



FEDERAL TRADE COMMISSION

16 CFR Parts 425, 463, and 910

RIN 3084-AB60

RIN 3084-AB72

RIN 3084-AB74

Revision of the Negative Option Rule, Withdrawal of the CARS Rule, Removal of the Non-Compete Rule to Conform these Rules to Federal Court Decisions

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: In light of Federal court decisions, the Federal Trade Commission (“FTC” or “Commission”) is taking final action to conform three of its recent rules to the results ordered by the courts. First, the Commission is revising its recently amended “Rule Concerning Recurring Subscriptions and Other Negative Option Programs” (“Negative Option Rule”) to recodify the text of the Negative Option Rule as it existed before the effective date of the Commission’s 2024 final rule amending it. Second, the Commission is withdrawing its final rule titled “Combating Auto Retail Scams Trade Regulation Rule” (“CARS Rule”). Third, the Commission is removing its “Non-Compete Clause Rule” (“Non-Compete Rule”) from the Code of Federal Regulations.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. The withdrawal of the Commission’s final rule published at 89 FR 590 (Jan. 4, 2024) and delayed at 89 FR 13267 (Feb. 22, 2024) is also effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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SUPPLEMENTARY INFORMATION:

I. Background and Discussion

The Federal Trade Commission (“FTC” or “Commission”) is taking final action in light of Federal court decisions vacating the Commission’s final rules in three of the Commission’s recent rulemaking proceedings. These decisions vacated final rules revising the Negative Option Rule and promulgating the CARS Rule and the Non-Compete Rule. Each will be discussed in turn.

A. The Negative Option Rule – 16 CFR part 425

The Commission first promulgated the Negative Option Rule in 1973 pursuant to the FTC Act, 15 U.S.C. 41 *et seq.*, finding that some negative option marketers were engaged in unfair and deceptive practices that violated section 5 of the Act, 15 U.S.C. 45.¹ On November 15, 2024, the Commission published a final rule (“2024 Rule”) amending its Negative Option Rule.² Among other things, the 2024 Rule (1) prohibited misrepresentations of any material fact made while marketing using negative option features; (2) required sellers to provide important information prior to obtaining consumers’ billing information and charging consumers; (3) required sellers to obtain consumers’ unambiguously affirmative consent to the negative option feature prior to charging them; and (4) required sellers to provide consumers with simple cancellation mechanisms to immediately halt all recurring charges.

After the 2024 Rule was published, businesses and industry groups asked four Federal circuit courts to review the Negative Option Rule. The Judicial Panel on Multidistrict Litigation consolidated their petitions in the U.S. Court of Appeals for the Eighth Circuit.³ Petitioners argued that the 2024 Rule did not meet the specificity and

¹ See FTC, Final Rule: Negative Option Rule, 89 FR 90476, 90477-78 (Nov. 15, 2024).

² See *id.* at 90476.

³ *Custom Commc’ns, Inc. v. FTC*, 142 F.4th 1060 (8th Cir. 2025).

prevalence requirements of section 18 of the FTC Act,⁴ violated section 22 of the FTC Act⁵ because the Commission had not issued a preliminary regulatory analysis, and was overbroad and unworkable.⁶ The Eighth Circuit found that the Commission’s failure to issue a preliminary regulatory analysis was “procedurally insufficient” and vacated the 2024 Rule.⁷

In light of the Eighth Circuit’s vacatur, this final rule revises the Negative Option Rule to restore it in the form it existed before the 2024 Rule became effective.⁸ *See Menorah Med. Ctr. v. Heckler*, 768 F.2d 292, 297 (8th Cir. 1985) (“Unless special circumstances are present, which we do not find here, prior regulations remain valid until replaced by a valid regulation or invalidated by a court.”); *see also Action on Smoking & Health v. CAB*, 713 F.2d 795, 797 (D.C. Cir. 1983) (“[B]y vacating or rescinding the [amendments], the judgment of this court had the effect of reinstating the rules previously in force.”).

B. The CARS Rule – 16 CFR part 463

In January 2024, the Commission published its CARS Rule⁹ which, among other things, prohibited motor vehicle dealers from making certain misrepresentations in the course of selling, leasing, or arranging financing for motor vehicles; required accurate pricing disclosures in dealers’ advertising and sales communications; required dealers to obtain consumers’ express, informed consent for charges; prohibited the sale of any add-on product or service that confers no benefit to the consumer; and required dealers to keep records of certain advertisements and customer transactions.¹⁰

⁴ 15 U.S.C. 57a.

⁵ 15 U.S.C. 57b-3(b)(1).

⁶ 142 F.4th at 1069-70.

⁷ *Id.* at 1074.

⁸ This recodification includes changing the full name of the rule back to “Use of Prenotification Negative Option Plans.”

⁹ *See* FTC, Final Rule: Combating Auto Retail Scams Trade Regulation Rule, 89 FR 590 (Jan. 4, 2024). The Dodd-Frank Act (Pub. L. 111-203, 124 Stat 1376 (2010)) authorizes the Commission to prescribe rules with respect to unfair or deceptive acts or practices by motor vehicle dealers. 12 U.S.C. 5519(d).

¹⁰ 89 FR 590.

On or about January 5, 2024, the National Automobile Dealers Association and the Texas Automobile Dealers Association filed a petition for review in the U.S. Court of Appeals for the Fifth Circuit.¹¹ On January 8, 2024, they filed a motion with the Fifth Circuit seeking a stay of the CARS Rule and expedited consideration of their petition. On February 22, 2024, the Commission delayed the effective date of the CARS Rule during the pendency of this legal challenge.¹²

On January 27, 2025, the Fifth Circuit found “that the substantive authority for the CARS Rule arises from § 18(a)(1)(B) of the FTC Act and that subpart B¹³ [of the FTC’s] procedures apply in all rulemakings where § 18(a)(1)(B) provides authority.”¹⁴ The court concluded that the FTC “violated its own regulations when it failed to issue an ANPRM for the CARS Rule.”¹⁵ The Fifth Circuit further found that this error was not harmless and vacated the CARS Rule.¹⁶

This final rule withdraws the CARS Rule published at 89 FR 590 (Jan. 4, 2024) and delayed at 89 FR 13267 (Feb. 22, 2024) to conform the rule with the Fifth Circuit’s decision.

C. The Non-Compete Rule – 16 CFR part 910

On May 7, 2024, the Commission published its Non-Compete Rule.¹⁷ The Non-Compete Rule provided that it is an unfair method of competition and therefore a violation of section 5 of the FTC Act for persons to, among other things, enter into non-compete clauses (“non-competes”) with workers on or after September 4, 2024. With

¹¹ *Nat’l Auto. Dealers Ass’n v. FTC*, 127 F.4th 549 (5th Cir. 2025).

¹² See FTC, Final Rule: Combating Auto Retail Scams Trade Regulation Rule, delay of effective date, 89 FR 13267 (Feb. 22, 2024) (stating that although the petitioners did not seek a stay from the Commission in the first instance as required by Rule 18(a)(1) of the Federal Rules of Appellate Procedure, the Commission nonetheless reviewed their motion, construing it as though it were a stay request submitted under Commission Rule 4.2(d) (16 CFR 4.2(d)), and delayed the effective date of the CARS Rule). This delay document also stated that the Commission would publish a document in the *Federal Register* announcing the CARS Rule’s new effective date once the court resolved the merits of the petition.

¹³ 16 CFR 1.7-1.20.

¹⁴ 127 F.4th at 559.

¹⁵ *Id.*

¹⁶ *Id.* at 561.

¹⁷ See FTC, Final Rule: Non-Compete Clause Rule, 89 FR 38342 (May 7, 2024).

respect to existing non-competes—i.e., non-competes entered into before September 4, 2024—the Non-Compete Rule adopted a different approach for senior executives than for other workers. For senior executives, existing non-competes could remain in force, while existing non-competes with other workers were not enforceable after September 4, 2024.¹⁸

After the Non-Compete Rule was issued, several employers and trade groups filed lawsuits challenging it. Plaintiffs argued, among other things, that the Commission did not have the statutory authority to issue the Non-Compete Rule; that the rule violated the major questions doctrine; and that it was unlawfully retroactive. Federal district courts in three jurisdictions issued opinions in lawsuits challenging the Non-Compete Rule. In one case, the court denied the plaintiff’s motion for a preliminary injunction.¹⁹ In another case, the court concluded that the plaintiff had demonstrated a likelihood of success on its claim that the Non-Compete Rule violated the major questions doctrine and entered a preliminary injunction that was limited to the plaintiff.²⁰ In the third case, the court held that the Non-Compete Rule was unlawful and set it aside.²¹ Specifically, because the court “concluded that (i) the FTC promulgated the Non-Compete Rule in excess of its statutory authority, and (ii) the Rule is arbitrary and capricious,” the court found that it “must ‘hold unlawful’ and ‘set aside’ the FTC’s Rule as required under § 706(2)” of the Administrative Procedure Act.²²

On September 5, 2025, the Commission voted 3-1 to dismiss its appeals in *Ryan, LLC v. FTC*, No. 24-10951 (5th Cir.), and *Properties of the Villages v. FTC*, No. 24-13102 (11th Cir.) and accede to the vacatur of the Non-Compete Rule.²³ With the

¹⁸ *Id.*

¹⁹ *ATS Tree Servs., LLC v. FTC*, No. CV 24-1743, 2024 WL 3511630, at *19 (E.D. Pa. July 23, 2024).

²⁰ *Props. of the Villages, Inc. v. FTC*, No. 5:24-CV-316-TJC-PRL, 2024 WL 3870380, at *11 (M.D. Fla. Aug. 15, 2024).

²¹ *Ryan, LLC v. FTC*, 746 F. Supp. 3d 369 (N.D. Tex. 2024).

²² *Id.* at 389–90.

²³ Press Release, FTC, Federal Trade Commission Files to Accede to Vacatur of Non-Compete Clause Rule

Commission having now acceded to vacatur, this final rule removes the Non-Compete Rule codified at 16 CFR part 910 from the Code of Federal Regulations (“CFR”).

II. Procedural Requirements

A. The Administrative Procedure Act

The APA allows agencies to dispense with notice and public comment if the agency finds for good cause that notice and comment are unnecessary.²⁴ The Commission has determined that notice and comment is unnecessary in this instance because Federal courts have vacated these rules. Here, the Commission – by revising the Negative Option Rule, withdrawing the CARS Rule, and removing the Non-Compete Rule from the CFR – is simply undertaking the ministerial task of conforming these Rules to the results ordered by the circuit courts. Thus, seeking public comment on these actions is unnecessary.

For the same reasons that this final rule is exempt from notice-and-comment rulemaking requirements, the Commission finds that good cause exists to make this final rule effective upon publication in the *Federal Register* under 5 U.S.C. 553(d)(3).

B. E.O. 14215, Ensuring Accountability for All Agencies; E.O. 12866, Regulatory Planning and Review; E.O. 14192, Unleashing Prosperity Through Deregulation

E.O. 14215 requires all executive branch departments and agencies, including independent agencies, to submit all their proposed and final significant regulatory actions to the Office of Budget and Management (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). OMB determined that this final rule is not a significant regulatory

(Sept. 5, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/09/federal-trade-commission-files-accede-vacatur-non-compete-clause-rule>.

²⁴ 5 U.S.C. 553(b)(B).

action under E.O. 12866.

Executive Order 14192 requires that any new incremental costs associated with certain significant regulatory actions “shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.” OMB’s guidance to agencies implementing E.O. 14192 defines two types of E.O. 14192 actions: an E.O. 14192 regulatory action and an E.O. 14192 deregulatory action.²⁵ The guidance defines an E.O. 14192 deregulatory action as “an action that has been finalized and has total costs less than zero.”²⁶ The guidance further explains that “an E.O. 14192 deregulatory action qualifies as both (1) one of the actions used to satisfy the provision to repeal or revise at least 10 existing regulations for each regulation issued and (2) a cost savings for purposes of the total incremental cost allowance.”²⁷ This rulemaking is expected to have total costs less than zero, and therefore is expected to be an E.O. 14192 deregulatory action.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 and its implementing regulations, the FTC is required to submit changes to collections of information to OMB for review and approval.²⁸ The vacatur of the 2024 Rule amending the Negative Option Rule, the CARS Rule, and the Non-Compete Rule impacted the following OMB-approved collections:

- Negative Option Rule collection of information, control number 3084-0104,²⁹

²⁵ OMB, M-25-20; Memorandum For: Regulatory Policy Officers at Executive Departments And Agencies and Managing and Executive Directors of Certain Agencies and Commissions (Mar. 26, 2025), <https://www.whitehouse.gov/wp-content/uploads/2025/02/M-25-20-Guidance-Implementing-Section-3-of-Executive-Order-14192-Titled-Unleashing-Prosperty-Through-Deregulation.pdf>.

²⁶ *Id.* at 4.

²⁷ *Id.*

²⁸ 44 U.S.C. 3501-3521; 5 CFR part 1320.

²⁹ On November 11, 2024, OMB approved this revised collection through November 30, 2027.

- CARS Rule collection of information, control number 3084-0172,³⁰ and
- Non-Compete Rule collection of information, control number 3084-0173.³¹

The Commission will file a request to discontinue these collections with OMB on the same date that this final rule publishes in the *Federal Register*. For the CARS Rule and Non-Compete Rule, the Commission will request a discontinuance of all collections and their associated OMB control numbers. For the Negative Option Rule, the Commission will request a discontinuance only for the revised collections associated with the 2024 Rule.³² This final rule recodifies the text of the Negative Option Rule as it existed before the 2024 Rule became effective. Thus, OMB’s February 13, 2024 approval of an extension for information collections associated with the previous and now recodified version of the Negative Option Rule will be in effect.³³

D. Regulatory Flexibility Act

Because the Commission has determined that it may revise the Negative Option Rule, withdraw the CARS Rule, and remove the Non-Compete Rule from the CFR without public comment, the Commission is also not required to publish an initial or final regulatory flexibility analysis under the Regulatory Flexibility Act as part of such action.³⁴

E. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a “major rule,” as defined by 5 U.S.C. 804(2).

³⁰ On June 20, 2024, OMB approved this collection through June 30, 2027.

³¹ On June 25, 2024, OMB approved this collection through June 30, 2027.

³² 89 FR 90476 (Nov. 15, 2024).

³³ On February 13, 2024, OMB approved an extension of the information collections associated with the version of the Negative Option Rule that was legally applicable before the subsequent 2024 Rule became effective.

³⁴ See 5 U.S.C. 603(a), 604(b).

List of Subjects

16 CFR Part 425

Advertising, consumer protection, trade practices

16 CFR Part 463

Consumer protection, motor vehicles, reporting and recordkeeping requirements, trade practices

16 CFR Part 910

Antitrust

For the reasons set forth above, under the authority of 15 U.S.C. 41 *et seq.*, the Commission amends 16 CFR chapter I as follows:

1. Revise part 425 to read as follows:

PART 425—USE OF PRENOTIFICATION NEGATIVE OPTION PLANS

Sec.

425.1 The rule.

425.2 [Reserved]

Authority: 15 U.S.C. 41 through 58

PART 425—USE OF PRENOTIFICATION NEGATIVE OPTION PLANS

§ 425.1 The rule.

(a) In connection with the sale, offering for sale, or distribution of goods and merchandise in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice, for a seller in connection with the use of any negative option plan to fail to comply with the following requirements:

(1) Promotional material shall clearly and conspicuously disclose the material terms of the plan, including:

(i) That aspect of the plan under which the subscriber must notify the seller, in the manner provided for by the seller, if he does not wish to purchase the selection;

(ii) Any obligation assumed by the subscriber to purchase a minimum quantity of merchandise;

(iii) The right of a contract-complete subscriber to cancel his membership at any time;

(iv) Whether billing charges will include an amount for postage and handling;

(v) A disclosure indicating that the subscriber will be provided with at least ten (10) days in which to mail any form, contained in or accompanying an announcement identifying the selection, to the seller;

(vi) A disclosure that the seller will credit the return of any selections sent to a subscriber, and guarantee to the Postal Service or the subscriber postage to return such selections to the seller when the announcement and form are not received by the subscriber in time to afford him at least ten (10) days in which to mail his form to the seller;

(vii) The frequency with which the announcements and forms will be sent to the subscriber and the maximum number of announcements and forms which will be sent to him during a 12-month period.

(2) Prior to sending any selection, the seller shall mail to its subscribers, within the time specified by paragraph (a)(3) of this section:

(i) An announcement identifying the selection;

(ii) A form, contained in or accompanying the announcement, clearly and conspicuously disclosing that the subscriber will receive the selection identified in the announcement unless he instructs the seller that he does not want the selection, designating a procedure by which the form may be used for the purpose of enabling the subscriber so to instruct the seller, and specifying either the return date or the mailing date.

(3) The seller shall mail the announcement and form either at least twenty (20)

days prior to the return date or at least fifteen (15) days prior to the mailing date, or provide a mailing date at least ten (10) days after receipt by the subscriber, provided, however, that whichever system the seller chooses for mailing the announcement and form, such system must provide the subscriber with at least ten (10) days in which to mail his form.

(b) In connection with the sale or distribution of goods and merchandise in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, it shall constitute an unfair or deceptive act or practice for a seller in connection with the use of any negative option plan to:

(1) Refuse to credit, for the full invoiced amount thereof, the return of any selection sent to a subscriber, and to guarantee to the Postal Service or the subscriber postage adequate to return such selection to the seller, when:

(i) The selection is sent to a subscriber whose form indicating that he does not want to receive the selection was received by the seller by the return date or was mailed by the subscriber by the mailing date;

(ii) Such form is received by the seller after the return date, but has been mailed by the subscriber and postmarked at least 3 days prior to the return date;

(iii) Prior to the date of shipment of such selection, the seller has received from a contract-complete subscriber, a written notice of cancellation of membership adequately identifying the subscriber; however, this provision is applicable only to the first selection sent to a canceling contract-complete subscriber after the seller has received written notice of cancellation. After the first selection shipment, all selection shipments thereafter are deemed to be unordered merchandise pursuant to section 3009 of the Postal Reorganization Act of 1970, as adopted by the Federal Trade Commission in its public notice, dated September 11, 1970;

(iv) The announcement and form are not received by the subscriber in time to

afford him at least ten (10) days in which to mail his form.

(2) Fail to notify a subscriber known by the seller to be within any of the circumstances set forth in paragraphs (b)(1)(i) through (iv) of this section, that if the subscriber elects, the subscriber may return the selection with return postage guaranteed and receive a credit to his account.

(3) Refuse to ship within 4 weeks after receipt of an order merchandise due subscribers as introductory and bonus merchandise, unless the seller is unable to deliver the merchandise originally offered due to unanticipated circumstances beyond the seller's control and promptly makes a reasonably equivalent alternative offer. However, where the subscriber refuses to accept alternatively offered introductory merchandise, but instead insists upon termination of his membership due to the seller's failure to provide the subscriber with his originally requested introductory merchandise, or any portion thereof, the seller must comply with the subscriber's request for cancellation of membership, provided the subscriber returns to the seller any introductory merchandise which already may have been sent him.

(4) Fail to terminate promptly the membership of a properly identified contract-complete subscriber upon his written request.

(5) Ship, without the express consent of the subscriber, substituted merchandise for that ordered by the subscriber.

(c) For the purposes of this part:

(1) *Negative option plan* refers to a contractual plan or arrangement under which a seller periodically sends to subscribers an announcement which identifies merchandise (other than annual supplements to previously acquired merchandise) it proposes to send to subscribers to such plan, and the subscribers thereafter receive and are billed for the merchandise identified in each such announcement, unless by a date or within a time specified by the seller with respect to each such announcement the subscribers, in

conformity with the provisions of such plan, instruct the seller not to send the identified merchandise.

(2) *Subscriber* means any person who has agreed to receive the benefits of, and assume the obligations entailed in, membership in any negative option plan and whose membership in such negative option plan has been approved and accepted by the seller.

(3) *Contract-complete subscriber* refers to a subscriber who has purchased the minimum quantity of merchandise required by the terms of membership in a negative option plan.

(4) *Promotional material* refers to an advertisement containing or accompanying any device or material which a prospective subscriber sends to the seller to request acceptance or enrollment in a negative option plan.

(5) *Selection* refers to the merchandise identified by a seller under any negative option plan as the merchandise which the subscriber will receive and be billed for, unless by the date, or within the period specified by the seller, the subscriber instructs the seller not to send such merchandise.

(6) *Announcement* refers to any material sent by a seller using a negative option plan in which the selection is identified and offered to subscribers.

(7) *Form* refers to any form which the subscriber returns to the seller to instruct the seller not to send the selection.

(8) *Return date* refers to a date specified by a seller using a negative option plan as the date by which a form must be received by the seller to prevent shipment of the selection.

(9) *Mailing date* refers to the time specified by a seller using a negative option plan as the time by or within which a form must be mailed by a subscriber to prevent shipment of the selection.

Part 910 [Removed and Reserved]

2. Remove and reserve part 910.

By direction of the Commission.

Joel Christie,

Acting Secretary.

[FR Doc. 2026-02866 Filed: 2/11/2026 8:45 am; Publication Date: 2/12/2026]