outcomes, and recurring issues, improving trust in the FTC's enforcement approach.
6. **Audit Mechanism for Compliance and Enforcement:** implement a systematic audit of enforcement actions concerning the Negative Option Rule. These audits would ensure that decisions are consistent, identify recurring issues, and evaluate the effectiveness of compliance measures. Periodic assessments would highlight areas needing reform and contribute to a more responsive and accountable regulatory framework.

b. Precedent Establishes Feasibility and Necessity of Proposed Revisions

Past enforcement actions under the Negative Option Rule reveal that while informal processes have achieved limited success, they fall short of providing the necessary robust deterrence. In instances where businesses exploit rule vagueness, resolutions have been reactive, lacking formal, enforceable guidelines to prevent recurrence. The proposed revisions build on these informal practices, formalizing them into a structured, proactive framework that ensures more consistent, transparent enforcement. By instituting clear, binding procedures for corrective actions, including cease-and-desist orders prior to litigation, the FTC can assertively address violations, restore public trust, and reinforce its commitment to consumer protection.

VIII. Text of Proposed Amendments to 16 C.F.R. Part 42.15

Below is the text of 16 C.F.R. Part 425.1, with proposed amendments, deletions, and alterations highlighted in bold and underlined:

§ 425.1 The rule.

(a) In connection with the sale, offering for sale, or distribution of goods and merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, it is an ~~unfair or deceptive act or unlawful~~ practice, for a seller in connection with the use of any negative option plan to **knowingly** fail to comply with the following requirements:

(1) Promotional material **shall must** clearly and conspicuously disclose the material terms of the plan, including:

- (i) That aspect of the plan under which the subscriber **must shall** notify the seller, in the manner provided for by the seller, if **[s]**he does not wish to purchase the selection;
- (ii) **Any All** obligation assumed by the subscriber to purchase a minimum quantity of merchandise;
- (iii) The right of a contract-complete subscriber to cancel **his** membership at any time;
- (iv) Whether billing charges will include an amount for postage and handling;
- (v) A disclosure indicating that the subscriber will be provided with at least ten (10) days in which to mail **any all** form, contained in or accompanying an announcement identifying the selection, to the seller;
- (vi) A disclosure that the seller will credit the return of **any all** selections sent to a subscriber, and guarantee to the Postal Service or the subscriber postage to return such selections to the seller when the announcement and form are not received by the subscriber in time to afford him at least ten (10) days in which to mail his form to the seller;
- (vii) The frequency with which the announcements and forms will be sent to the subscriber and the maximum number of announcements and forms which will be sent to him during a 12-month period.

(2) Prior to sending any selection, the seller **shall must** mail to its subscribers, within the time specified by [paragraph \(a\)\(3\)](#) of this section:

- (i) An announcement identifying the selection;
- (ii) A form, contained in or accompanying the announcement, clearly and conspicuously disclosing that the subscriber will receive the selection identified in the announcement unless **[s]**he instructs the seller that **[s]**he does not want the selection, designating a procedure by which the form may be used for the purpose of enabling the subscriber so to instruct the seller, and specifying either the return date or the mailing date.

(3) The seller **shall must** mail the announcement and form either at least twenty (20) days prior to the return date or at least fifteen (15) days prior to the mailing date, or provide a mailing date at least ten (10) days after receipt by the subscriber, provided, however, that whichever system the seller chooses for mailing the announcement and form, such system must provide the subscriber with at least ten (10) days in which to mail **his the** form.

(b) In connection with the sale or distribution of goods and merchandise in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, it **shall must** constitute an unfair or deceptive act or practice for a seller in connection with the use of any negative option plan to:

- (1) Refuse to credit, for the full invoiced amount thereof, the return of any selection sent to a subscriber, and to guarantee to the Postal Service or the subscriber postage adequate to return such selection to the seller, when:

(i) The selection is sent to a subscriber whose form indicating that ~~ls~~he does not want to receive the selection was received by the seller by the return date or was mailed by the subscriber by the mailing date;

(ii) Such form is received by the seller after the return date, but has been mailed by the subscriber and postmarked at least 3 days prior to the return date;

(iii) Prior to the date of shipment of such selection, the seller has received from a contract-complete subscriber, a written notice of cancellation of membership adequately identifying the subscriber; however, this provision is applicable only to the first selection sent to a canceling contract-complete subscriber after the seller has received written notice of cancellation. After the first selection shipment, all selection shipments thereafter are deemed to be unordered merchandise pursuant to section 3009 of the Postal Reorganization Act of 1970, as adopted by the Federal Trade Commission in its public notice, dated September 11, 1970;

(iv) The announcement and form are not received by the subscriber in time to afford him at least ten (10) days in which to mail ~~his the~~ form.

(2) Fail to notify a subscriber known by the seller to be within any of the circumstances set forth in [paragraphs \(b\)\(1\)\(i\)](#) through [\(iv\)](#) of this section, that if the subscriber elects, the subscriber may return the selection with return postage guaranteed and receive a credit to ~~his the~~ account.

(3) Refuse to ship within 4 weeks after receipt of an order merchandise due subscribers as introductory and bonus merchandise, unless the seller is unable to deliver the merchandise originally offered due to unanticipated circumstances beyond the seller's control and promptly makes a reasonably equivalent alternative offer. However, where the subscriber refuses to accept alternatively offered introductory merchandise, but instead insists upon termination of ~~his~~ membership due to the seller's failure to provide the subscriber with ~~his the~~ originally requested introductory merchandise, or any portion thereof, the seller must comply with the subscriber's request for cancellation of membership, provided the subscriber returns to the seller any introductory merchandise which already may have been sent him.

(4) Fail to terminate promptly the membership of a properly identified contract-complete subscriber upon ~~his~~-written request.

(5) Ship, without the express consent of the subscriber, substituted merchandise for that ordered by the subscriber.

(c) For the purposes of this part:

(1) **Negative option plan** refers to a contractual plan or arrangement under which a seller periodically sends to subscribers an announcement ~~which identifies identifying~~ merchandise (other than annual supplements to previously acquired merchandise) it proposes to send to subscribers to such plan, and the subscribers thereafter receive and are billed for the merchandise identified in each such announcement, unless by a date or within a time~~frame~~ specified by the seller with respect to each such announcement the subscribers, ~~in under~~ conformity with the provisions of such plan, instruct the seller not to

(2) **Subscriber** means any **person [wo]man** who has agreed to receive the benefits of, and assume the obligations entailed in, membership in any negative option plan and whose membership in such negative option plan has been approved and accepted by the seller.....

(8) **Return date** refers to a date specified by a seller using a negative option plan as the date by which a form must be received by the seller to prevent shipment of the selection.

(9) **Mailing date** refers to time specified by a seller using a negative option plan as the time by or within which a form must be mailed by a subscriber to prevent shipment of selection.

(10) Representation: refers to the act of acting on behalf of an entity that has formally established its presence before the court, exercising its rights or responsibilities as a recognized party. ⁴

(11) Order means a binding directive imposed by authority, commanding the fulfillment of a duty, subject to equitable terms, conditions, or costs, with full legal enforceability. ⁵

(12) Believe: refers to cognitive act of accepting proposition as true, an exclusive mental function attributable only to natural persons.

(13) Violation refers to an act of harm or breach against an individual or entity, actionable through the process of redress, including the imposition of accountability. ⁶

(14) Unlawful: refers to a wrong committed in contravention of natural law or fundamental principle, denoting an inherent injustice within the moral or ethical framework. ⁷

(15) Illegal: refers to an action contrary to established rules or statutes created by a legal society, subject to formal sanctions or penalties within the legal system. ⁸

⁴ re • presentation stems from the prefix "re-" (again) and "presentare" (to bring forward). In legal contexts, it presupposes a prior act of presenting. Absent an initial acknowledgment or appearance, any subsequent attempt at representation becomes inherently flawed, lacking the foundational legitimacy required for legal sufficiency. Cf. *United States v. A.D. Bedell Wholesale Co.*, 507 F.2d 1137 (2d Cir. 1974).

⁵ an order, like any binding directive, must clearly define its terms and obligations to avoid unintended financial liabilities. Consider an [Amazon.com](https://www.amazon.com) transaction: placing an ‘order’ inherently includes an obligation to pay. Similarly, when a court or judge issues an order, it should account for associated costs or risk facing claims for compliance expenses. In *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991), the Court underscored the danger of vague directives leading to unintended outcomes, emphasizing that ambiguous orders may impose undue burdens on issuing authorities. Precision safeguards fairness, ensuring all parties understand their obligations and rights without room for exploitation. See e.g., *Loper Bright Enterprises v. Raimondo*, 599 U.S.(2024) (mandates statutory clarity)

⁶ violation: applies solely to actions that affect living beings—entities capable of asserting claims in court. Statutes, as inanimate objects, cannot assert harm or participate in legal proceedings, rendering the concept of "violating" a statute inherently flawed. Without an accuser with standing, due process is compromised, undermining the fairness of the legal system. This distinction ensures that violations are rooted in tangible harm, not abstract legal constructs, safeguarding the integrity of legal proceedings.

⁷ Unlawful refers to actions that transgress universally recognized ethical standards or natural law. These are actions that directly harm or infringe upon others' rights, typically seen as inherently wrong by common sense or moral reasoning, independent of legal codes.

⁸ *illegal*: encompasses actions prohibited by the specific rules of a legal society, often extending beyond universally accepted ethical principles. These rules, complex and multifaceted, are so extensive that an individual could spend a lifetime—and still fall short—of fully comprehending their scope and

(16) Authority: refers to governing power, control, or enforce, derived from creation, ownership, or legal empowerment of a person, entity, or thing.⁹

(17) Actor: refers to an individual performing actions within a defined capacity, often attributed with legal authority, but bounded by the scope of their role.¹⁰

(17) Plaintiff: refers to the party who lodges a formal complaint or seeks adjudication, bringing forth a matter for judicial examination or legal resolution.¹¹

(18) Shall means expression denoting futurity or conditional requirement.¹²

(19) Defendant an individual or entity called to respond to allegations, constrained by the legal process, deprived of full ability to act offensively, and forced into a defensive posture.¹³

nuances. To impose accountability for violations within such an opaque system undermines the foundational principle of fair and due process. The maxim "ignorance of the law is no excuse" is a falsehood, as it fails to recognize the distinction between willful ignorance and the mere absence of access to or understanding of the law. Ignorance in this context is not an intentional evasion, but a failure of the system to ensure the law is reasonably made available to all, with clear and adequate notice. Its application is therefore unjust, oppressive, and in direct conflict with the principles of equity and fairness.

⁹ Author • ity : derived from the Latin *auctoritas*, meaning "influence" or "power," which stems from *auctor*, signifying "creator" or "originator." The suffix *-ity* denotes a state or quality, reflecting the essence of being an author—one who creates or initiates. In legal terms, authority is inherently linked to creation: a judge or court possesses authority only over matters they have authored, such as a legal person or a birth certificate. Without clear authorship, authority shifts from a legitimate right to a presumption, much like a painter falsely claiming ownership of a canvas they did not create. As the maxim holds, "He who has no author cannot claim authority," underscoring the importance of clear definitions to prevent judicial overreach and safeguard the limits of power.

¹⁰ Auctor, actor, acting, and authority are interlinked—rooted in *auctor*, meaning creator. In legal terms, an actor performs within a given role, acting within defined authority. Without auctor-based authority, actions become unlawful, as reinforced by *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), where the Court held that actions outside an official's authority are void.

¹¹ *Plaintiff*, derived from Old French *plaintiff* (complaining) and Latin *planctus* (lamentation), historically denoted one who persistently voiced grievance, akin to an incessant, nagging figure. While the term has since evolved in legal parlance to denote a party initiating a legal action, it retains its roots in complaint rather than claim. This distinction underscores the difference between a mere grievance and a legitimate legal assertion, reflecting both linguistic evolution and the shifting dynamics of justice.

¹² Supreme Court in *Fort Stewart Schools v. FLRA*, 495 U.S. 641, 648 (1990), observed that "shall" often signifies a conditional obligation contingent on future events, rather than a definitive mandate. To mitigate this ambiguity, the Court emphasized the term "must" as a more precise and enforceable expression of present obligations.

¹³ *de • fend • ant*: originating from the Latin term "defendere," meaning "to protect" or "ward off." The prefix "de-" conveys a sense of reversal or diminishment, highlighting a state where the individual's protective power is systematically undermined. The root "fend," derived from "fendere" (to strike or repel), implies an inherently defensive stance, while the suffix "-ant" denotes one actively engaged in a specific action or role. Thus, a defendant embodies a profound contradiction—placed in a position where they must defend themselves but are often subjected to constraints that weaken their capacity to do so. This construct reveals a judicial paradox, where defense becomes a symbolic act rather than a fair fight, exposing the engineered disparity inherent in the legal process.

a. Additional Action Required and Amended Regulatory Language

1. **Proposed Definitions:**

Refinement and Clarification of Key Terms: terms such as "Disclosure" and "Offer" must be clearly defined or revised to eliminate ambiguity and ensure precise enforcement of the Negative Option Rule.

- **"Disclosure":** clear and conspicuous act of informing the subscriber about the potential shipment of merchandise, along with a clear opportunity to decline or return it within a specified timeframe.
 - **"Offer":** merchandise or service proposed under the Negative Option Rule, which the subscriber will receive and be billed for unless timely action is taken to prevent the transaction.
2. **Explicit Scierter Requirement:** said rule must mandate that deceptive actions within the Negative Option framework be executed with knowledge or fraudulent intent, ensuring clear accountability for willful misconduct and preventing inadvertent violations.¹⁴
3. **Clarifying Permissible Practices:** FTC should provide definitive, practical examples of compliant business practices, addressing frequent industry challenges to enhance clarity and guide businesses toward consistent compliance with the Negative Option Rule.
4. **Strengthening Enforcement Transparency:** Comprehensive, clear procedural protocols must be established for investigations, recusal processes, and enforcement actions, safeguarding impartiality and preventing potential biases within the FTC's decision-making procedures.
5. **Thorough Statutory Analysis:** detailed review of the Negative Option Rule's statutory language and relevant case law is critical to ensure that enforcement actions align with legislative intent and avoid overreach or misinterpretation,

¹⁴ *Requiring scienter ensures liability attaches only to intentional or reckless conduct, preserving fairness in enforcement. See Ernst & Ernst v. Hochfelder, 425 U.S. 185, 197 (1976).*

Examination of statutory language and precedents is essential for precise interpretation of the Negative Option Rule.¹⁵ Such review ensures adherence to legislative intent, prevents regulatory overreach, and clarifies ambiguities, promoting consistency and safeguarding the integrity of enforcement mechanisms.¹⁶

IX. CORE ISSUES FOR DELIBERATION

Petitioner seeks to address five inquiries pursuant to 5 U.S.C. § 552 and 15 U.S.C. § 45:

Whether the Negative Option Rule aligns with judicial review standards and complies with Chevron reversal?

ensuring consistency with state and federal laws? Examines legal consistency and adherence to governing principles to prevent conflicts.

Whether the rule's language is sufficiently clear, requiring clarification of ambiguous definitions by the FTC?

Tackles the need for precise language and specific definitions to provide clearer guidance to businesses.

Whether the rule has evolved with technological advancements and if its continued relevance remains necessary?

Assesses the rule's adaptability to technological changes, ensuring its ongoing effectiveness.

Whether incorporating a scienter requirement and defining procedural standards would enhance fairness in enforcement?

Combines a scienter requirement with clearer procedures to foster fairness and transparency in enforcement.

Whether the economic impact of the rule justifies the FTC providing examples of acceptable business practices?

Weighs the rule's economic effects against the need for clear examples to enhance compliance and reduce ambiguity.

¹⁵ Cf. *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1162 (9th Cir. 2010) (recognizing the FTC's broad authority to prevent deceptive practices and protect market integrity). The Commission's role in ensuring clear, consistent enforcement is central to upholding consumer confidence, as further affirmed in *FTC v. Verity Int'l Ltd.*, 443 F.3d 48, 63 (2d Cir. 2006). *Following* 15 U.S.C. § 45 & , 15 U.S.C. § 57b-3.

¹⁶ ...in defining pivotal moments, two U.S. presidents demonstrated the profound influence of language on legal and political outcomes. Trump focused on the significance of "and" versus "or" when discussing impeachment, while Clinton famously redefined the word "is" to shift the context of his testimony. Cf. Garcia, "Trump & Clinton: How Semantics Shaped Two Impeachments, [Youtube Channel](#), (Last Viewed Jan 4, 2025) <https://youtu.be/B1XxjXQ4J_o> These instances reveal how the careful selection of words can alter interpretations and reshape entire narratives. See e.g., C-SPAN, "[User Clip: Meaning of the word 'is' with context](#)" (August 17, 1998), Oppysko, "[Trump on impeachment: 'It's a dirty, filthy, disgusting word.'](#)" Politico (May 30, 2019),

X. ANTICIPATED LEGAL AND ECONOMIC EFFECTS

Foreseen Effects of Rule Refinements

1. **Restoration of Consumer Confidence:** by curtailing deceptive practices under the Negative Option Rule, the proposed changes restore consumer trust. Clear definitions and prohibitions ensure consumers are protected from manipulation, securing their confidence in fair business practices.
2. **Judicial Efficiency and Consistency:** clear and definitive language, combined with an explicit scienter requirement, empowers both the judiciary and the Federal Trade Commission to expeditiously resolve disputes. Streamlined adjudication fosters consistency and reduces unnecessary legal ambiguity, ensuring fair and predictable outcomes across diverse jurisdictions.
3. **Prevention of Market Distortions:** strengthened deterrents and targeted penalties curtail the prevalence of exploitative behavior, ensuring that deceptive actors cannot gain unfair advantage. The rule protects legitimate market participants from the destabilizing effects of fraudulent tactics, ensuring a level playing field and fostering innovation through ethical competition.
4. **Promotion of Regulatory Transparency:** revised procedural safeguards ensure transparency in enforcement actions, including clear standards for investigation, recusal, and enforcement decisions. These measures protect the integrity of the FTC's regulatory framework, mitigating the risk of undue influence while enhancing public confidence in the fairness and impartiality of enforcement actions.
5. **Alignment with Broader Consumer Protections:** harmonizing the Negative Option Rule with broader consumer protection laws, including § 5 of the FTC Act, strengthens its legal foundation and ensures consistent regulatory enforcement. This alignment provides clarity for businesses and protection for consumers, ensuring compliance with federal mandates.
6. **Economic Stability and Integrity:** enhancements protect consumers and businesses from exploitative practices, fostering a marketplace based on trust and fairness. By reducing deceptive conduct, the rule supports economic stability, allowing ethical business practices to flourish.
7. **Increased Accountability for Deceptive Conduct:** with a robust scienter requirement, the rule ensures that only those engaging in fraudulent or reckless conduct are penalized. This approach balances fairness and accountability, targeting bad actors while protecting those who act in good faith.
8. **Reaffirmation of FTC's Regulatory Authority:** through a clearly defined and consistently enforced framework, the Negative Option Rule firmly reaffirms the FTC's essential role as a steadfast protector of consumer interests. By effectively curbing deceptive practices, the rule not only enhances public trust in regulatory oversight but also fortifies the integrity of market transactions, ensuring fairness and transparency.

XI. ALTERNATIVE

SURE (Standardized Unambiguous Regulation Enforcement) proposes an efficient, expert-driven alternative to traditional rulemaking. Comprising independent legal scholars, consumer advocates, and industry specialists, this panel would provide real-time guidance on best practices for negative option policies, ensuring compliance without excessive bureaucracy. Leveraging inspiration from the Privacy and Civil Liberties Oversight Board, SURE would allow for timely, adaptive responses to emerging issues while maintaining fairness and transparency. This approach reduces the need for costly enforcement actions and enhances voluntary compliance, promoting a more flexible regulatory framework. SURE’s proactive strategy fosters a collaborative environment, balancing business needs with consumer protection.

XII. CONCLUSION

A call to the Federal Trade Commission is made, urging a decisive, forward-thinking enhancement of the Negative Option Rule to promote clarity, consistency, and fairness in its enforcement.¹⁷ By eliminating ambiguities, incorporating a scienter requirement, and offering clear examples of lawful conduct, the proposed revisions will enable the Commission to more effectively protect consumers while promoting legitimate business practices. These amendments are essential not only to maintain the integrity of the marketplace but also to reinforce public trust in the Commission’s ability to safeguard consumers from exploitative practices.¹⁸

CORE respectfully *requires* that the FTC expeditiously conduct a thorough retrospective review of 16 C.F.R. § 425.1, exercising its unique authority as an impartial regulator to address these pressing deficiencies are critical for fortifying consumer protections while cultivating a fair and transparent business environment for all stakeholders.¹⁹

Humbly,

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¹⁷ In accordance with the Administrative Procedure Act (APA), 5 U.S.C. § 553, the Federal Trade Commission (FTC) possesses the authority to amend its regulations based on petitions from stakeholders, such as the Petitioner. This power is further reinforced by 16 C.F.R. § 1.31, which facilitates rule revisions. Additionally, under Executive Order 13563, regular reviews are required to maintain the relevance and efficacy of existing regulations. Through this petition, the Petitioner aims to support the Commission in refining regulatory clarity and enhancing its overall impact.

¹⁸ Drawing on industry insights, the petition highlights the regulatory uncertainty created by vague terms like "automatic renewal" and "consumer consent" under the Negative Option Rule. This ambiguity has led to inconsistent enforcement, as evidenced by the Petitioner’s involvement in *FTC v. Start Connecting*, 8:24-cv-01626. With direct experience managing affected business ventures, the petition offers a clear legal basis to improve regulatory clarity and enforcement consistency, supporting the Commission’s goals under Rule 1.31(b)(3). *See e.g., FTC v. Expert Payment Solutions*, 9:18-cv-01042.

¹⁹ CORE respectfully requests an expedited retrospective review of the Negative Option Rule, 16 C.F.R. § 425.1 et seq., in alignment with the FTC's duty to ensure that regulations remain effective, clear, and adaptable to evolving market dynamics, as mandated by Executive Order 13563 and the Commission's Regulatory Reform Program. Such reviews are vital to maintain regulatory relevance, ensuring that rules align with both current legal standards and industry practices.