

Issued in Washington, DC, on May 7, 2009.

**Nan Shellabarger,**

*Director of Advance Notice of Proposed Rulemaking*

[FR Doc. E9-11291 Filed 5-13-09; 8:45 am]

BILLING CODE 4910-13-P

## FEDERAL TRADE COMMISSION

### 16 CFR Part 425

#### Rule Concerning the Use of Prenotification Negative Option Plans

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

**ACTION:** Advance Notice of Proposed Rulemaking; Request for public comments.

**SUMMARY:** As part of the Commission’s systematic review of all current FTC rules and guides, the Commission requests public comment on the overall costs, benefits, necessity, and regulatory and economic impact of the FTC’s Trade Regulation Rule concerning “Use of Prenotification Negative Option Plans.”

**DATES:** Written comments must be received on or before July 27, 2009.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to “Prenotification Negative Option Rule Review, Matter No. P064202” to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (<http://www.ftc.gov/advance-notice>).

Because comments will be made public, they should not include any sensitive personal information, such as an individual’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. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should 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 Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in

paper form and clearly labeled “Confidential.”<sup>1</sup>

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (<http://sec.ed.gov/eitossco/ftc-Neat/eOIR/eANPR>) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (<http://sec.ed.gov/eitossco/ftc-Neat/eOIR/eANPR>). If this Notice appears at (<http://www.ftc.gov/advance-notice>),

you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at <http://www.ftc.gov> to read the Notice and the news release describing it.

A comment filed in paper form should include the “Prenotification Negative Option Rule Review, Matter No. P064202” reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room H-135 (Annex Q), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (“FTC Act”) and other laws 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, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (<http://www.ftc.gov/advance-notice>). As a matter of discretion, the Commission makes every effort to remove home contact

<sup>1</sup> The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC’s privacy policy, at (<http://www.ftc.gov/privacy>).

Negative Option Rule Review, Matter No. P064202, FTC Advance Notice of Proposed Rulemaking, 74 FR 22720 (May 14, 2009).

<sup>2</sup> The Rule became effective on June 4, 1974.

<sup>3</sup> 51 FR 42087 (Nov. 21, 1986).

<sup>4</sup> 62 FR 15135 (Mar. 31, 1997).

minimal cost.”

---

<sup>5</sup> 63 FR 44555 (Aug. 20, 1998).

<sup>6</sup> The Commission: deleted a Note that had become obsolete; amended two paragraphs to read “in or affecting commerce” in lieu of “in commerce” to conform the Rule to the FTC Act; and changed the title from “Negative Option Rule” to “Use of Prenotification Negative Option Plans” to better describe the Rule’s coverage.

<sup>7</sup> These terms are: the aspect of the plan under which subscribers must notify the seller if they do not wish to purchase the selection; any minimum purchase obligations; the subscribers’ right to cancel; whether billing charges include postage and handling; that subscribers will be given at least ten days to reject a selection; that if any subscriber is not given ten days to reject a selection, the seller will credit the return of the selection and postage to return the selection, along with shipping and handling; and the frequency with which announcements and forms will be sent, and the maximum number of announcements subscribers should expect to receive during a twelve-month period. 16 CFR 425.1(a)(1)(i-vii).

<sup>8</sup> 16 CFR 425.1(a)(2)(3); 425.1(b).

requires marketers to make certain disclosures clearly and conspicuously? If so, why, and how? If not, why not?

(15) What potentially unfair or deceptive practices concerning the marketing of prenotification negative option plans, if any, are not covered by the Rule?

(a) What evidence, such as empirical data, consumer perception studies, or consumer complaints, demonstrates whether there is widespread existence of such practices? Please provide this evidence.

(b) What evidence demonstrates that such practices cause consumer injury? Please provide this evidence.

(c) With reference to such practices, should the Rule be modified? If so, why, and how? If not, why not?

(16) What potentially unfair or deceptive practices concerning the marketing of negative option plans, not covered by the Rule, are occurring in the marketplace?

(a) What evidence, such as empirical data, consumer perception studies, or consumer complaints, demonstrates whether there is widespread existence of such practices? Please provide this evidence.

(b) What evidence demonstrates that such practices cause consumer injury? Please provide this evidence.

(c) With reference to such practices, should the Rule be modified? If so, why, and how? If not, why not?

(17) What modifications, if any, should be made to the Rule to account for changes in relevant technology or economic conditions?

(a) What evidence supports the proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

(18) Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?

(a) What evidence supports the asserted conflicts?

(b) With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not?

(c) Is there evidence concerning whether the Rule has assisted in promoting national consistency with respect to the marketing and operation of prenotification negative option plans? If so, please provide that evidence.

(19) Are there foreign or international laws, regulations, or standards with respect to negative option plans that the Commission should consider as it reviews the Rule? If so, what are they?

(a) Should the Rule be modified in order to harmonize with these international laws, regulations, or

standards? If so, why, and how? If not, why not?

(b) How would such harmonization affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

(20) Do current or impending changes in technology affect whether and how the Rule should be modified?

#### List of Subjects in 16 CFR Part 306

Negative Options, Trade practices.

**Authority:** 15 U.S.C. 41-58.

By direction of the Commission.

**Donald S. Clark,**

*Sec et/a*

[FR Doc. E9-11226 Filed 5-13-09; 8:45 am]

BILLING CODE 6750-01-S

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-0139]

RIN 1625-AA11

#### Regulated Navigation Area; Gulf Intracoastal Waterway, Inner Harbor Navigation Canal, New Orleans, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes for a rule to prohibit all floating vessels from being within an area in the Inner Harbor Navigation Canal from Mile Marker 22 (west of Chef Menteur Pass) on the Gulf Intracoastal Waterway, west through the Gulf Intracoastal Waterway and Inner Harbor Navigation Canal out to Lake Ponchartrain and the Mississippi River in New Orleans, LA. This regulated navigation area would also apply to part of the Harvey Canal, between Lapalco Boulevard Bridge and the intersection of the Harvey Canal and the Algiers Alternate Route of the Intracoastal Waterway. This action is necessary to protect the high-risk areas in the flood protection for New Orleans. The proposed rule will protect the floodwalls in the designated areas of the Inner Harbor Navigation Canal and the Harvey Canal from damage caused by drifting vessels by excluding vessels from the area under certain weather conditions.

**DATES:** Comments and related material must be received by the Coast Guard on or before June 15, 2009. Requests for public meetings must be received by the Coast Guard on or before June 15, 2009.

**ADDRESSES:** You may submit comments identified by docket number USCG-2009-0139 using any one of the following methods:

(1) *Fede a eR e a n. Po ta :*