

# Challenges Shipping on Time Because of COVID-19? What You Should Know about the FTC's Mail Order Rule

Christie Grymes Thompson

March 27, 2020

As localities order people to stay at home and non-essential businesses to close, consumers are turning to online options. Although you might welcome the traffic, you might also be facing unexpected challenges like a reduced work force, supply chain disruptions, manufacturing shifts from regular inventory to medical necessities, and other hurdles that can cause shipping delays. As you scramble to fulfill those orders, remember that under the [FTC's Mail Order Rule](#), you need a reasonable basis for any shipping representations and any delays may trigger obligations to notify purchasers and sometimes even cancel and refund orders.

**Representations About Shipping Dates** The Mail Order Rule requires that when you advertise merchandise, you must have a reasonable basis for representations about timing for shipping. If you provide no shipping date, you must have a reasonable basis for believing that you can ship within 30 days. Particularly in these times of uncertainty, companies may choose to use a shipping date that is further out than what they would reasonably anticipate in typical circumstances.

**Initial Delay Notice** If you cannot ship the merchandise by the promised time frame or within 30 days, you must notify the customer and give the option to cancel the order and obtain a full and prompt refund.

If you know when you can expect to ship the merchandise, the initial delay notice must contain: (1) the revised shipping date; (2) the customer's ability to cancel for a full refund; and (3) a statement that a customer's non-response is a consent to the delay.

If you cannot provide a revised shipping date, the initial delay notice must contain: (1) the reason for the delay and (2) a statement that, if the customer agrees to the indefinite delay, the customer may cancel the order any time before shipment.

**Subsequent Delay Notices** Given the current unpredictability around supply chains and distributions, companies may be unable to ship by the date included in the initial delay notice. If that occurs, prior to that date, you must send a "renewed" delay notice. Although this notice must include much of the same information as the initial delay notice, a customer must expressly consent to further delay.

A renewed delay option must include information about: (1) a revised shipping date; (2) the customer's ability to cancel for a full refund; and (3) a statement that, unless the customer agrees to wait beyond the most recent definite revised shipment date and the company has not shipped by

then, you will automatically cancel the order and issue a prompt refund.

If you cannot provide a new definite revised shipping date, the notice must include: (1) the reason for the delay; and (2) a statement that, if the customer agrees to the indefinite delay, the customer may cancel the order any time until shipment.

Instead of sending a delay notification, you can cancel the order and send a refund, as long as you notify the customer and send the refund within the time you would have sent the consent notification.

**Exemptions to the Rule** Not all merchandise is subject to the Mail Order Rule. For example, products such as monthly gift clubs, subscription boxes, and magazine subscriptions are exempt, although because the FTC could still challenge practices allegedly unfair or deceptive, we recommend taking reasonable steps to notify consumers about shipping delays and to offer options for cancellation and perhaps a refund.

**Enforcement** The FTC can extract large civil penalties for violations of the Mail Order Rule: up to \$43,280 per violation plus consumer redress. For example, in *FTC v. DiscountMetalBrokers, Inc.*, a court ordered DiscountMetalBrokers to pay over \$6 million for violations of the FTC Act and the Mail Order Rule. The FTC has also levied fines of over \$800,000 in settlements related to alleged Mail Order Rule violations.

\* \* \*

The Mail Order Rule imposes very specific requirements that companies should navigate carefully, COVID-19 or not. As companies face shipping and distribution disruptions, appropriate notice to customers as delays become known will avoid Mail Order Rule violations and enforcement.

For other helpful information during this pandemic, visit our [COVID-19 Resource Center](#).

**Update:** Our article, [Top FTC Rules and Guides You Should Keep in Mind](#), and other [mail order rule blog posts](#) may also be useful.

