



**FEDERAL TRADE COMMISSION
Washington, D.C. 20580**

**Comments of the
National Retail Federation
regarding notice of proposed rulemaking to the
Mail or Telephone Order Merchandise Rule**

16 CFR Part 435 Comment - Project No. P924214

Mallory B. Duncan
*Senior Vice President
General Counsel*

Melissa R. Froelich
*Moritz Corporate Fellow
Government Relations*

Liberty Place
325 7th Street NW, Suite 1100
Washington, DC 20004
800.NRF.HOW2 (800.673.4692)
202.783.7971 fax 202.737.2849
www.nrf.com

Introduction

The National Retail Federation (“NRF”) appreciates the opportunity to respond to the Commission’s request for comments with respect to its notice of proposed rulemaking regarding the Mail or Telephone Order Merchandise Rule (“Rule”).

As the world’s largest retail trade association and the voice of retail worldwide, NRF and our Shop.org and NCCR divisions represent merchants of all types and sizes, including chain restaurants and industry partners, from the United States and more than 45 countries abroad. Retailers operate more than 3.6 million U.S. establishments that support one in four U.S. jobs – 42 million working Americans. Contributing \$2.5 trillion to annual GDP, retail is a daily barometer for the nation’s economy. NRF’s Retail Means Jobs campaign emphasizes the economic importance of retail and encourages policymakers to support a Jobs, Innovation and Consumer Value Agenda aimed at boosting economic growth and job creation. The proposed changes affect both the businesses we represent and their customers.

Coverage of Internet Orders

Our comments are directed to the question of Internet orders. Specifically, NRF seeks to ensure that the mere fact that a sales associate uses the Internet in a customer’s presence does not convert the transaction from a face-to-face transaction, outside the scope of the Rule, to an Internet order sale covered by the Rule. In-store assisted sales are used in specialty merchandise situations and when merchandise that is not on-hand can be shipped to the customer from another location if available. The face-to-face aspect of these in-store assisted sales should continue to be placed outside the Rule even if the in-store assisted sale is effectuated by an Internet connection.¹

Some retailers use Internet connections within their stores to allow sales associates and others to access the Internet to learn information about products offered for sale. The information on these sites may in some respects be rougher and in other ways more detailed than information provided on sites to which customers are directed when responding to a solicitation. For example, the website may contain information about special product options, not generally advertised, that a “personal shopper” can access and make available for his or her client. Or they may provide more detailed information about features and operations designed to help the sales associate better explain the product. Because of the nature of this detail, these sites may also contain rougher availability data than that provided in websites designed to be publicly accessed by consumers directly.

In general, the purpose of these websites is not to facilitate a telephone, or mail, or Internet order, but rather to provide information about the product and to facilitate a face-to-face purchase of goods that may or may not be available in the physical store (e.g. such a site may indicate that a particular perfume is out of stock and backordered at the customer’s store on the

¹ Any number of data transmissions directly or indirectly related to the sale may occur over the Internet but should not be classified as Internet sales under the Rule (e.g. credit card authorizations and settlement transactions, communications of sales data from a remote store/branch to a central location, communication to company’s distribution center for fulfillment of home delivery goods).

West Coast, but inform the personal shopper that she might be able to get it shipped within a week from one of the store's Midwestern outlets if that store's supply hasn't already been pre-committed). The fact that a customer happens to see information in what otherwise would be the equivalent of a sales associate's book should not turn that sale into the equivalent of a mail order transaction just because the site and the request for goods is accessed through the Internet.

The Commission has indicated that face-to-face transactions are outside the scope of the Rule.² However, with the blanket inclusion of the Internet in the definition of section 435.1(a) "Mail, Internet, or telephone order sales," NRF encourages the Commission to clarify that in-store assisted sales are excluded from coverage of the Rule, even if the Internet is used during the assisted sale, because of the "ordered by the buyer" requirement by section 435.2(a)(1) of the Rule.

Conclusion

NRF supports the retention of the Mail or Telephone Order Merchandise Rule and its extension to sales where a buyer has responded to a solicitation to order merchandise by mail, telephone or using the publicly available worldwide web. However, NRF would like clarification that in-store assisted sales that use the Internet are excluded from coverage of the Rule.

We appreciate the opportunity to provide these comments, and would welcome the opportunity to answer additional questions.

² 16 CFR Part 435, "Mail or Telephone Order Merchandise Rule" notice of proposed rulemaking, Vol. 76, No. 190, Friday, September 30, 2011, p.60767 n.16, available at <http://www.ftc.gov/os/fedreg/2011/09/110930mailtelenotice.pdf>.