

Insights

FOLLOW THE RULES TO MAKE THE RULES: 8TH CIRCUIT VACATES “CLICK-TO-CANCEL” RULE

Jul 11, 2025

SUMMARY

The Eighth Circuit Court of Appeals has issued a [per curiam opinion](#) vacating the FTC’s Click-to-Cancel Rule based on the Federal Trade Commission (FTC)’s failure to comply with a procedural requirement in the FTC Act. This means that clients do not have to meet the July 14, 2025, compliance date but should be mindful of continuing [state legal requirements](#) as well as any future developments that could change their compliance obligations.

The FTC’s [“Click-to-Cancel” Rule](#) (Rule), which was published in the Federal Register on November 15, 2024, amended the FTC’s prior Negative Option Rule. It defined four separate “unfair or deceptive” acts or practices under the FTC Act. The FTC approved the Rule by a vote of 3-2, with Commissioner Holyoak and now-Chairman Ferguson voting no. On May 9, 2025, the FTC [delayed the compliance date](#) of the Rule to July 14, 2025.

After multiple petitions were filed against the Rule, the Judicial Panel on Multidistrict Litigation, through a random selection process, designated the Eighth Circuit to hear arguments on the consolidated petitions. After the parties filed their respective briefs, the Eighth Circuit heard oral arguments on June 10, 2025.

The Eighth Circuit’s opinion striking down the Rule was based on a procedural error by the FTC. [Section 22 of the FTC Act](#) requires the Commission to “issue a preliminary regulatory analysis relating to the proposed rule” when it “publishes [a] notice of a proposed rulemaking.” The definition of “rule” excludes amendments that have an effect on the economy that is less than \$100 million. Here, the FTC originally found that the Rule would not have an annual effect of \$100 million or more. An administrative law judge (ALJ) later found, however, that the Rule’s annual effect on the economy would exceed this threshold. Even after this determination by the ALJ, the FTC “did not issue a preliminary regulatory analysis.”

The Eighth Circuit found this failure to follow Section 22 to be fatal to the Rule. Despite the FTC's contentions otherwise, the Court held that the FTC was not excused "from having to prepare the [preliminary regulatory] analysis in the event that its initial economic estimate is later deemed inaccurate." It thus concluded that the FTC was required "to issue a preliminary regulatory analysis after the ALJ found that the Rule would meet the \$100 million economic impact threshold." The Eighth Circuit found that this was not a harmless error because Petitioners had "lost a notable opportunity to dissuade the FTC from adopting the Rule." Based on these findings, the Court vacated the Rule in its entirety.

After concluding that the FTC did not satisfy this requirement, the Court held that it did not need to address Petitioners' other arguments, including the argument based on the scope of the FTC's power under Section 18. However, the Court took care to note that the FTC had "attempted to import § 5's general standards prohibiting unfair or deceptive acts or practices into § 18's more circumscribed rulemaking process." This could signal hostility to such an approach.

An interesting aspect of this opinion is that it was issued *per curiam*, which is generally reserved for straightforward cases. This is likely due to the Court vacating the Rule on procedural grounds under the FTC Act rather than having to rely on the Petitioners' more substantive arguments. However, it is noteworthy that the panel struck down the rule after an earlier panel denied a request to stay the implementation of the Rule by a 2-1 vote in January.

The ruling means that clients do not necessarily have to comply with the Rule's requirements by the July 14, 2025, deadline but does not mean that the requirements will never take effect. The FTC still has numerous options, including petitioning for a rehearing *en banc*. Moreover, state autorenewal laws, such as those in California, remain in effect. Clients should thus be mindful of continuing state legal obligations as well as any further developments that could again change their compliance obligations.

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