



[Billing code: 6750-01-S]

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice and request for comment.

SUMMARY: The FTC requests that the Office of Management and Budget (OMB) extend for three years the current Paperwork Reduction Act (PRA) clearance for information collection requirements contained in the Use of Prenotification Negative Option Plans (Negative Option Rule or Rule). That clearance expires on December 31, 2020.

DATES: Comments must be received by [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review - Open for Public Comments” or by using the search function. The [reginfo.gov](https://www.reginfo.gov) web link is a United States Government website produced by OMB and the General Services Administration (GSA). Under PRA requirements, OMB’s Office of Information and Regulatory Affairs (OIRA) reviews Federal information collections.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney,
Division of Enforcement, Federal Trade Commission, Room CC-9528, 600 Pennsylvania
Avenue, NW, Washington, DC 20580, (202) 326-2889.

SUPPLEMENTARY INFORMATION:

Title: Use of Prenotification Negative Option Plans (Negative Option Rule or Rule), 16
CFR 425.¹

OMB Control Number: 3084-0104.

Type of Review: Extension of a currently approved collection.

Likely Respondents: Sellers of prenotification subscription plans.

Estimated Annual Hours Burden: 9,750 hours.

Estimated Annual Cost Burden: \$572,300 (solely related to labor costs).

Estimated Capital or Other Non-Labor Cost: \$0 or *de minimis*.

Abstract: The Negative Option Rule governs the operation of prenotification
subscription plans. Under these types of plans – which can include things such as a book
of the month club, food of the month club, or clothing items of the month club – a seller
provides a consumer with automatic shipments of merchandise unless the consumer
affirmatively notifies the seller they do not want the shipment. The Rule requires that a
seller notify a member that they will automatically ship merchandise to the member and
bill the member for the merchandise if the subscriber fails to expressly reject the

¹ The Commission recently published an Advance Notice of Proposed Rulemaking seeking
comments on the need for amendments to the current Rule. 84 FR 52393 (Oct. 2, 2019). The
present PRA Notice is not part of that proceeding and merely seeks comment on the existing
burden estimates for the current Rule, which applies only to “prenotification” negative option
plans.

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.

Request for Comment

On August 3, 2020, the FTC sought public comment on the information collection requirements associated with the Rule. 85 FR 46628. The Commission received one anonymous comment (#0049-0002), which generally supported the Rule’s extension.² Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.*, the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule.

Your comment -- including your name and your state -- will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as 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, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any

² This comment was filed under the wrong public docket number and is available at <https://www.regulations.gov/document?D=FTC-2020-0049-0002>.

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.

Josephine Liu,
Assistant General Counsel for Legal Counsel.

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