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FEDERAL TRADE COMMISSION

16 CFR Part 435

[RIN 3084-AB07]

Mail or Telephone Order Merchandise Rule; Staff Report

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

ACTION: Staff report; notice of availability.

SUMMARY: The FTC announces the publication of the Staff Report on the Mail or Telephone Order Merchandise Rule (“MTOR” or “Rule”). The Staff Report sets forth the staff’s recommendations to the Commission on the various proposed amendments to the MTOR.

DATES: Comments on the Staff Report must be received on or before July 15, 2013.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “16 CFR Part 435 - Mail or Telephone Order Merchandise” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/mtorstaffreport> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex N), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jock Chung, (202) 326-2984, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room M-8102B, 600 Pennsylvania Ave, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The MTOR prohibits sellers from soliciting mail or telephone order sales unless sellers have a reasonable basis to expect that they will be able to ship, after receipt of a properly completed order, the ordered merchandise within the time stated on the solicitation or, if no time is stated, within 30 days. The MTOR further requires a seller to seek the buyer’s consent to the delayed shipment when the seller learns that it cannot ship within the time stated or, if no time is stated, within 30 days. If the buyer does not consent, the seller must promptly refund all money paid for the unshipped merchandise.

On September 11, 2007, as part of its rule review process,¹ the Commission published a request for public comment,² which also served as an Advance Notice of Proposed Rulemaking.³ It then published a Notice of Proposed Rulemaking (“NPRM”) in 2011.⁴

¹ The Commission reviews all its rules and guides periodically to ensure that they remain relevant. These periodic reviews seek information about the costs and benefits of the Commission’s rules and guides as well as their economic and regulatory impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission.

² 72 FR 51728 (Sept. 11, 2007).

³ 15 U.S.C. 57a(b)(2)(A).

⁴ 76 FR 60765 (Sept. 30, 2011).

Pursuant to the Commission's Rules of Practice, and the rulemaking procedures specified earlier in the NPRM, the Commission now announces the availability of the Staff Report on the MTOR. The Staff Report summarizes the rulemaking record to date, and sets forth the staff's recommendation that the Commission revise the Rule to respond to new methods of accessing the Internet and making payments and refunds. The Staff Report has not been endorsed or adopted by the Commission.

The Staff Report to the Federal Trade Commission and Proposed Revised Trade Regulation Rule for the Mail or Telephone Order Merchandise Rule is available at the FTC's Web site at <http://www.ftc.gov/ftc/regreview/index.shtml>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

The Commission invites interested parties to submit written data, views, and arguments on the recommendations announced by the Staff Report by following the instructions in the **ADDRESSES** section of this notice. Comments previously submitted in the ongoing rulemaking procedures are already part of the rulemaking record and need not be repeated.

I. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 15, 2013. Write "16 CFR Part 435 - Mail or Telephone Order Merchandise" on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>.

As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, such as anyone'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. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, such as medical records or other individually identifiable health information. In addition, don't 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 FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).⁵ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

⁵ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/mtorstaffreport> by following the instruction on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “16 CFR Part 435 - Mail or Telephone Order Merchandise” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex N), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that 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 on or before July 15, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Upon completion of the comment period, the staff will make final recommendations to the Commission about the Rule. If the Commission adopts the proposed revised Rule as recommended by the staff, or alternatively determines to make changes to the proposed revised Rule, it will publish in a future Federal Register notice the final text of the Rule, statement of

Basis and Purpose on the Rule, and an announcement of when the revised Rule will become effective.

II. Communications to Commissioners And Commissioner Advisors by Outside Parties

Pursuant to Commission Rule 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the end of the comment period on the Staff Report. They shall be placed on the public record if the communication is received later. Unless the outside party making an oral communication is a member of Congress, such communications are permitted only if advance notice is published in the Weekly Calendar and Notice of “Sunshine” Meetings.⁶

By direction of the Commission.

Donald S. Clark
Secretary.

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⁶ See 15 U.S.C. 57a(i)(2)(A), 45 FR 50814 (1980), 45 FR 78626 (1980).