

# With Uncertainty Surrounding the FTC's Negative Option Rule, New California Requirements Wait in the Wings

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Last Friday, the FTC's final Negative Option Rule was [published](#) in the Federal Register, starting the clock on the effective dates for the agency's expansive overhaul of requirements related to goods or services sold through any negative option or automatic renewal plan, including free trials, subscriptions, and repeat delivery offers. (For an overview of the final rule, see our previous post [here](#)).

Based on the publication date, the Rule's blanket prohibition on deception will become effective on January 15, 2025, and the provisions related to the disclosure, consent, and cancellation of negative option features will be effective on May 14, 2025. Or will they?

The Rule is currently being challenged in multiple circuits, and the incoming Trump administration could either cut back or scrap the Rule altogether (recall that both Republican commissioners dissented to the final Rule). Congress could also decide to do away with the Rule under the Congressional Review Act, which allows Congress to nullify agency rules promulgated within a "lookback period" based on the number of days that Congress is in session. For all these reasons, it is entirely within the realm of the possibility that the current Rule does not ultimately take effect, or that only certain aspects take effect.

Amidst this uncertainty, as businesses evaluate whether to overhaul or modify any of their subscription practices, it is important to keep in mind that even if the final Rule is set aside, repealed, or significantly amended, there are still myriad state laws to consider. Significantly, as we previously reported [here](#), new amendments to California's already stringent Automatic Renewal Law (ARL) become effective on July 1, 2025, and mirror or even go beyond many requirements adopted under the FTC's Rule.

So, what are the key new California ARL requirements that companies will need to comply with, regardless of the outcome of challenges to the FTC Rule?

- Obtaining "express affirmative consent" to the automatic renewal terms beyond consent to an agreement containing the terms;
- A ban on including information that detracts from or interferes with the consumer's ability to provide affirmative consent;

- A ban on misrepresentations of material facts related to the underlying good or service;
- Disclosing additional, specific material terms prior to obtaining billing information;
- Maintaining "verification" records of a consumer's affirmative consent for at least three years, or one year after the contract is terminated, whichever period is longer;
- Allowing cancellation through the same method used to sign up or interact with the business, without obstruction or delay;
- Imposing limitations on save offers and specific requirements on offers made in different media;

While companies operating in California will need to comply with the above requirements regardless of the fate of the FTC's Rule, the FTC's Rule imposes some unique issues and requirements, including :

- Broad application to "any negative option program in any media," including B2B transactions;
- "Unambiguous" affirmative consent to the negative option feature separate from any other portion of the transaction;
- Cancellation at least as easy as consent (i.e., proportional consent and cancellation processes);
- Ban on the use of a live or virtual representative (e.g., chatbot) for cancellation if not used for consent.

Some of these ostensible differences may end up being more academic than practical, particularly if California aggressively interprets certain requirements in its statutes. For instance, California may not interpret its consent and cancellation requirements much differently from the FTC's unambiguous affirmative consent or proportional cancellation requirements, even though its statute is less prescriptive.

Where does that leave businesses? Unfortunately, with more uncertainty than answers. At the end of the day, companies will need to conduct a fact-specific risk assessment to determine how closely their practices align with the to-be-effective California requirements and pending Rule requirements.