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FTC Delays Enforcement of Amended Negative Option Rule

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On May 9, the Federal Trade Commission (FTC) voted unanimously to delay enforcement of most portions of its amended Negative Option Rule (rule) by 60 days, shifting the compliance deadline for these portions from May 14 to July 14, 2025. Once fully enforced, the rule will impose sweeping new requirements on businesses offering subscription-based services, including enhanced consent, disclosure and cancellation obligations.

While the rule itself remains in effect, according to a Statement of the Commission, the decision is an enforcement policy choice, not a legal stay. The statement emphasized that the delay is intended to give businesses additional time to account for "the complexity of compliance."

Key takeaways

The rule is still technically in force. The FTC's decision does not alter the legal status of the rule – it merely postpones the agency's own enforcement efforts. Additionally, the amendments to the rule that prohibit misrepresentations of material facts in selling any good or service with a negative-option feature went into effect on January 19, 2025, and are currently enforceable.

The delay may permit the Eighth Circuit to hand down a decision regarding the rule before the FTC begins to enforce it. The FTC's decision comes as the US Court of Appeals for the Eighth Circuit considers a legal challenge to the rule brought by several industry groups. The delay may allow the court to issue a ruling before the new compliance date, potentially resolving key questions about the rule's legality.

Alignment with California's ARL updates. The new July 14 enforcement date brings the FTC's timeline closer to the July 1, 2025, enforcement date for California's updated Automatic Renewal Law (ARL). Businesses operating nationally will need to harmonize compliance strategies across overlapping federal and state regimes.

What's next?

According to the FTC's statement, "[s]tarting July 14, 2025, regulated entities must be in compliance with the whole of the Rule because the Commission will begin enforcing it. Of course, if that enforcement experience exposes problems with the Rule, the Commission is open to amending the Rule to address any such Problems." As neither house of Congress has introduced a resolution, it appears unlikely that the rule will be nullified under the Congressional Review Act, but the legal landscape remains fluid, and businesses should monitor the Eighth Circuit proceedings closely as a decision could alter the regulatory calculus.

For questions about how the amended Negative Option Rule, California's ARL or other laws regulating automatic renewal offers may affect your business, please contact any member of the Cooley team listed below.

Cooley special counsel Brett Weinstein also contributed to this alert.

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