



[Billing Code: 6750-01-S]

FEDERAL TRADE COMMISSION
Agency Information Collection Activities; Submission for OMB
Review; Comment Request

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (“OMB”) to extend through November 30, 2014, the current Paperwork Reduction Act (“PRA”) clearance for the information collection requirements in Use of Prenotification Negative Option Plans (“Negative Option Rule” or “Rule”). That clearance expires on November 30, 2011.

DATES: Comments must be submitted by [INSERT DATE 30 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the SUPPLEMENTARY INFORMATION section below. Write “Negative Option Rule: FTC File No. P064202” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/NegOptionPRA2> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Edwin Rodriguez, Attorney, Division of Enforcement, Bureau of

Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, M-8102B, Washington, DC 20580, (202) 326-3147.

SUPPLEMENTARY INFORMATION:

Title: Negative Option Rule, 16 CFR Part 425.

OMB Control Number: 3084-0104.

Type of Review: Extension of currently approved collection.

Abstract: The Negative Option Rule governs the operation of prenotification subscription plans. Under these plans, sellers notify subscribers that they will automatically ship merchandise, such as books, compact discs, or tapes, and bill subscribers for the merchandise if the subscribers do not expressly reject the merchandise beforehand within a prescribed time. The Rule protects consumers by: (a) requiring that promotional materials disclose the terms of membership clearly and conspicuously; and (b) establishing procedures for the administration of such “negative option” plans.

On August 4, 2011, the Commission sought comment on the information collection requirements associated with the Negative Option Rule. 76 FR 47186. No comments were received. Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.*, the FTC is providing a second opportunity for the public to comment while seeking OMB approval to renew the pre-existing clearance for the Rule.

Estimated Annual Burden: 3,875 hours

Estimated Number of Respondents, Estimated Average Burden Per Year Per Respondent:

- (a) 45 existing clubs each require annually about 75 hours to comply with the Rule's disclosure requirements, for a total of 3,375 hours (45 clubs x 75 hours);
- (b) 5 new clubs come into being each year, requiring approximately 100 hours to comply with the Rule, including start up-time, for a total of 500 hours (5 clubs x 100 hours).

Estimated Annual Labor Cost: \$167,125.¹

Estimated Capital or Other Non-Labor Cost: minimal.²

Request for Comment:

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN FEDERAL REGISTER]. Write "Negative Option Rule: FTC File No. P064202" on your comment. 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 public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

¹ The calculations underlying this estimate were detailed in the August 4, 2011, related *Federal Register* Notice. See 76 FR at 47187. An error in the recap, however, showed the total as \$171,825; the ensuing calculations in that notice, however, correctly showed the total as \$167,125.

² Because the Rule has been in effect since 1974, the vast majority of the negative option clubs have no current start-up costs. For the few new clubs that enter the market each year, the costs associated with the Rule's disclosure requirements, beyond the additional labor costs discussed above, are minimal. Negative option clubs already have access to the ordinary office equipment necessary to achieve compliance with the Rule. Similarly, the Rule imposes few, if any, printing and distribution costs. The required disclosures generally constitute only a small addition to the advertising for negative option plans. Because printing and distribution expenditures are incurred to market the product regardless of the Rule, adding the required disclosures results in marginal incremental expense.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential . . . ," as provided in 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). If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).³ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/NegOptionPRA2> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!/home>, you also may file a comment through that website.

³ In particular, the written request for confidential treatment that accompanies the comment 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), 16 CFR 4.9(c).

If you file your comment on paper, write “Negative Option Rule: FTC File No. P064202” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. 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. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN FEDERAL REGISTER]. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW, Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395-5167.

David C. Shonka
Acting General Counsel.

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