



Environmental Protection and Growth Management Department  
**PERMITTING, LICENSING and CONSUMER PROTECTION DIVISION**  
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October 2, 2009

Federal Trade Commission  
Office of the Secretary  
Room H-135 (Annex Q)  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580


Re: Prenotification Negative Option Rule Review, Matter No. P064202


Dear Commissioners:


The attached comments are being filed by the Broward County Permitting, Licensing and Consumer Protection Division, Broward County Government, as part of the public comments to be considered in connection with your review of, and proposed changes to, the Rule Concerning the Use of Prenotification Negative Option Plans (Rule 425). These comments are limited to free trial conversion negative option sales transactions, as that has been the type of transaction about which our office has recently received many complaints. Please make them part of the public record in this matter.

Please be advised that a cover letter, a copy of the submitted comments, the copies of the complaints referred to in our comments and a copy of Case No. 09-051002 also referred to in our comments are being mailed via United States Postal Service (not next day delivery or courier) due to the expense.

Thank you for your consideration.

Very truly, 

 Joel Metter  
Supervisor, Consumer Protection  
Permitting, Licensing and Consumer Protection  
Broward County, Florida

 Jennifer DiBono  
Consumer Relations Analyst II  
Permitting, Licensing and Consumer Protection  
Broward County, Florida

JM/JD:gl  
Enclosure

## **Comments on Questions 1 through 20**

**The Commission solicits comments on the following specific questions related to the Negative Option Rule:**

**1. Is there a continuing need for the Rule as currently promulgated? Why or why not?**

Yes, there is a continuing need for the Rule because of the protection it provides. This office believes that it is not a natural or usual assumption on the part of consumers that when they agree to purchase a specific product for a specific duration at a specific price that they are also agreeing to a continuing standing order with the attendant continuing financial obligation. This office believes that it is necessary to create a specific disclosure standard that would require merchants to notify consumers in a clear and conspicuous manner of any additional continuing purchase and financial obligations, in addition to the initial transaction with a merchant.

**2. What benefits has the Rule provided to consumers? What evidence supports the asserted benefits?**

The Rule has resulted in consumers being made aware, in negative option sales transactions, that there are additional financial obligations from such transactions. The evidence this office can offer up in support of this assertion is the lack of consumer complaints and phone calls relating to pre-notification negative option sales transactions since the installation of our computer database in 1998. Except for the free trial conversion negative option sales transactions referred to below, we have not received a significant number of complaints involving pre-notification negative option sales transactions.

**3. What modifications, if any, should the Commission make to the Rule to increase its benefits to consumers?**

This office believes that free trial conversion negative option sales transactions should be covered by the Rule. The most common version of this particular negative option sales transaction, seen by this office, is where the consumer orders a free trial of a product for a specified "free trial" period and, at the same time the consumer orders the free trial of the product, he/she is also signing up for a continuing standing order for the product for which the consumer is charged. The merchant has obtained the consumer's banking or credit/debit card information during the free trial transaction to pay for shipping and handling and then uses that information to obtain payment for the continuing standing orders. The free trial period begins to run from either the date the order is taken by the merchant or the date the product is shipped to the consumer. It never begins to run from the date the consumer receives the product. Therefore, the free trial period is less than the period advertised and often has almost expired by the time the consumer receives the free trial product. Then, at the end of the free trial period, as calculated by the merchant, unless the consumer has cancelled the continuing standing order pursuant to the procedure established by the merchant, the consumer is automatically charged for the continuing standing order shipment. In many instances, the consumer is charged for the first continuing standing

order shipment before the free trial period has expired. Furthermore, the language concerning the necessity to effectively cancel the continuing standing order and the method of cancellation is always buried in long, legalistic language contained in the “Terms and Conditions” section of the merchant’s website on a different web page than those on which the order was placed and payment was made. Specifically, this office believes that the Rule should be amended to include free trial conversion negative option sales transactions in the following manner:

- To require a standardized format to disclose that a continuing standing order is being placed in connection with a free trial conversion negative option sales transaction (which would operate in much the same way as the Used Car Buyer’s Guide (16 CFR Part 455)), making consumers familiar with the format and obligations being undertaken when entering into free trial conversion negative option sales transactions;
- To set forth the above standardized format in a separate space within a border, in bold, 12 point type, in close proximity to the free trial conversion negative option sales offer with a heading titled “Payment for Future Shipments Consent Form;” and a clear statement explaining that a continuing standing order is being entered into and specifically stating that the consumer agrees to such an order;
- To require that the rest of the continuing standing order form be written in 10 point size type;
- To require the consumer to re-enter his/her bank information or credit/debit card information as to the method of payment for the continuing standing order in the separate box referred to above expressly for the purpose of paying for the continuing standing order, as opposed to the free trial offer;
- To require the consumer to indicate agreement to the continuing standing order for future shipments by clicking, checking or otherwise marking a separate box indicating the consumer’s agreement;
- To require the free trial period to start from the date the consumer receives the product, thus making it incumbent upon the seller to use a method of delivery for the product to the consumer that will generate proof of delivery, or in the absence of any such proof of delivery, the consumer’s statement as to when the product was received shall be controlling; and
- To require that billing for any additional product pursuant to a standing order be made only after the free trial period has expired.

**(a) What evidence supports your proposed modifications?**

Within the past year, this office has received approximately 200 complaints concerning internet transactions specifically involving free trial conversion negative option sales transactions. This is an increase from an insignificant number of such complaints in previous years. In addition, the Better Business Bureau of Southeast Florida and the Caribbean has received over 2,000 complaints concerning

this type of business transaction. Lastly, the State of Florida Attorney General's Office has received over 700 complaints and, as a result of its investigation, has filed Case #09-051002 in the 17<sup>th</sup> Judicial Circuit Court against one merchant engaging in this type of business transaction.

**(b) How would these modifications affect the costs and benefits of the Rule for consumers?**

These modifications would save consumers, both individually and collectively, time and money. They would prevent consumers from being charged for future shipments that were not clearly disclosed to them in the initial transaction and which they did not intend to purchase. Based upon the complaints received by this office, the average monetary loss to a consumer in a free trial conversion negative option sales transaction ranges from \$87-\$140. These monetary losses are directly the result of the consumer's inadvertent enrollment to receive continuing standing orders. By the time a consumer realizes he/she has been charged for a shipment of the product, one or two months have passed and the funds have already been withdrawn from the consumer's bank account or have been paid by the consumer's credit card company. At that point in time, a consumer may be unable to recover the funds from his/her bank or have the credit card charges reversed.

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

The extension of the Rule to free trial conversion negative option sales transactions would save businesses money. Some of the savings would come from staffing reductions in that employees would not be spending time on dealing with consumer complaints concerning cancellation of continuing standing orders, performing the cancellations and dealing with returns of unwanted products. And some savings would come in the form of financial savings since these businesses would not be performing numerous reversals of credit card and bank charges and would thus not incur these transaction charges. Thus, these modifications to the Rule would provide an overall benefit to the businesses that engage in free trial conversion negative option sales transactions. This is especially true of small businesses where staff is limited.

**4. What impact has the Rule had on the flow of truthful information to consumers and on the flow of deceptive information to consumers? What evidence supports the asserted impact?**

This office believes that the Rule has had significant impact on the flow of deceptive information to consumers. This is supported by the fact that we have not received a significant number of complaints concerning transactions presently covered under the Rule.

**5. What significant costs has the Rule imposed on consumers? What evidence supports the asserted costs?**

This office does not believe that the Rule has imposed any significant costs on consumers.

**6. What modifications, if any, should be made to the Rule to reduce the costs imposed on consumers?**

The Rule should include a subsection for free trial conversion negative option sales transactions. Specifically, this office believes that the Rule should require those transactions to comply with the requirements proposed in our comments to Question 3.

**(a) What evidence supports your proposed modifications?**

Within the past year, this office has received approximately 200 complaints concerning internet transactions specifically involving free trial conversion negative option sales transactions. This is an increase from a non-significant number of complaints in previous years. In addition, in the same period the Better Business Bureau of Southeast Florida and the Caribbean has received over 2,000 complaints concerning this type of business transaction. Lastly, the State of Florida Attorney General's Office has received over 700 complaints and, as a result of its investigation, has filed Case #09-051002 in the 17<sup>th</sup> Judicial Circuit Court against one merchant engaging in this type of business transaction.

**(b) How would these modifications affect the costs and benefits of the Rule for consumers?**

With regard to benefits, consumers would be afforded the opportunity to be made aware in a clear, forthright manner the contracts they are entering into. Consumers would have full knowledge of which shipment is the free trial shipment and which shipment(s) is/are the one(s) they are agreeing to pay for. With this knowledge, consumers will save an enormous amount of time in avoiding contacting their credit card companies or banks to file disputes, calling merchants to dispute unauthorized charges, and contacting consumer protection agencies to file complaints against the merchants.

Since consumers would then have full knowledge of the contracts they are entering into, they would see a substantial benefit where cost is concerned in that they will not have unauthorized charges being deducted from their checking accounts or charged to their credit cards. Consumers would also be able to avoid incurring bank and credit card overdraft charges, which has occurred in many cases.

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

These modifications would only serve to protect and benefit all businesses engaging in these types of transactions by reducing their expenses. Merchants would not have to expend time and staff on investigating nearly as many complaints. Merchants would be able to avoid the expense of unnecessary bank/credit card processing fees imposed as a result of reversals of unauthorized charges. Additionally, merchants would not incur the expense of having to discard shipped product that is returned opened and therefore cannot be resold, or having to discard any product which may have spoiled in transit to the consumer's home and from the consumer's home back to the merchant.

**7. Please provide any evidence that has become available since 1998 concerning consumer perception of, or experience with, negative option offers, including offers for prenotification negative option plans, continuity plans, trial conversions, or automatic renewals. Does this new information indicate that the Rule should be modified? If so, why, and how? If not, why not?**

This office has seen a marked increase in complaints received concerning free trial conversion negative option sales transactions. In just the past year we have received approximately 200 such complaints. In addition, the Better Business Bureau of Southeast Florida and the Caribbean has received over 2,000 complaints concerning this type of business transaction. Lastly, the State of Florida Attorney General's Office has received over 700 complaints and, as a result of its investigation, has filed Case #09-051002 in the 17<sup>th</sup> Judicial Circuit Court against one merchant engaging in this type of business transaction.

There are two common threads in these complaints. The first is that consumers allege they were deceived in that they thought they were getting a free trial period to try a product and they did not receive that full free trial period. The second is that consumers allege they did not know they were agreeing to pay for future shipments of the product. Furthermore, in many of the complaints consumers state that, despite being diligent in reading the ordering information, they did not see any wording pertaining to payment for future shipments of the product. (See the complaints mailed to your agency on July 17, 2009, and October 2, 2009.)

This information supports this office's position that the Rule should be modified to include free trial conversion negative option sales transactions. It stands to reason that there are countless other complaints similar to the ones referred to above which have not been reported to this and other agencies. Cumulatively, there is no doubt that thousands of consumers throughout the United States are being harmed by the deceptive use of this sales technique.

**8. What benefits, if any, has the Rule provided to businesses, and in particular to small businesses? What evidence supports the asserted benefits?**

No comment submitted.

**9. What modifications, if any, should be made to the Rule to increase its benefits to businesses, particularly small businesses?**

No comment submitted.

**(a) What evidence supports your proposed modifications?**

No comment submitted.

**(b) How would these modifications affect the costs and benefits of the Rule for consumers?**

No comment submitted.

**(c) How would these modifications affect the costs and benefits of the Rule for businesses?**

No comment submitted.

**10. What significant costs, including costs of compliance, has the Rule imposed on businesses, particularly small businesses? What evidence supports the asserted costs?**

This office believes that the Rule has imposed only nominal costs on businesses. The costs would appear to be in the area of training staff and disclosing information.

The evidence that supports this assertion is the fact that this office has not received a significant number of complaints on transactions covered by the Rule, which proves businesses have not determined the Rule to be unduly burdensome.

**11. What modifications, if any, should be made to the Rule to reduce the costs imposed on businesses, particularly small businesses?**

This office does not believe that any modification should be made to the Rule to reduce the costs imposed on businesses since the Rule, as it stands, does not impose a significant burden on businesses to warrant any modification.

**(a) What evidence supports your proposed modifications?**

No comment submitted.

**(b) How would these modifications affect the costs and benefits of the Rule for consumers?**

No comment submitted.

**(c) How would these modifications affect the costs and benefits of the Rule for businesses?**

No comment submitted.

**12. What evidence is available concerning the degree of compliance with the Rule? Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?**

The evidence this office can offer that businesses are complying with the Rule is the lack of consumer complaints received regarding consumer transactions already covered under the Rule. However, the evidence does indicate that the Rule should be modified to include free trial conversion negative option sales transactions as we have seen a marked increase in the amount of complaints being filed with this office concerning those transactions. This office believes that if free trial conversion negative option sales transactions are brought within the purview of the Rule that, based on current compliance data for transactions covered by the Rule, consumer complaints would decrease significantly.

**13. Are any of the Rule’s requirements no longer needed? If so, explain. Please provide supporting evidence.**

No. Each requirement in the Rule is necessary for the protection of consumers.

**14. Should the Rule define “clearly and conspicuously,” given that it requires marketers to make certain disclosures clearly and conspicuously? If so, why, and how? If not, why not?**

Yes. If “clearly and conspicuously” is not defined in the Rule, then compliance with the Rule will be determined by the business, and regulatory authorities will be put in the position of examining each transaction after a complaint is received and the harm has already occurred. This is an inefficient and time consuming method of enforcement which utilizes large amounts of investigative resources. It is much more efficient and cost effective from an enforcement standpoint to have a preventive rule that defines what kinds of disclosures are considered “clear and conspicuous.” To specify the type size and specific language to be used in the disclosures and where they are to be placed in the advertising or documentation, as is the case with the Used Car Buyers Guide and the disclosures required in used car contracts under FTC Rule 455 (16 CFR Part 455), would promote clear and conspicuous disclosure and provide an efficient compliance mechanism.

For example, each free trial conversion negative option sales transaction should include a “clear and conspicuous” statement concerning the agreement of the consumer to receive future shipments; the statement, entitled “Agreement for Future Shipments Consent Form” would clearly explain there is a continuing standing order being entered into and specifically states that the consumer agrees to such an order; and it should further require a separate signature of the consumer or a separate box be checked and a separate place for entering the payment information. The Consent Form should also:

- Be set off in a separate space within a border;
- Be in close proximity to the free trial conversion negative option sales offer in the documentation agreeing to receive the free trial offer;
- Have the title of the form written in bold, 12 point size type;
- Have the rest of the form written in 10 point size type;
- Advise the consumer as to the method of delivery of the product to the consumer and provide for only those delivery methods that would generate proof of delivery; and
- Provide a billing date for any additional product pursuant to a standing order and require that such date be a date later than the expiration of the free trial period.

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

Please see our response to Questions 3 and 7.

**(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.**

This office has received approximately 200 complaints with regard to free trial conversion negative option sales transactions within the last 12 months.

These complaints are not only from consumers located in Broward County or Florida, but all over the United States. We also receive complaints from Broward County residents who have become the victims of such transactions with businesses located in other states. This is evidence that such transactions are occurring throughout the United States. Consumers from more than a dozen states have filed these 200 complaints. The states where they reside are as close to Florida, in proximity, as Georgia and as distant as California and Washington State. Complaints have also been received from residents of Canada.

A number of additional complaints received by this office (not included in our package mailed July 17, 2009), were mailed to your agency on October 2, 2009. We would like the complaints from both mailings to be considered as part of these comments.

In addition, the Better Business Bureau of Southeast Florida and the Caribbean has received over 2,000 complaints concerning this type of business transaction. Lastly, the State of Florida Attorney General's Office has received over 700 complaints and, as a result of its investigation, has filed Case #09-051002 in the 17<sup>th</sup> Judicial Circuit Court against one merchant engaging in this type of business transaction.

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

Please refer to the consumer complaints received by this office and mailed to your agency on July 17, 2009, and October 2, 2009. Additionally, the State of Florida Attorney General's Office has received over 700 complaints and, as a result of its investigation, has filed Case #09-051002 in the 17<sup>th</sup> Judicial Circuit Court against one merchant engaging in this type of business transaction.

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

This office believes that the Rule should be modified to cover free trial conversion negative option sales transactions. The specific modifications that this office believes are warranted are:

- To require a standardized format to disclose that a continuing standing order is being placed in connection with a free trial conversion negative option sales transaction (which would operate in much the same way as the Used Car Buyer's Guide (16 CFR Part 455) operates), making consumers familiar with the format and obligations being undertaken when entering into free trial conversion negative option sales transactions;
- To set forth the above standardized format in a separate space within a border, in bold, 12 point type, in close proximity to the free trial conversion negative option sales offer with a heading titled "Payment for Future Shipments Consent Form;" and a clear statement explaining that a

continuing standing order is being entered into, and specifically stating that the consumer agrees to such an order;

- To require that the rest of the continuing standing order form be written in 10 point size type;
- To require the consumer to re-enter his/her bank information or credit/debit card information as to the method of payment for the continuing standing order in the separate box referred to above expressly for the purpose of paying for the continuing standing order, as opposed to the free trial offer;
- To require the consumer to indicate agreement to the continuing standing order for future shipments by clicking, checking or otherwise marking a separate box indicating the consumer's agreement;
- To require the free trial period to start from the date the consumer receives the product, thus making it incumbent upon the seller to use a method of delivery for the product to the consumer that will generate proof of delivery, or in the absence of any such proof of delivery, the consumer's statement as to when the product was received shall be controlling; and
- To require that billing for any additional product pursuant to a standing order be made only after the free trial period has expired.

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

Free trial conversion negative option sales transactions are not currently covered by the Rule but are occurring with great frequency in the marketplace. The typical transaction involves a consumer receiving a free trial period of a product followed by standing monthly orders for which the consumer has to pay. The unfair or deceptive practice can occur at several points in the transaction. One such point is the consumer's initial contact with the merchant and the advertising of the free trial period. The vast majority of consumers believe that the free trial period begins to run upon receipt of the product. However, the free trial period typically starts when the product is ordered or shipped, not when it is received by the consumer, but this information is usually buried in the terms and conditions section of the merchant's website if it is disclosed at all. In addition, many merchants appear to be delaying the mailing of the free trial product until a significant portion of the free trial period has expired or, in some cases, has entirely expired. Consumers are left in the position of having only a few days to try the product before having to make a decision as to whether or not to cancel the standing monthly order, or being bound immediately to pay for a standing order. It has also been the case that consumers may be bound to a standing order simply because they have not received the free trial product until after the free trial period has expired.

Another point at which an "unfair or deceptive practice" can occur is when a consumer becomes aware that he/she has agreed to a standing order unless he/she takes action to cancel the standing order and the consumer tries to contact the merchant to cancel the standing order. Many of the complaints we

have received reflect that consumers have been unable to contact the merchant by telephone, either because the telephone number is not in service or because they are put on hold for long periods of time, and never get to speak to an individual and are told by a recoding to leave a message, which is never returned. Then, if a consumer is finally able to speak to an individual, the consumer is told to call another telephone number and the whole process starts all over again, or he/she is informed that the speaker cannot help the consumer.

If the consumer is able to contact the merchant and is informed that the standing order can be canceled, the consumer is also informed that a “merchant return authorization number” is required to ship back the product received. That number may not be provided by the same person the consumer is speaking to and then the consumer is informed that he must contact the merchant via another telephone number or e-mail address to receive the merchant return authorization number; and when the consumer makes that contact the merchant return authorization number may not be forthcoming. And, if it is forthcoming it may not be so within the time frame necessary to cancel the standing order before the next shipment is made and the charge deducted from the consumer’s bank account or charged to his/her credit/debit card.

Lastly, another point at which an “unfair or deceptive practice” can occur is when the consumer is advised by the merchant that the standing order has been canceled and a refund of a previously charged amount will be made. Many consumers, in the complaints received by this office, allege that merchants have promised refunds within several days or weeks, and the consumers are still waiting for their refunds after several months.

**(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.**

This office has received approximately 200 complaints with regard to free trial conversion negative option sales transactions within the last 12 months. These complaints are not only from consumers located in Broward County or Florida, but all over the country, and are against businesses operating in Broward County, Florida. We also have received complaints from Broward County residents who have become the victims of such transactions with businesses located in other states. This is evidence that such transactions are occurring throughout the United States. Consumers from more than a dozen states have filed these 200 complaints. The states where they reside are as close to Florida, in proximity, as Georgia and as distant as California and Washington State. Complaints have also been received from residents of Canada.

A number of additional complaints received by this office (not included in our package mailed July 17, 2009), were mailed to your agency on October 2, 2009. We would like the complaints from both mailings to be considered as part of these comments.

In addition, the Better Business Bureau of Southeast Florida and the Caribbean has received over 2,000 complaints concerning this type of business transaction. Lastly, the State of Florida Attorney General’s

Office has received over 700 complaints and, as a result of its investigation, has filed Case #09-051002 in the 17<sup>th</sup> Judicial Circuit Court against one merchant engaging in this type of business transaction.

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

The aforementioned “unfair and deceptive trade practices” harm consumers both individually and collectively when it comes to time spent trying to recover monies and the corresponding monetary loss. The monetary loss occurs when consumers are charged for the standing orders that were not clearly disclosed to them in the initial free trial conversion negative sales option transaction and which they did not intend to purchase. The evidence which supports these assertions is based upon the complaints received by this office and submitted to your agency. It has been determined that the typical monetary loss to the consumer in a free trial conversion negative option sales transaction ranges from \$87-\$140. These monetary losses are directly the result of the consumer’s inadvertent enrollment to receive continuing standing orders. By the time a consumer realizes he/she has been charged for a shipment of the product, one or two months have passed and the funds have already been withdrawn from the consumer’s bank account or have been paid by the consumer’s credit card company. At that point in time, a consumer may be unable to recover the funds from his/her bank or have the credit card charges reversed.

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

Yes, the Rule should be modified. This office believes that the Rule should be modified, with regard to free trial conversion negative option sales transactions, in the following manner:

- To require a standardized format to disclose that a continuing standing order is being placed in connection with a free trial conversion negative option sales transaction (which would operate in much the same way as the Used Car Buyer’s Guide (16 CFR Part 455)), making consumers familiar with the format and obligations being undertaken when entering into free trial conversion negative option sales transactions;
- To set forth the above standardized format in a separate space within a border, in bold, 12 point type, in close proximity to the free trial conversion negative option sales offer with a heading titled “Payment for Future Shipments Consent Form;” and a clear statement explaining that a continuing standing order is being entered into, and specifically stating that the consumer agrees to such an order;
- To require that the rest of the continuing standing order form be written in 10 point size type;

- To require the consumer to re-enter his/her bank information or credit/debit card information as to the method of payment for the continuing standing order in the separate box referred to above expressly for the purpose of paying for the continuing standing order, as opposed to the free trial offer;
- To require the consumer to indicate agreement to the continuing standing order for future shipments by clicking, checking or otherwise marking a separate box indicating the consumer's agreement;
- To require the free trial period to start from the date the consumer receives the product, thus making it incumbent upon the seller to use a method of delivery for the product to the consumer that will generate proof of delivery, or in the absence of any such proof of delivery, the consumer's statement as to when the product was received shall be controlling; and
- To require the billing for any additional product pursuant to a standing order be made only after the free trial period has expired.

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

The Rule should require the "Payment for Future Shipments Consent Form" to be loaded on one internet page so the consumer can read the form in one continuous format without having to move forward or backward on the website or be required to refresh the document, and that it be on a different page from the free trial offer.

The modifications should specifically state that they include internet sales, fax machine solicited sales and e-mail solicited sales.

**(a) What evidence supports the proposed modifications?**

The evidence that supports the proposed modifications is the packets of consumer complaints mailed to your office on July 17, 2009, and October 2, 2009. After reviewing these consumer complaints, you will note that the overwhelming number of these transactions occurred using the internet. In addition, the Better Business Bureau of Southeast Florida and the Caribbean has received over 2,000 complaints concerning this type of business transaction. Lastly, the State of Florida Attorney General's Office has received over 700 complaints and, as a result of its investigation, has filed Case #09-051002 in the 17<sup>th</sup> Judicial Circuit Court against one merchant engaging in this type of business transaction.

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

These modifications should not impose any significant costs to businesses offering free trial conversion negative options sales since it would require only a onetime modification of a business's internet page,

e-mail or fax template. The modifications would not impose a cost to consumers unless businesses pass on the nominal cost of modifying their internet pages, e-mails and faxes to the consumer.

These modifications should only serve to benefit consumers and businesses since, in this office's experience, most free trial conversion negative option sales transactions occur on the internet. The more specific and clear and conspicuous the terms of the transaction, the less likely problems will occur necessitating time and effort on the part of both parties to rectify matters with the attendant expenses and losses.

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

This office is not aware of any other laws or regulations specifically addressing the same issues covered by the Rule. The one law that addresses similar issues to the Rule in the State of Florida is the Florida Deceptive and Unfair Trade Practices Act set forth in Florida Statutes §501.201-501.213.

**(a) What evidence supports the asserted conflicts?**

No comment submitted.

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

No comment submitted.

**(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.**

No comment submitted.

**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?**

No comment submitted.

**(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?**

No comment submitted.

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

No comment submitted.

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

Yes. Consumers are shopping more and more frequently on the internet, both wired and wireless, and using faxes and e-mails. The Rule became effective in 1973 when the primary method of communication was mail delivered via the United States Postal Service. Consumer shopping habits have changed. The Rule should be amended to cover the methods of conducting business that consumers are currently engaging in and are anticipated to use in the future.