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FEDERAL TRADE COMMISSION

16 CFR Part 425

RIN 3084-AB54

Rule Concerning the Use of Prenotification Negative Option Plans

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) seeks public comment on the need for amendments to the Commission’s “Rule Concerning the Use of Prenotification Negative Option Plans” (*i.e.*, “Negative Option Rule” or “Rule”) to help consumers avoid recurring payments for products and services they did not intend to order and to allow them to cancel such payments without unwarranted obstacles.

DATES: Comments must be received on or before April 13, 2026.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. If you prefer to file your comments on paper, write “Negative Option Rule ANPRM, Project No. P064202” on your comment and on the envelope, and mail your comment by overnight service to: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex N), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Hong Park (202-326-2158), Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade

Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Overview

The Commission seeks comments on ways to improve its existing regulations for negative option marketing, a common form of marketing where the absence of affirmative consumer action constitutes assent to be charged for goods or services. Negative option offers, which have become more widespread in recent years, can provide substantial benefits for sellers and consumers in the marketplace. However, consumers cannot reap such benefits when sellers fail to make adequate disclosures, charge consumers without their consent, or make cancellation difficult or impossible. Over the years, these types of negative option practices have remained a persistent source of consumer harm, often saddling consumers with recurring payments for goods and services they did not intend to purchase or they no longer want. In the past, the Commission has sought to address such practices through individual law enforcement cases and a patchwork of regulations. Nevertheless, consumers continue to encounter these practices in the marketplace and submit thousands of complaints about them to the FTC each year.

In October 2024, the FTC amended the Rule to address ongoing consumer complaints and continued misconduct in the marketplace. On July 8, 2025, shortly before businesses would need to comply with all parts of the Rule, the United States Court of Appeals for the Eighth Circuit vacated the amended Rule, holding that the Commission had failed to conduct the preliminary regulatory analysis required under section 22 of the FTC Act, 15 U.S.C. 57b-3(b)(1).¹ However, the record compiled during that rulemaking, as well as ongoing consumer complaints and recent enforcement cases,² show

¹ *Custom Commc’ns, Inc. v. FTC*, 142 F.4th 1060, 1070-75 (8th Cir. 2025).

² Since the 2019 advance notice of proposed rulemaking (“ANPRM”), 84 FR 52393 (Oct. 2, 2019), the FTC has brought cases (using its own litigating authority or upon notification and referral to the Department of Justice) alleging widespread negative option abuses by major companies including Vonage, Amazon, Adobe, Uber, LA Fitness, and Instacart. *FTC v. Vonage Holdings*, No. 3:22-cv-6435 (D.N.J. Nov. 3, 2022); *FTC v. Amazon.com Inc.*, No. 2:23-cv-0932 (W.D. Wash. June 21, 2023); *United States v. Adobe, Inc.*, No. 5:24-cv-03630 (N.D. Cal. July 23, 2024); *FTC v. Uber Techs., Inc.*, No. 3:25-cv-03477 (N.D. Cal. Apr. 21, 2025); *FTC v. Fitness Int’l, LLC*, No. 8:25-cv-01841 (C.D. Cal. Aug. 20, 2025); *FTC v. Maplebear Inc.*, No. 3:25-cv-10783 (N.D. Cal. Dec. 18, 2025) (Instacart).

continued unlawful negative option marketing practices in the marketplace.

To address these persistent concerns, the Commission seeks comments on ways to improve existing regulatory requirements, including whether it should use its rulemaking authority under the FTC Act to modernize the Rule.³

II. Negative Option Marketing

A “negative option” is any type of sales term or condition that allows a seller to interpret a customer’s silence, or failure to take an affirmative action, as acceptance of an offer.⁴ Negative option marketing generally falls into four categories: Prenotification negative option plans, continuity plans, automatic renewals, and free-to-pay or nominal-fee-to-pay conversion offers.

Prenotification plans are the only negative option practice currently covered by the Commission’s Negative Option Rule. Under such plans (*e.g.*, product-of-the-month clubs), sellers send 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. The periodic announcements and shipments can continue indefinitely. In continuity plans, consumers agree in advance to receive periodic shipments of goods or provision of services (*e.g.*, bottled water delivery), which they continue to receive until they cancel the agreement. In automatic renewals, sellers (*e.g.*, a magazine publisher) automatically renew consumers’ subscriptions when they expire and charge for them, unless consumers affirmatively cancel the subscriptions. Finally, in free-to-pay or nominal-fee-to-pay plans, 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.

Some negative option offers include upsell or bundled offers, where the seller uses consumers’ billing data to advertise and sell their additional products or passes consumers’ billing data to a third party that generates additional offers. An upsell occurs

³ Section 18 of the FTC Act authorizes the Commission to promulgate rules specifying acts or practices in or affecting commerce which are unfair or deceptive. 15 U.S.C. 57a(a)(1)(B).

⁴ The Commission’s Telemarketing Sales Rule defines a negative option feature as a provision in an offer or agreement to sell or provide any goods or services “under which the customer’s silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.” 16 CFR 310.2(w).

when a consumer completes a first transaction and then receives a solicitation for an additional product or service. A bundled offer occurs when a seller packages two products or services together, typically so that they either cannot be purchased separately or can only be purchased separately by paying a premium.

III. FTC's Negative Option Rule

The Commission first promulgated the Rule in 1973 pursuant to the FTC Act, 15 U.S.C. 41 *et seq.*, after finding that some negative option marketers had committed unfair or deceptive marketing practices that violated section 5 of the Act, 15 U.S.C. 45. As discussed above, the Rule applies only to prenotification plans for the sale of goods and does not reach most modern negative option marketing.⁵

The Rule requires prenotification plan sellers to clearly and conspicuously disclose their plan's material terms before consumers subscribe. It enumerates seven material terms sellers must disclose clearly and conspicuously, including: (1) how subscribers must notify the seller if they do not wish to purchase the selection; (2) any minimum purchase obligations; (3) the subscribers' right to cancel; (4) whether billing charges include postage and handling; (5) that subscribers have at least ten days to reject a selection; (6) that if any subscriber is not given ten days to reject a selection, the seller will credit the return of the selection and the postage to return the selection, along with shipping and handling; and (7) the frequency with which announcements and forms will be sent.⁶ In addition, sellers must follow certain procedures, including: abiding by particular time periods during which sellers must send introductory merchandise and announcements identifying merchandise the seller plans to send; giving consumers a specified period to respond to announcements; providing instructions for rejecting merchandise in announcements; and promptly honoring written requests to cancel from consumers who have met any minimum purchase requirements.⁷

⁵ The Rule defines "negative option plan" narrowly to apply only to prenotification plans. 16 CFR 425.1(c)(1). The Rule covers prenotification plan marketing in all media. In 1998, the Commission clarified that the Rule "covers all promotional materials that contain a means for consumers to subscribe to prenotification negative option plans, including those that are disseminated through newer technologies. . . ." 63 FR 44555, 44561 (Aug. 20, 1998).

⁶ 16 CFR 425.1(a)(1)(i)-(vii).

⁷ 16 CFR 425.1(a)(2), (3), 425.1(b).

IV. Existing Regulatory Requirements

In addition to the Rule, several other statutes and regulations address aspects of harmful negative option practices. First, section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices, has traditionally served as one of the Commission's primary mechanisms for addressing such practices. Additionally, the Restore Online Shoppers' Confidence Act ("ROSCA") (15 U.S.C. 8401-8405), the Telemarketing Sales Rule (16 CFR part 310), the Postal Reorganization Act (*i.e.*, the Unordered Merchandise Statute) (39 U.S.C. 3009), and the Electronic Fund Transfer Act (15 U.S.C. 1693-1693r) each address various aspects of negative option marketing. ROSCA is the only Federal law primarily designed to regulate negative option marketing, but it is limited to seller transactions effected on the internet.⁸

A. Section 5 of the FTC Act

The main consumer protection statute enforced by the Commission is section 5(a) of the FTC Act, 15 U.S.C. 45(a)(1). This provision states that "unfair or deceptive acts or practices in or affecting commerce . . . are . . . declared unlawful."⁹ In past guidance and cases, the FTC has highlighted five basic section 5 requirements that negative option marketing must follow.¹⁰ First, marketers must disclose

⁸ In addition to these Federal laws that are nationwide in scope, an assortment of State laws also regulates negative option marketing, primarily providing varying levels of protection for consumers in those States. *See, e.g.*, Cal. Bus. & Prof. Code sec. 17600 *et seq.* (California); Colo. Rev. Stat. sec. 6-1-732 (Colorado); Vt. Stat. Ann. Tit. 9, sec. 2454a (Vermont); Va. Code Ann. sec. 59.1-207.46 (Virginia).

⁹ The FTC Act defines "unfair or deceptive acts or practices" to include such acts or practices involving foreign commerce that cause or are likely to cause reasonably foreseeable injury within the United States or involve material conduct occurring within the United States. 15 U.S.C. 45(a)(4)(A). It also defines "unfair" practices as those that cause or are likely "to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition." 15 U.S.C. 45(n).

¹⁰ *See Negative Options: A Report by the staff of the FTC's Division of Enforcement* 26-29 (Jan. 2009), <https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf>. In discussing the five principal section 5 requirements related to negative options, the report cites to the following pre-ROSCA cases and publications: *FTC v. JAB Ventures*, No. CV08-04648 (C.D. Cal. 2008); *FTC v. Complete Weightloss Ctr.*, No. 1:08cv00053 (D.N.D. 2008); *FTC v. Berkeley Premium Nutraceuticals*, No. 1:06cv00051 (S.D. Ohio 2006); *FTC v. Think All Publ'g*, No. 4:07cv11 (E.D. Tex. 2006); *FTC v. Hispanexo*, No. 1:06cv424 (E.D. Va. 2006); *FTC v. Consumerinfo.com*, No. SACV05-801 (C.D. Cal. 2005); *FTC v. Conversion Mktg.*, No. SACV04-1264

the material terms of a negative option offer including, at a minimum, the following key terms: the existence of the negative option offer; the offer's total cost; the transfer of a consumer's billing information to a third party, if applicable; and how to cancel the offer. Second, disclosures must be clear and conspicuous. Third, sellers must disclose the material terms of the negative option offer before consumers agree to the purchase. Fourth, marketers must obtain consumers' consent to such offers. Finally, marketers must not impede the effective operation of promised cancellation procedures, and they should honor cancellation requests that comply with such procedures.

Although adherence to these five principles should minimize the likelihood of non-compliance with section 5, the legality of a particular negative option depends on an individualized assessment of, among other things, the claims made in the advertisement, consumers' understanding of the advertisement (*e.g.*, net impression), and the seller's business practices. In addition to these deception-related requirements, several courts have held that billing consumers without consumers' express informed consent constitutes an unfair act or practice under the FTC Act.¹¹

B. ROSCA

Enacted by Congress in 2010 to address ongoing problems with online negative option marketing, ROSCA contains general provisions related to disclosures, consent, and cancellation.¹² ROSCA prohibits charging or attempting to charge consumers for goods or services sold on the internet through any negative option feature unless the marketer: (1) clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer's billing information; (2)

(C.D. Cal. 2004); *FTC v. Mantra Films*, No. CV03-9184 (C.D. Cal. 2003); *FTC v. Preferred Alliance*, No. 103-CV0405 (N.D. Ga. 2003); *United States v. Prochnow*, No. 102-CV-917 (N.D. Ga. 2002); *FTC v. Ultralife Fitness, Inc.*, No. 2:08-cv-07655-DSF-PJW (C.D. Cal. 2008); *Am. Isuzu Motors*, FTC Docket No. C-3712 (1996); *FTC v. Universal Premium Servs.*, No. CV06-0849 (C.D. Cal. 2006); *FTC v. Remote Response*, No. 06-20168 (S.D. Fla. 2006); and the *FTC Dot Com Disclosures* (2000), <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-guidelines-internet-advertising/0005dotcomstaffreport.pdf>.

¹¹ Courts have found unauthorized billing to be unfair under the FTC Act. *See, e.g.*, *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1157-59 (9th Cir. 2010), *amended by* 2010 WL 2365956 (9th Cir. June 15, 2010); *FTC v. Amazon.com, Inc.*, No. C14-1038-JCC, 2016 WL 10654030, at *8 (W.D. Wash. July 22, 2016); *FTC v. Ideal Fin. Sols., Inc.*, No. 2:13-CV-00143-JAD, 2015 WL 4032103, at *8 (D. Nev. June 30, 2015).

¹² 15 U.S.C. 8401-8405.

obtains a consumer's express informed consent before charging the consumer's account; and (3) provides simple mechanisms for the consumer to stop recurring charges.¹³

ROSCA also addresses offers made by, or on behalf of, third-party sellers during, or immediately following, a transaction effected on the internet with an initial merchant.¹⁴ In connection with these offers, ROSCA prohibits post-transaction third-party sellers from charging or attempting to charge consumers for any good or service unless the seller: (1) before obtaining the consumer's billing information, clearly and conspicuously discloses all material terms of the transaction; and (2) receives the consumer's express informed consent for the charge by obtaining the consumer's name, address, contact information, as well as the full account number to be charged, and by requiring the consumer to perform an additional affirmative action indicating consent.¹⁵ ROSCA also prohibits initial merchants from disclosing billing information to any post-transaction third-party seller for use in any internet-based sale of goods or services.¹⁶

ROSCA provides that a violation of that Act shall be treated as a violation of a Commission rule under section 18 of the FTC Act.¹⁷ Thus, the Commission may seek a variety of remedies for violations of ROSCA, including civil penalties under section 5(m)(1)(A) of the FTC Act;¹⁸ injunctive relief under section 13(b) of the FTC Act;¹⁹ and consumer redress, damages, and other relief under section 19 of the FTC Act.²⁰ Although Congress charged the Commission with enforcing ROSCA, it did not require the FTC to create regulations pursuant to its section 18 rulemaking authority.²¹

¹³ 15 U.S.C. 8403. ROSCA incorporates the definition of "negative option feature" from the Commission's Telemarketing Sales Rule, 16 CFR 310.2(w).

¹⁴ ROSCA defines "post-transaction third-party seller" as a person other than the initial merchant who sells any good or service on the internet and solicits the purchase on the internet through an initial merchant after the consumer has initiated a transaction with the initial merchant. 15 U.S.C. 8402(d)(2).

¹⁵ 15 U.S.C. 8402(a).

¹⁶ 15 U.S.C. 8402(b).

¹⁷ 15 U.S.C. 8404. Section 18 of the FTC Act is 15 U.S.C. 57a.

¹⁸ 15 U.S.C. 45(m)(1)(A).

¹⁹ 15 U.S.C. 53(b).

²⁰ 15 U.S.C. 57b(a)(1), (b).

²¹ ROSCA states that a violation "of this chapter or any regulation prescribed under this chapter shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices." 15 U.S.C. 8404(a).

C. Telemarketing Sales Rule

The Telemarketing Sales Rule ("TSR") (16 CFR part 310) prohibits deceptive telemarketing acts or practices, including those involving negative option offers, and certain types of payment methods common in deceptive marketing. The TSR applies only to negative option offers made over the telephone. Specifically, the TSR requires that telemarketers disclose all material terms and conditions of the negative option feature, including the need for affirmative consumer action to avoid the charges; the date (or dates) the charges will be submitted for payment; and the specific steps the customer must take to avoid the charges. It also prohibits telemarketers from misrepresenting such information and contains specific requirements related to payment authorization.²² The Commission amended the TSR in 2015 to prohibit the use of payment methods often used in deceptive marketing, including negative options, such as remotely created checks.²³

D. Other Relevant Requirements

The Electronic Fund Transfer Act ("EFTA")²⁴ and the Postal Reorganization Act ("PRA") (*i.e.*, Unordered Merchandise Statute) also contain provisions that address negative option marketing.²⁵ The EFTA prohibits sellers from imposing recurring charges on a consumer's debit cards or bank accounts without written authorization.²⁶ The PRA provides that mailing unordered merchandise, or a bill for such merchandise, constitutes an unfair method of competition and an unfair trade practice in violation of section 5 of the FTC Act.²⁷

²² 16 CFR 310.3(a).

²³ 80 FR 77520 (Dec. 14, 2015). The TSR Notice of Proposed Rulemaking (78 FR 41200 (July 9, 2013)) noted negative option cases where the defendants used unauthorized remotely created checks. *See, e.g., FTC v. FTN Promotions, Inc.*, No. 8:07-1279 (M.D. Fla. Dec. 30, 2008) (Stip. Perm. Inj.) (defendants allegedly caused more than \$171 million in unauthorized charges to consumers' accounts for bogus travel and buyers' clubs in part by using unauthorized remotely created checks).

²⁴ 15 U.S.C. 1693-1693r.

²⁵ 39 U.S.C. 3009.

²⁶ The EFTA provides that the Commission shall enforce its requirements, except to the extent that enforcement is specifically committed to some other Federal government agency, and that a violation of any of its requirements shall be deemed a violation of the FTC Act. Accordingly, the Commission has authority to seek the same injunctive and monetary equitable relief for EFTA violations that it can seek for other section 5 violations.

²⁷ The Commission has authority to seek the same remedies for PRA violations that it can seek for other section 5 violations. For example, the Commission can seek civil penalties pursuant to section 5(m)(1)(A) of the FTC Act from violators

V. Limitations of Existing Regulatory Requirements

The existing patchwork of laws and regulations does not provide industry and consumers with a consistent legal framework for negative option marketing across different media and types of plans. For instance, as discussed above, the current Rule does not cover common practices such as continuity plans, automatic renewals, and trial conversions.²⁸ In addition, ROSCA and the TSR each address negative option plans only in certain media—ROSCA's general statutory prohibitions on deceptive negative option marketing apply only to transactions effected on the internet, whereas the TSR's more specific provisions only apply to telemarketing. Furthermore, harmful negative option practices that fall outside of ROSCA and the TSR's coverage still occur.²⁹ Therefore, under the current framework, different rules apply depending on whether a negative option offer is made online, over the phone, or in some other medium (*e.g.*, in print, through the mail, etc.).

VI. Past FTC Rulemaking Efforts

The Commission began a regulatory review of the Rule in 2009 (74 FR 22720 (May 14, 2009)), following a 2007 FTC workshop and subsequent Staff Report.³⁰ The Commission completed the review in 2014 (79 FR 44271 (July 31, 2014)). The Commission received comments advocating for the Rule's expansion because of the continued presence of "unfair, deceptive, and otherwise problematic negative option marketing practices [that] continue to cause substantial consumer injury, despite determined enforcement efforts by the Commission and other law enforcement agencies."³¹ It also noted

who have actual knowledge that the Commission has found mailing unordered merchandise unfair.

²⁸ Indeed, the prenotification plans covered by the Rule represent only a small fraction of negative option marketing. In 2024, for instance, FTC staff estimated that only 25 sellers ("clubs") were subject to the current Rule's requirements. 88 FR 59922 (Aug. 30, 2023); 89 FR 377 (Jan. 3, 2024).

²⁹ For instance, in 2018, the Commission brought two cases under section 5 involving negative option plans that did not involve either internet sales or telemarketing. *See FTC v. Health Research Labs., LLC*, No. 2:17-cv-00467-JDL (D. Me. 2018); *FTC v. Mktg. Architects*, No. 2:18-cv-00050 (D. Me. 2018).

³⁰ *See Negative Options: A Report by the staff of the FTC's Division of Enforcement* 26-29, <https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf>.

³¹ The Commission cited a number of its law enforcement actions challenging negative option marketing practices, including, for example, *FTC v. Process Am., Inc.*, No. 14-0386-PSG-VBKx (C.D. Cal. Jan. 16, 2014) (processing of unauthorized

that practices not covered by the Rule (e.g., trial conversions and continuity plans) accounted for most of its enforcement activity in this area. Despite these findings, the Commission declined to expand or enhance the Rule at that time, concluding that amendments were not warranted because the enforcement tools available then—namely, the TSR and ROSCA—might prove adequate to address continued deceptive and unfair negative option marketing. However, the Commission also explained that, if ROSCA and its other enforcement tools do not adequately protect consumers, the Commission could consider, based on a more complete factual and evidentiary record, whether and how to amend the Rule.³² The Commission's declination was made at a time, moreover, when courts still interpreted the FTC Act's section 13(b) authority as allowing monetary relief for harmed consumers.³³

After the conclusion of the 2009 regulatory review of the Rule, mounting evidence strongly suggested that unlawful negative option marketing continued to harm consumers. The Commission and the States continued to regularly bring cases challenging unlawful negative option practices, including more than 20 FTC cases before 2019. These matters involved a range of deceptive or unfair practices, including inadequate disclosures for “free” offers and other products or programs, enrollment without consumer consent, and inadequate or overly burdensome cancellation and refund procedures.³⁴

charges relating to negative option marketing); *FTC v. Willms*, No. 2:11-cv-00828 (W.D. Wash. May 16, 2011) (internet free trials and continuity plans); *FTC v. Moneymaker*, No. 2:11-cv-00461-JCM-RJJ (D. Nev. Mar. 28, 2011) (internet trial offers and continuity programs); *FTC v. Johnson*, No. 2:10-cv-02203-RLH-GWF (D. Nev. Dec. 21, 2010) (internet trial offers); and *FTC v. John Beck Amazing Profits, LLC*, No. 2:09-cv-04719 (C.D. Cal. June 30, 2009) (infomercial and telemarketing trial offers and continuity programs); see also “An Overview of the FTC's Enforcement Actions Concerning Negative Option Marketing,” a presentation delivered during the Commission's 2007 “Negative Options: An FTC Workshop Analyzing Negative Option Marketing,” <https://www.ftc.gov/news-events/events-calendar/2007/01/negative-options-workshop-analyzing-negative-option-marketing>.

³² 79 FR at 44276.

³³ Numerous courts had held that section 13(b)'s language allowing the Commission to obtain a “permanent injunction” included the authority to seek equitable monetary relief such as restitution or disgorgement. See, e.g., *FTC v. Ross*, 743 F.3d 886, 890–92 (4th Cir. 2014); *FTC v. Bronson Partners, LLC*, 654 F.3d 359, 367 & 375 (2d Cir. 2011); *FTC v. Stefanchik*, 559 F.3d 924, 931 (9th Cir. 2009). The Supreme Court rejected this interpretation in 2021. *AMG Cap. Mgmt., LLC v. FTC*, 593 U.S. 67 (2021).

³⁴ Examples of these matters include: *FTC v. Nutraclick LLC*, No. 2:16-cv-06819-DMG (C.D. Cal.

In 2019, the Commission published an advance notice of proposed rulemaking (“ANPRM”) seeking comment on the Rule (84 FR 52393 (Oct. 2, 2019)). Specifically, the Commission sought comment on alternatives, including amendments to further address disclosures, consumer consent, and cancellation. The Commission also requested input on using its authority under section 18 of the FTC Act to expand the Rule. In 2021, the Commission issued an “Enforcement Policy Statement Regarding Negative Option Marketing.”³⁵

In 2023, the Commission issued a notice of proposed rulemaking (“NPRM”) to amend the Rule.³⁶ The Commission received over 16,000 comments in response.³⁷

In 2024, the Commission promulgated an amended Rule.³⁸ The amendments expanded the scope of the Rule to cover all negative option programs—across all media—and made it an unfair or deceptive act or practice under section 5 of the FTC Act:

- to misrepresent any material fact made while marketing using a negative option feature (§ 425.3);
- to fail to clearly and conspicuously disclose material terms prior to obtaining a consumer's billing information in connection with a negative option feature (§ 425.4);
- to fail to obtain a consumer's express informed consent to the negative option feature before charging the consumer (§ 425.5); and
- to fail to provide a simple mechanism to cancel the negative

2016); *FTC v. Health Formulas, LLC*, No. 2:14-cv-01649-RFB-GWF (D. Nev. 2016); *FTC v. AAFE Products Corp.*, No. 3:17-cv-00575 (S.D. Cal. 2017); *FTC v. Pact Inc.*, No. 2:17-cv-1429 (W.D. Wash. 2017); *FTC v. Tarr*, No. 3:17-cv-02024-LAB-KSC (S.D. Cal. 2017); *FTC v. AdoreMe, Inc.*, No. 1:17-cv-09083 (S.D.N.Y. 2017); *FTC v. Credit Bureau Ctr., LLC*, No. 17-cv-00194 (N.D. Ill. 2017); *FTC v. JDI Dating, Ltd.*, No. 1:14-cv-08400 (N.D. Ill. 2014); *FTC v. XXL Impressions*, No. 1:17-cv-00067-NT (D. Me. 2017); *FTC v. DOTAuthority.com, Inc.*, No. 0:16-cv-62186-WJZ (S.D. Fla. 2018); *FTC v. Bunzai Media Grp., Inc.*, No. CV15-04527-GW(PLAx) (C.D. Cal. 2015); *FTC v. RevMountain, LLC*, No. 2:17-cv-02000-APG-GWF (D. Nev. 2018); *FTC v. Apex Capital Grp., LLC*, No. 2:18-cv-9573 (C.D. Cal. 2018); *FTC v. Jason Cardiff*, No. 18-cv-2104 (C.D. Cal. 2018); *FTC v. Triangle Media Corp.*, No. 18-cv-1388 (S.D. Cal. 2018); *FTC v. AH Media Grp., LLC*, No. 3:19-cv-4022 (N.D. Cal. 2019); *FTC v. Elite IT Partners, Inc.*, No. 2:19-cv-125 (D. Utah 2019); *FTC v. F9 Advertising LLC*, No. 3:19-cv-1174 (D. P.R. 2019); *UrthBox, Inc.*, FTC Matter No. C-4676 (2019).

³⁵ Enforcement Policy Statement, 86 FR 60822 (Nov. 4, 2021).

³⁶ 88 FR 24716 (Apr. 24, 2023).

³⁷ See 89 FR 90476 (Nov. 15, 2024). Unique public comments to the NPRM are available online. See www.regulations.gov, Negative Option Rule (NPRM), FTC-2023-0033-0001, <https://www.regulations.gov/document/FTC-2023-0033-0001>.

³⁸ 89 FR 90476 (Nov. 15, 2024).

option feature and immediately halt charges (§ 425.6).

The amended Rule had an effective date of January 14, 2025 and a deferred compliance date of May 14, 2025 for certain parts (later extended to July 14, 2025).³⁹

In July 2025, the Eighth Circuit vacated the amended Rule (“Vacated Rule”).⁴⁰ The court found the FTC should have conducted a preliminary regulatory analysis under section 22 of the FTC Act, 15 U.S.C. 57b-3(b)(1).⁴¹

VII. Ongoing Problems With Negative Option Marketing

The Commission continues to receive thousands of complaints each year regarding negative option marketing. The rate of these complaints has steadily risen from at least 33 per day in late 2020 to more than 90 per day in 2025. The complaints come from all 50 States, and involve dozens of industries, and hundreds of companies. These complaints have led the Commission to bring additional enforcement actions. For instance, since January 2025, the Commission has initiated five cases alleging negative option misconduct, and has approved six settlements of alleged negative option misconduct.⁴²

³⁹ FTC, Statement of the Commission Regarding the Negative Option Rule, Matter No. P064202 (May 9, 2025).

⁴⁰ *Custom Commc'ns, Inc. v. FTC*, 142 F.4th 1060, 1070–75 (8th Cir. 2025). The Eighth Circuit's vacatur reinstated the prior version of the Rule which was first promulgated in 1973. 38 FR 4896 (Feb. 22, 1973).

⁴¹ *Custom Commc'ns, Inc.*, 142 F.4th at 1074–75.

⁴² The Commission initiated (or referred to the Department of Justice for initiating) enforcement actions in *FTC v. JustAnswer LLC*, No. 3:26-cv-00333 (N.D. Cal. Jan. 13, 2026); *United States v. Iconic Hearts Holdings*, No. 2:25-cv-09310 (C.D. Cal. Sept. 29, 2025); *FTC v. Int'l Markets Live, Inc.*, No. 2:25-cv-00760 (D. Nev. May 20, 2025); *FTC v. Fitness Int'l, LLC*, No. 8:25-cv-1841 (C.D. Cal. Aug. 20, 2025); and *FTC v. Uber Tech., Inc.*, No. 3:25-cv-03477 (N.D. Cal. Apr. 21, 2025). The Commission approved settlements in *FTC v. Maplebear Inc.*, No. 3:25-cv-10783 (N.D. Cal. Dec. 18, 2025) (Instacart; Proposed Stipulated Order); *FTC v. Amazon.com Inc.*, No. 2:23-cv-0932 (W.D. Wash. Sept. 25, 2025) (Stipulated Order); *FTC v. Chegg, Inc.*, No. 5:25-cv-07827 (N.D. Cal. Sept. 15, 2025) (Stipulated Order); *FTC v. Match Grp., Inc.*, No. 3:19-cv-0228 1-K (N.D. Tex. Aug. 12, 2025) (Proposed Stipulated Order); *FTC v. Paddle.com Market Ltd.*, No. 1:25-cv-01886 (D.D.C. June 16, 2025) (Stipulated Order); *FTC v. Cleo AI, Inc.*, No. 1:25-cv-02594 (S.D.N.Y. Mar. 27, 2025) (Stipulated Order); see also *FTC v. Amazon.com, Inc.*, 2025 WL 2677086 (W.D. Wash. Sept. 17, 2025) (granting summary judgment on certain ROSCA violations and individual liability). In addition, the Commission has brought a number of other recent enforcement actions involving unfair or deceptive negative option practices, using its own litigating authority or upon notification and referral to the Department of Justice. See, e.g., *United States v. Adobe, Inc.*, No. 5:24-cv-03630 (N.D. Cal. July 23, 2024); *FTC v. Wealthpress Holdings, Inc.*, No. 3:23-cv-00046 (M.D. Fla. Jan. 12, 2023); *FTC v. Vonage*

Continued

These recent cases and the increasingly high volume of complaints suggest there is prevalent, unabated consumer harm in the marketplace. As discussed below, the Commission seeks comments on these issues.

VIII. Objectives, Regulatory Alternatives, and Request for Comments

The Commission seeks comments on the current Rule as well as regulatory alternatives to better address unfair or deceptive negative option practices. The Commission promulgated the current Rule to address unlawful negative option conduct in the marketplace as it existed over 50 years ago.⁴³ While the record in the prior proceeding amply demonstrates the prevalence of unlawful negative option conduct,⁴⁴ the Commission solicits additional public comment to update the record and ensure its rulemaking adequately responds to concerns from both consumers and industry.

Specifically, the Commission seeks information relating to practices that prevent consumers from understanding the terms of the negative option program, enroll consumers without their express informed consent, or impede consumers from canceling their enrollments. The Commission also seeks information regarding ways to address these practices, including retaining the current Rule, adopting provisions of the Vacated Rule or some other provision, or implementing alternatives to regulation such as educating consumers and businesses on avoiding unlawful negative option practices.

In responding to the questions below, the Commission invites the public to submit any market studies, economic data, or other empirical evidence that the Commission may not have

Holdings, No. 3:22-cv-6435 (D.N.J. Nov. 3, 2022); *FTC v. Benefytt Techs., Inc.*, 8:22-cv-1794 (M.D. Fla. Aug. 8, 2022); *FTC v. First Am. Payment Sys.*, No. 4:22-cv-654 (E.D. Tex. July 29, 2022); *Movie Pass*, No. C-4751 (FTC Oct. 5, 2021); *FTC v. RagingBull.com, LLC*, No. 1:20-cv-3538 (D. Md. Dec. 14, 2020); *FTC v. Age of Learning, Inc.*, No. 2:20-cv-07996 (C.D. Cal. Sept. 2, 2020); *United States v. MyLife.com, Inc.*, No. 20-cv-6692 (C.D. Cal. July 27, 2020).

⁴³ See 38 FR 4896 (Feb. 22, 1973); 63 FR 44555 (Aug. 20, 1998) (minor technical amendments).

⁴⁴ For instance, consumer complaints, law enforcement actions, and academic studies, among other evidence, show unfair and deceptive negative option practices permeate the economy across industries. See *supra* Section VII (consumer complaints about negative option marketing have increased to 90 per day in 2025); *supra* notes 2, 34 (collecting recent cases); see also 89 FR 90476 (Nov. 11, 2024) at Sections VII.A.1(a)-(b), II.A.1(b) (2024 Statement of Basis and Purpose sections collecting enforcement actions, studies, and consumer complaints that demonstrate the prevalence of negative option misconduct for the Vacated Rule).

considered in promulgating the Vacated Rule in the prior proceeding. The Commission reminds commenters that, while it reviews all submissions, comments may be more persuasive when substantiated with evidence, particularly economic evidence.

A. General Questions About the Current Rule

1. Is there a continuing need for the current Rule? Why or why not?

2. Is there a need for new provisions to prevent unfair or deceptive practices by addressing negative option plans not covered by the current Rule? Why or why not?

a. If new regulations are needed, should the Rule be amended, or should a new Rule or Rules be created?

b. Should the Commission consider alternatives to new regulation, such as the publication of additional consumer and business education? If so, what are these alternatives, and how effectively would they prevent unfair or deceptive negative option practices?

c. What are the benefits and costs to consumers and businesses under your proposed approach compared to the other options, whether issuing a new Rule(s), amending the existing Rule, or implementing an alternative to new regulation?

d. What evidence supports your responses to the above questions?

B. Questions About the Marketplace for Negative Option Programs

1. How many negative option enrollments do all negative option sellers have collectively?

a. On average, how many negative option programs is each person, household, or business enrolled in?

b. On average, how many negative option program enrollments occur each year, by enrollment method (*i.e.*, online, over the phone, in person)?

c. On average, how many negative option program enrollments are cancelled each year, by cancellation method (*i.e.*, online, over the phone, in person)?

d. On average, how often do consumers attempt to cancel a negative option program without being able to complete the cancellation process?

2. Which industries⁴⁵ sell negative option programs? How many businesses sell negative option programs? Is this expected to change, and if so, how?

a. What is the total revenue associated with negative option programs?

b. What is the average price of a negative option program?

c. How much do consumers spend on negative option programs that go unused?

d. How much do consumers spend on negative option programs after attempting to cancel?

3. On average, how long does it take consumers to enroll in negative option programs, by enrollment method (*i.e.*, online, over the phone, in person), starting from the time the consumer reaches the website, calls the phone number, or visits the premises designated by the business for enrolling, and including the time consumers spend to navigate the website, wait for a representative, or take steps to reach a representative?

a. For each enrollment method, please provide the average times for all consumers and separately the time for consumers at the 25th percentile, 50th percentile, and 75th percentile ranked by time taken to enroll.

b. Do these enrollment times vary by industry? If so, how?

4. On average, how long does it take consumers to cancel negative option enrollments, by cancellation method (*i.e.*, online, over the phone, in person), starting from the time the consumer reaches the website, calls the phone number, or visits the premises designated by the business for canceling, and including the time consumers spend to navigate the website, wait for a representative, or take steps to reach a representative?

a. For each cancellation method, please provide the average times for all consumers and separately the time for consumers at the 25th percentile, 50th percentile, and 75th percentile ranked by time taken to cancel.

b. Do these cancellation times vary by industry? If so, how?

5. Are third parties, such as payment service providers, subscription management providers, or customer relationship management providers, involved in enrolling consumers into, or canceling consumers' enrollment for, a business's negative option program?

a. If so, what types of third parties, and how are they involved?

b. What impact, if any, do these third parties have on a business's ability to disclose the material terms of the program, obtain consumers' express informed consent, or enable consumers to easily cancel their enrollment?

c. What role, if any, do third-party service providers, such as subscription management providers or customer relationship management providers, currently have in ensuring compliance with existing State and Federal laws governing negative options?

⁴⁵ You may use NAICS codes to identify industries. See *NAICS Code Identification Tools*, <https://www.naics.com/search/>.

6. What evidence supports your responses to the above questions?

7. What timeframe(s) do your responses to the above questions cover?

C. Questions About Unfair or Deceptive Practices Involving Negative Option Programs

1. What unfair or deceptive practices do consumers encounter that involve negative option programs?

a. What practices make it difficult for consumers to understand that a product or service is part of a negative option program?

b. What practices make it difficult for consumers to understand all material terms of a negative option program?

c. What practices enroll consumers into negative option programs without their express informed consent?

d. What practices make it difficult for consumers to cancel the negative option feature of a product or service offering?

e. Is it unfair or deceptive to offer discounts or other incentives to remain enrolled in a negative option program (“Saves”) instead of promptly honoring a consumer’s request to cancel? Why or why not?

i. What proportion of consumers who are offered Saves accept them?

ii. On average, how much money do consumers save by accepting a Saves offer?

iii. To what extent, if any, do Saves make it difficult for consumers to cancel their enrollment in a negative option program? If the business makes a Saves offer and the consumer declines it, how much longer on average does it take for a consumer to cancel?

iv. How do Saves impact competition in the negative options marketplace?

What are the circumstances under which Saves foster competition and result in lower prices and/or better negative option programs for consumers? What are the circumstances under which Saves impede competition by undermining consumers’ ability to cancel and choose a different product or service?

v. What has been the impact of State laws regulating Save attempts (e.g., California) on offers to consumers? Has compliance with these laws resulted in an increase or decrease in Saves offered to consumers?

vi. In addition to the above factors, what other factors should the Commission consider in evaluating the extent to which Saves are unfair or deceptive? What do these factors indicate about whether Saves are unfair or deceptive?

2. Congress authorized the Commission to propose a rule defining unfair or deceptive acts or practices

with specificity when the Commission “has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent.”⁴⁶ A determination about prevalence can be made either on the basis of previous Commission cease-and-desist orders regarding such acts or practices, or when the Commission has “any other information” that “indicates a widespread pattern of unfair or deceptive acts or practices.”⁴⁷ Which unfair or deceptive negative option practices identified in your response to Question C.1 are prevalent? For each of these practices, please answer the following:

a. Is there information indicating that such practices are prevalent? If so, what information?

b. How frequently do consumers encounter the practice?

c. What proportion of consumers have encountered the practice?

d. Is the practice prevalent for all types of negative option programs or just certain types?

e. If just certain types, for which types of negative option programs is the practice not prevalent?

f. Are there features of certain negative option programs that prevent the practice from becoming prevalent?

i. If so, which features?

ii. Is the practice not prevalent for negative option transactions between certain types of parties (e.g., B2B transactions between sophisticated business entities)? If so, which types of parties?

iii. How do negative option transactions between these types of parties prevent the practice from becoming prevalent?

g. Is the practice not prevalent for certain industries?

i. If so, which industries?

ii. What aspects of these industries prevent the practice from becoming prevalent?

h. Do you expect future developments in the negative option marketplace to change any of your responses to the above questions? If so, how?

3. How many, or what proportion of, businesses that sell negative option programs do not engage in any unfair or deceptive negative option practices?

a. Does the proportion that is not engaged in any unfair or deceptive negative option practices vary by observable characteristics, such as industry or firm size? If so, how?

b. Is the proportion of businesses not engaged in unfair or deceptive negative option practices changing over time

⁴⁶ 15 U.S.C. 57a(b)(3).

⁴⁷ *Id.*

(i.e., getting larger or smaller)? If so, how?

4. To the extent unfair or deceptive negative option practices are prevalent in any industry, how do the practices affect competition among businesses?

a. How do the practices affect a business’s ability to win and retain customers?

b. How do the practices affect the need for businesses to compete on the merits of their products or services?

c. Are businesses that do not engage in the practices at a competitive disadvantage to those who do? If so, how?

d. Do the practices affect small businesses differently? If so, how?

5. What evidence supports your responses to the above questions?

D. Questions About Specific Rule Provisions

The Commission may consider portions of the Vacated Rule to propose a new rule.⁴⁸ The Vacated Rule imposed the following four requirements. First, it prohibited misrepresentations of any material fact in connection with a negative option offering.⁴⁹ Second, it required sellers to obtain the consumer’s consent to the negative option feature separately from any other portion of the transaction and to maintain records verifying the consumer’s consent.⁵⁰ Third, it required disclosure of important information about the negative option feature immediately next to the means for obtaining the consumer’s consent for the negative option.⁵¹ Finally, it required a simple

⁴⁸ Since January 2025, the FTC has received two petitions for rulemaking regarding negative options. Petition for Rulemaking of Consumer Federation of America and the American Economic Liberties Project (Dec. 3, 2025), <https://www.regulations.gov/document/FTC-2025-0792-0001>; Petition for Rulemaking of Central Office of Reform and Efficiency (Negative Option Rule) (Jan. 21, 2025), <https://www.regulations.gov/document/FTC-2025-0003-0001>. The Commission will process these requests pursuant to 16 CFR 1.31.

⁴⁹ Vacated Rule at § 425.3. The prohibition applied to misrepresentations relating to the negative option feature, the underlying product or service, or “[a]ny other Material fact.”

⁵⁰ Vacated Rule at § 425.5. The Vacated Rule required Negative Option Sellers to maintain records verifying consumer consent to the negative option feature for 3 years. The Vacated Rule, however, deemed most sellers in compliance with this recordkeeping requirement if they obtained consumer consent using “a check box, signature, or other substantially similar method,” which the consumer must complete to accept the negative option feature.

⁵¹ Vacated Rule at § 425.4. Specifically, the Vacated Rule required disclosure that consumers will be charged unless the consumer cancels; the deadline(s) by which the consumer must cancel to avoid the charge(s); the amount of the charge(s); and the information necessary for the consumer to find the simple cancellation mechanism.

mechanism for consumers to cancel the negative option feature.⁵² In the November 2024 Final Rule document, the Commission analyzed the economic impact of these four requirements and the other requirements of the Vacated Rule in its Final Regulatory Analysis, Final Regulatory Flexibility Act Analysis, and Paperwork Reduction Act Analysis.⁵³ The following questions solicit comments on these four requirements and their economic impact.

1. What requirements, if any, from the Vacated Rule are needed to address unlawful negative option practices prevalent in the marketplace? For any such requirement, or part thereof, please provide the following information:

a. What benefit would the requirement provide consumers in terms of time and money saved?

b. What costs would the requirement impose on consumers?

c. What benefit would the requirement provide businesses in terms of time and money saved?

i. Would complying with the requirement allow businesses to eliminate or reduce certain other business practices? If so, which business practices?

ii. What are the savings in terms of time and money for eliminating or reducing such business practices?

d. What costs would the requirement impose on businesses?

e. What modifications, if any, should the Commission make to the requirements to reduce the costs imposed on businesses, particularly small businesses?⁵⁴

f. Would the requirement interfere with legitimate business practices?

i. If so, what types of legitimate business practices would be affected and how?

ii. How can the Commission modify the requirements to accommodate these legitimate business practices?

g. Does the requirement overlap or conflict with existing Federal, State, or local laws or regulations?

i. If so, how?

⁵² Vacated Rule at § 425.6. The Vacated Rule required the simple cancellation mechanism to be “at least as easy to use” as the mechanism used to obtain the consumer’s consent to the negative option feature and specified certain minimum requirements.

⁵³ 89 FR 90476, 90517–37 (Nov. 15, 2024) (Sections X, XI, and XII).

⁵⁴ Please use the U.S. Small Business Administration’s (“SBA”) standards for defining “small business.” See *Size Standards*, <https://www.sba.gov/federal-contracting/contracting-guide/size-standards>. SBA defines “small business” by NAICS code based on either employment levels or annual receipts.

ii. Should any Rule amendment address such overlaps or conflicts? If so, why, and how? If not, why not?

2. The Commission seeks information on both (i) the current costs⁵⁵ for complying with existing laws on negative options and (ii) how those costs will change if the Commission adopts all or part(s) of the Vacated Rule.

a. For the average negative option seller, what are the current costs to comply with existing Federal, State, and local laws or regulations governing negative options?

b. How, and to what extent, would each of these four requirements change the costs to comply with existing Federal, State, and local laws or regulations governing negative options?

i. Please provide separate estimates for each cost component, including costs to read and understand the rule, costs to update procedures and train personnel on compliance, costs to revise web pages and apps for compliance, costs to modify existing contracts and subscriptions, costs to update disclosures, costs for record keeping, and any other compliance costs.

ii. Would any other requirement from the Vacated Rule change the costs of compliance? If so, how and to what extent?

c. How do the costs in your responses to the above questions vary by industry?

d. How do the costs in your responses to the above questions vary by business size?

e. How do the costs in your responses to the above questions vary by specific business processes, including third-party services, used to market and operate the negative option program (e.g., how do costs vary by type of system for managing customer relationships or subscriptions)?

f. How do the costs in your responses to the above questions vary over time (in real dollars), in particular between initial first year compliance efforts and subsequent years?

3. What evidence supports your responses to the above questions?

4. What evidence do you have that either supports or contradicts the Final Regulatory Analysis, the Final Regulatory Flexibility Act Analysis, and the Paperwork Reduction Act Analysis in the Final Rule document for the Vacated Rule?⁵⁶

E. Questions About Exemptions

The Commission will consider how to handle industry requests for exemptions

⁵⁵ Current costs include fixed costs as well as costs that vary with production.

⁵⁶ 89 FR 90476, 90517–37 (Nov. 15, 2024) (Sections X, XI, and XII).

from the requirements of a new rule. The Vacated Rule, for example, affirmed existing procedures for petitioning the Commission for an exemption and specified these procedures apply to petitions for both partial and full exemptions.⁵⁷ The Commission could take a similar approach to exemptions under a new rule and additionally consider supplementing the existing petition process with new procedural or substantive requirements. Alternatively, the Commission could expressly exempt particular segments of the marketplace from a new rule or apply any new requirements only to specific industries where unlawful negative option marketing practices are prevalent. The following questions solicit information and evidence for making this determination.

1. What procedure should the Commission use to decide requests for exemptions?

2. What criteria should the Commission use to decide requests for exemption?

3. What types of evidence should the Commission require petitioners to submit to support their exemption request?

4. How broadly should the Commission grant exemptions to such a new rule?

a. Should exemptions be limited to individual businesses or should it cover entire industries?

b. Should it be limited in time or in any other manner?

5. Should a new rule exempt certain businesses or industries from any of the four requirements discussed in Section VIII.D above or any other requirement from the Vacated Rule?

a. If so, which requirement(s) and why?

6. Conversely, should a new rule apply to certain industries only? If so, which industries, and why?

7. What evidence supports your responses to the above questions?

IX. Comment Submissions

The public is invited to submit comments on this document. The Commission will consider all timely and responsive comments it receives on or before April 13, 2026. Because of the agency’s heightened security screening, postal mail addressed to the

⁵⁷ Vacated Rule at § 425.8. Section 18 of the FTC Act provides that any affected person may petition the Commission for an exemption from a rule proscribing unfair or deceptive acts or practices. 15 U.S.C. 57a(g). The Commission Rules incorporated this right into 16 CFR 1.16. The vacated Rule specified this right covers both petitions for partial and full exemptions and designated the procedures under 16 CFR 1.31 for resolving such petitions.

Commission will be delayed. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. If you prefer to file your comments on paper, write “Negative Option Rule ANPRM, Project No. P064202” on your comment and on the envelope, and mail your comment by overnight service to: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex N), Washington, DC 20580.

For comments submitted online through the <https://www.regulations.gov> website, you are solely responsible for making sure your comment does not include any sensitive personally identifiable or health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website. Once your comment has been posted there—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website unless you submit a written confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request. Such requests must be clearly labeled “Confidential,” must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c).

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, *see* <https://www.ftc.gov/site-information/privacy-policy>.

X. Regulatory Review

E.O. 14215 requires all executive branch departments and agencies to submit all their proposed and final significant regulatory actions to the Office of Management and Budget (OMB) for review. E.O. 12866 says that agencies should assess the costs and

benefits of available regulatory alternatives and, if regulation is necessary, select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and distributive impacts).

By direction of the Commission.

April J. Tabor,
Secretary.

[FR Doc. 2026–04952 Filed 3–12–26; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

16 CFR Chapter I

RIN 3084–AB88

Rule on Unfair or Deceptive Rental Housing Fee Practices

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission (“Commission”) proposes to commence a rulemaking proceeding to address unfair or deceptive acts or practices relating to advertised rent and other fees and charges in the rental housing industry. To assist the Commission in determining the existence and prevalence of any such potentially unfair or deceptive practices and exploring ways to address them, the Commission is soliciting written comment, including data and argument, concerning such fees and charges throughout a lease lifecycle, from application to move out. The Commission is soliciting such public comment to determine the need for a rule to prevent persons, entities, and organizations from engaging in unfair or deceptive practices in connection with rental housing fees and charges, such as advertising rent that fails to include all mandatory fees or charges, imposing fees and charges without express informed consent, and misleading consumers about the nature and purpose of fees or charges.

DATES: Comments must be received on or before April 13, 2026.

ADDRESSES: Members of the public may file a comment online or on paper by following the instructions in the Comment Submissions part of the **SUPPLEMENTARY INFORMATION** section below. Write “Unfair or Deceptive Rental Housing Fee Practices ANPRM, Project No. R207011” on your comment and file your comment online at <https://www.regulations.gov>. If you prefer to file your comment on paper, mail your

comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex R), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Annette Soberats, asoberats@ftc.gov, 202–326–2921; Karen Mandel, kmandel@ftc.gov, 202–326–2491; Edwin Rodriguez, erodriguez@ftc.gov, 202–326–3147, Attorneys, Division of Advertising Practices.

SUPPLEMENTARY INFORMATION:

I. General Background Information

The Commission publishes this advance notice of proposed rulemaking (“ANPRM”) pursuant to section 18 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. 57a, the provisions of part 1, subpart B, of the Commission’s Rules of Practice, 16 CFR 1.7–1.20, and 5 U.S.C. 553. This authority permits the Commission to promulgate, modify, and repeal rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

II. Objectives the Commission Seeks To Achieve and Possible Regulatory Alternatives

A. Background

Consumers in the market today for rental housing, including renters and prospective renters, must navigate a wide array of hidden or misleading fees and charges that can appear at every stage of the rental cycle—from application to move out. These fees and charges obscure the total rent, causing renters to pay well above what is advertised. For consumers of all ages—from young singles to families to older adults—the gap between the advertised rent and the true total rent, including all mandatory fees and charges, may be more than they can afford.¹ More than half of renters are “cost-burdened, spending at least 30% of their income on rent” and, as a result, struggle to afford other basic necessities.² In 2023,

¹ *See* Allaire Conte, *Rent Isn’t What It Seems: The Hidden Fees Driving Up Housing Costs and the States Taking Action* (Sept. 23, 2025), <https://www.realtor.com/advice/rent/hidden-rental-fees-state-laws/>.

² *See, e.g.*, E.O. 13878, 84 FR 30853 (June 25, 2019) (“In 2017, approximately 37 million renter and owner households spent more than 30 percent of their incomes on housing, with more than 18 million spending more than half of their incomes on housing. Between 2001 and 2017, the number of renter households allocating more than half of their incomes toward rent increased by nearly 45 percent. These rising costs are leaving families with fewer resources for necessities such as food,

Continued