

## **Shipping to Non-Foreign Areas Federal Trade Commission Report to Congress**

### **I. Report Overview.**

The U.S. House of Representatives Committee on Appropriations Report (“House Report”) raised concerns that some companies engaged in interstate commerce are unwilling to ship products to consumers in “Alaska, Hawaii, Puerto Rico, and other territories, even though the [United States] Postal Service and private shipping companies serve these areas.” The House Report requested that the Federal Trade Commission (“FTC” or “Commission”) “work with the Postal Service on recommendations and outreach materials to address” such issues and provide a report to the Committee within 120 days of enactment of the Appropriations Act.<sup>1</sup> In response to the Committee’s request, the Commission submits this report, and, in March 2020, Commission staff issued outreach materials.<sup>2</sup>

### **II. The FTC’s Interest and Authority in Protecting Consumers Online.**

The FTC protects consumers and competition by preventing anticompetitive, deceptive, and unfair business practices in the marketplace, including the digital marketplace, through law enforcement, advocacy, and education, without unduly burdening legitimate business activity.<sup>3</sup> Although technology and business models continue to change, the principles that underlie FTC enforcement priorities remain constant. One such principle is that consumers should have access to truthful and accurate information to make informed decisions about the merits and value of

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<sup>1</sup> H.R. Rep. No. 116-122, at 58 (2019). The Appropriations Act was enacted on December 20, 2019.

<sup>2</sup> Federal departments or boards that enforce laws and regulations relevant to the interstate commerce concerns expressed by the Committee include: (i) the Department of Commerce (<https://www.commerce.gov/about>), which oversees ocean and coastal navigation, conducts foundational research, has offices in all 50 states and U.S. Territories, and supports online commerce; (ii) the Surface Transportation Board (“STB”) (<https://prod.stb.gov/about-stb/>), which was established when the Interstate Commerce Commission was abolished in 1995, was administratively aligned with the U.S. Department of Transportation from 1996 to mid-December 2015, and whose jurisdiction includes “rate regulation of non-contiguous domestic water transportation (marine freight shipping involving the mainland United States, Hawaii, Alaska, Puerto Rico, and other U.S. territories and possessions)”; and (iii) the Department of Transportation (<https://www.transportation.gov/sites/dot.gov/files/docs/mission/budget/304476/508dotbh2019-b.pdf>), including the Federal Highway Administration, which oversees the maintenance of the Nation’s highway system. This Report does not address whether specific transportation issues may impact a company’s decision not to ship, or to offer different shipping options, which are within the purview of those departments and the STB. This Report also does not address whether the Merchant Marine Act of 1920 (the “Jones Act”), 46 U.S.C. § 50102, requiring shipping between U.S. ports to be conducted by U.S. flag ships, may have any effect, if at all, on shipping costs between any U.S. ports, which are within the purview of the Commerce Department, Transportation Department, and STB.

<sup>3</sup> *Federal Trade Commission Agency Financial Report, Fiscal Year 2019*, FTC, [https://www.ftc.gov/system/files/documents/reports/agency-financial-report-fy2019/ftc\\_agency\\_financial\\_report\\_fy2019.pdf](https://www.ftc.gov/system/files/documents/reports/agency-financial-report-fy2019/ftc_agency_financial_report_fy2019.pdf) at 9–11. The FTC’s Policy Statements on its deception and unfairness authority are available at <https://www.ftc.gov/public-statements/1983/10/ftc-policy-statement-deception>, and <https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness>. The FTC’s activities in the antitrust area include detection and elimination of illegal collusion, anticompetitive mergers, unlawful single-firm conduct, and injurious vertical agreements. S. Rep. No. 116-111 at 69 (2019). The FTC does not enforce any law specifically requiring retailers to ship to a particular location.

competing products and services. When consumers do not receive accurate and material information, the marketplace can be distorted, which can harm both legitimate competitors and consumers. If marketers state or imply something that is not true, or fail to disclose relevant information necessary to prevent a claim from being misleading, then a claim can be deceptive. Therefore, the FTC promotes the dissemination of accurate information.

In general, FTC statutes and rules apply equally regardless of the commercial venue. A company violates the FTC Act by materially misstating the terms and conditions of a purchase or omitting material information prior to a consumer's purchase of a product regardless of whether the transaction is in a brick and mortar store or online. If a company failed to timely and adequately disclose the cost of shipping a product to a consumer prior to obtaining payment information from that consumer, then that non-disclosure could be deceptive. Similarly, if a company billed a consumer but failed to deliver that product, such conduct could violate Section 5 of the FTC Act. The FTC's Mail, Internet, or Telephone Order Merchandise Rule ("Mail Order Rule") requires, among other things, that retail orders be shipped within a specified time regardless of whether ordering is done online, by phone, or by mail.<sup>4</sup>

To complement its law enforcement authority, the Commission's education and outreach programs reach tens of millions of people each year through the FTC's website, the media, and partner organizations that disseminate consumer information on the agency's behalf. The FTC delivers actionable, practical, plain-language guidance on dozens of issues and updates its consumer education materials whenever it has new information to share.<sup>5</sup> FTC consumer guidance includes brochures and blogs describing consumer rights when purchasing from remote sellers.<sup>6</sup>

The Commission also provides companies with resources on a variety of issues that affect businesses. Such resources include the *Business Guide to the FTC's Mail, Internet, or Telephone Order Merchandise Rule*.<sup>7</sup> The guidance, prepared by FTC staff in cooperation with the Direct Marketing Association, explains in plain language the Mail Order Rule's requirements

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<sup>4</sup> 16 C.F.R. pt. 435 (Rule requires sellers who solicit buyers to order merchandise through the mail, via the Internet, or by phone to have a reasonable basis to expect orders can ship within a clearly and conspicuously disclosed time frame, or, if no time frame is specified, within 30 days; rule also requires that, when a seller cannot ship within the promised time, the seller must obtain the buyer's consent to a delay in shipping or refund payment for the unshipped merchandise.) The Mail Order Rule does not require that sellers ship their products to consumers in certain locations.

<sup>5</sup> *FTC Financial Report*, *supra* note 3, at 11; *2018 Annual Highlights*, FTC, 20 (Mar. 2019), [https://www.ftc.gov/system/files/documents/reports/annual-highlights-2018/2018\\_annual\\_highlights\\_report.pdf](https://www.ftc.gov/system/files/documents/reports/annual-highlights-2018/2018_annual_highlights_report.pdf).

<sup>6</sup> *See, e.g., Billed for Merchandise You Never Received*, FTC (Sept. 2015), <https://www.consumer.ftc.gov/articles/0221-billed-merchandise-you-never-received#rights>; *Help avoid online order slow- or no-shows*, FTC Blog (Dec. 7, 2018), <https://www.consumer.ftc.gov/blog/2018/12/help-avoid-online-order-slow-or-no-shows>.

<sup>7</sup> *Business Guide to the FTC's Mail, Internet, or Telephone Order Merchandise Rule*, FTC (Sept. 2011), <https://www.ftc.gov/tips-advice/business-center/guidance/business-guide-ftcs-mail-internet-or-telephone-order>.

for stating or implying a shipping date and describes the seller’s responsibility if it later learns the shipment will be delayed.

In its business education materials, the FTC has long emphasized the importance of material disclosures in connection with advertising and marketing, including when online.<sup>8</sup> By failing to disclose adequately their shipping and delivery policies in their online marketing, companies may risk “[n]egative consumer experiences [that] can result in lost consumer goodwill and erode consumer confidence. Clear, conspicuous, and meaningful disclosures benefit advertisers and consumers.”<sup>9</sup>

### **III. Retailers’ Policies and Disclosures Regarding Shipping.**

#### **A. Internet Commerce is Changing Retail Shipping and Delivery Logistics.**

The Internet has transformed retail commerce by expanding opportunities for consumers to purchase goods remotely for local delivery. Websites “have helped hasten the transition from street shopping to making purchases from the comfort of [one’s] home. Today, with the click of a mouse or a simple voice command, a host of items—from oven gloves to groceries and computers to cell phones—can be ordered for home delivery, often on the same day.”<sup>10</sup> Simple searches easily and quickly provide information about pricing and availability so that consumers can compare products from various manufacturers and retailers and determine which products are best for them. Purchasing items online may provide benefits to consumers, including choice, convenience, and increased access to goods, services, and information.

By facilitating the remote purchase of retail goods, the Internet has also spurred competition and innovation in shipping and delivery logistics.<sup>11</sup> In such an environment, consumers may be uncertain about the shipping and delivery options available to their locations. A review of shipping policies for some of the top online retailers<sup>12</sup> shows that they do disclose their shipping policies on their websites. However, the policies of these top retailers are not all

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<sup>8</sup> See, e.g., *Dot com Disclosures: How to Make Effective Disclosures in Digital Advertising*, FTC (2013) <https://www.ftc.gov/news-events/press-releases/2013/03/ftc-staff-revises-online-advertising-disclosure-guidelines>.

<sup>9</sup> *Id.* at iii.

<sup>10</sup> Anmar Frangoul, *10 Ways the Web and Internet Have Transformed Our Lives*, CNBC (Feb. 9, 2018), <https://www.cnbc.com/2018/02/09/10-ways-the-web-and-internet-have-transformed-our-lives.html>.

<sup>11</sup> See, e.g., Seth Clevenger, *Retailers, Private Fleets Expand Delivery Options to Keep Pace With E-Commerce Demand*, Transport Topics (Aug. 26, 2019), <https://www.ttnews.com/articles/retailers-private-fleets-expand-delivery-options-keep-pace-e-commerce-demand>; Michael Lierow, *Amazon Is Using Logistics To Lead A Retail Revolution*, Forbes (Feb. 18, 2016), <https://www.forbes.com/sites/oliverwyman/2016/02/18/amazon-is-using-logistics-to-lead-a-retail-revolution/#bac84724e438>.

<sup>12</sup> See, e.g., Walter Loeb, *Who Are the Top 10 U.S. Retailers?*, Forbes (Aug. 6, 2018), <https://www.forbes.com/sites/walterloeb/2018/08/06/who-are-the-top-10-u-s-online-retailers/#1010f5e83401>; Jessica Tyler, *These Are the Biggest Online Shopping Destinations in America*, Business Insider (Apr. 19, 2018), <https://www.businessinsider.com/biggest-online-shopping-sites-list-2018-4>.

the same with respect to shipping to all states and U.S. Territories (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands). As noted in the House Report, “some companies . . . are unwilling to ship products to Alaska, Hawaii, Puerto Rico, and the other territories.” Moreover, such policies may be disclosed inconsistently or at a time that is not optimal for consumers making online purchase decisions. In view of diverse and changing shipping and delivery policies, merchants may wish to examine their disclosure practices, particularly when common and widely promoted options are not available to certain locations.

## **B. Shipping and Delivery to Alaska, Hawaii, Puerto Rico, and Other U.S. Territories.**

Many popular online retailers disclose that they ship to Alaska, Hawaii, Puerto Rico, or the other U.S. Territories. However, the shipping options available to these locations may cost more, take more time, or be unavailable for certain products.<sup>13</sup> Other online retailers may not ship any goods to certain areas. For instance, some retailers will ship to Alaska, Hawaii, and Puerto Rico but not the other U.S. Territories, while others limit shipping only to Alaska and Hawaii or further limit some types of delivery to the “48 continental United States.”<sup>14</sup> One retailer discloses that it will ship certain items to Alaska, Hawaii, Guam, and the U.S. Virgin

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<sup>13</sup> See, e.g., *Is Shipping Available to Alaska, Hawaii & Puerto Rico?* Costco, [https://customerservice.costco.com/app/answers/detail/a\\_id/1134/kw/Shipping%20to%20Puerto%20Rico](https://customerservice.costco.com/app/answers/detail/a_id/1134/kw/Shipping%20to%20Puerto%20Rico) (many items found on Costco.com can be shipped to Alaska, Hawaii, and Puerto Rico, but not all products will qualify); QVC, [https://www.qvc.com/content/qvc-commerce-us/en/info/popups/Shipping\\_Info.content-main.html](https://www.qvc.com/content/qvc-commerce-us/en/info/popups/Shipping_Info.content-main.html) (QVC offers standard shipping and handling within the contiguous 48 states, with different options for Alaska, Hawaii, and U.S. Territories); *Amazon Prime Shipping Benefits*, Amazon, <https://www.amazon.com/gp/help/customer/display.html?nodeId=201910440> (Amazon, which has different shipping speeds for addresses in Alaska, Hawaii, and Puerto Rico, notes that “Expedited Shipping is currently not available for Puerto Rico” although it is available for Alaska and Hawaii, and provides no Prime shipping to other U.S. Territories); *Where We Ship*, Walmart, [https://help.walmart.com/app/answers/detail/a\\_id/279/kw/shipping/related/1](https://help.walmart.com/app/answers/detail/a_id/279/kw/shipping/related/1) (Walmart ships to Alaska, Hawaii, and U.S. Protectorates, but shipping charges may vary by weight, item, and shipping option); *Delivery Options*, Lowe’s, <https://www.lowes.com/l/delivery-options.html> (orders to U.S. protectorates are offered a standard (expected) three-to-seven business day service option only, while Alaska and Hawaii are also offered Two-Business Day and Next-Business Day service levels, although all shipments to those states are subject to a \$5 surcharge); *Ship to Home*, Target, <https://help.target.com/help> (follow “Delivery Options” hyperlink; then follow “Ship to Home” hyperlink) (Target offers regular shipping but not expedited shipping to U.S. Territories or protectorates or APO/FPO/DPO, although it does offer expedited shipping to Alaska and Hawaii, depending on the item).

<sup>14</sup> See, e.g., *Shipping & Pickup*, Apple, [https://www.apple.com/shop/help/shipping\\_delivery](https://www.apple.com/shop/help/shipping_delivery) (Apple provides shipping options to Alaska, Hawaii, and Puerto Rico, but not the other U.S. Territories); *About Your Online Order*, The Home Depot, [https://www.homedepot.com/c/About\\_Your\\_Online\\_Order](https://www.homedepot.com/c/About_Your_Online_Order) (“Select items can ship to Alaska & Hawaii. We cannot ship to . . . U.S. Territories”); *Shipping Methods*, Kmart, [https://www.kmart.com/en\\_us/customer-service/shipping-delivery-returns/shipping-methods.html](https://www.kmart.com/en_us/customer-service/shipping-delivery-returns/shipping-methods.html) (“Kmart does not currently ship to P.O. Boxes, Puerto Rico, Guam or the US Virgin Islands” and oversized shipping is “[a]vailable only in the 48 continental United States”); *Shipping & Delivery*, Sears, <https://www.sears.com/ue/home/shippingDelivery031612.html> (gift cards are delivered to Puerto Rico; UPS delivers to the 50 states; however, Home Delivery/Freight Carrier Delivery is only available to the “48 continental United States”); *International Shipping*, Kohl’s, [https://cs.kohls.com/app/answers/detail/a\\_id/1140/~shipping-methods](https://cs.kohls.com/app/answers/detail/a_id/1140/~shipping-methods) (follow “International Shipping” hyperlink) (“Customers outside of the U.S. (including U.S. territories) who wish to purchase . . . merchandise will need to partner with a consolidated international shipping company.”).

Islands, but it does not list Puerto Rico.<sup>15</sup> Some consumers have complained about this retailer's lack of shipping to Puerto Rico and have stated that they were shopping elsewhere due to this policy.<sup>16</sup> Despite offering very similar products, some competitors may have different shipping policies for those products.<sup>17</sup>

The shipping pages of retailers that disclose they do not ship goods to Alaska, Hawaii, Puerto Rico, or other U.S. Territories typically do not explain why they do not ship to those locations. Explaining why a particular retailer does not ship to a particular state or U.S. Territory might lead to less consumer frustration or confusion. For example, when the Postal Service is unable to ship to Puerto Rico, it issues alerts to consumers to let them know that it cannot ship to them, why it cannot ship to them, and when shipments are likely to resume.<sup>18</sup>

Comparing products online can help consumers reduce costs, but that may be less useful if, after spending time researching a product, the consumer finds that it is unavailable for shipment to a particular location or that shipping would be prohibitively expensive. Retailers may need to examine their websites to ensure shipping policies are easily found and limitations are clearly and prominently disclosed. At the same time, consumers may want to start their searches by first evaluating shipping policies to lessen such frustration. If a consumer is shopping on a platform that features individual sellers or small retailers, then the consumer may want to inquire directly with the seller about shipping options if the consumer is considering a purchase from the seller.<sup>19</sup> Moreover, prior to communicating with individual sellers, consumers may wish to review various shipping options to Alaska, Hawaii, Puerto Rico, and the other U.S. Territories offered by the Postal Service and private shipping companies on their respective websites. (See section IV below.)

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<sup>15</sup> *International Orders*, Best Buy, <https://www.bestbuy.com/site/help-topics/international-orders/pcmcat204400050019.c?id=pcmcat204400050019>. This retailer has stores in Bayamon, San Juan, and Carolina, Puerto Rico. These stores were temporarily closed after Hurricane Maria and it was reported that the retailer offered to evacuate employees to Florida and spent \$750,000 helping these employees. See Kavita Kumar, *Best Buy Reopens Store in Puerto Rico After Months of Helping Employees Recover*, Star Tribune (Dec. 17, 2017), <http://www.startribune.com/best-buy-spends-750-000-helping-puerto-rico-employees-after-hurricane/464844203/>.

<sup>16</sup> See Comments to *Shipping to Puerto Rico*, Best Buy (Dec. 15, 2015), <https://forums.bestbuy.com/t5/Best-Buy-IdeaX/Shipping-to-Puerto-Rico/idi-p/948426#comments>.

<sup>17</sup> Compare, for example, the shipping policies of The Home Depot ([https://www.homedepot.com/c/About\\_Your\\_Online\\_Order](https://www.homedepot.com/c/About_Your_Online_Order)) and Lowe's (<https://www.lowes.com/l/delivery-options.html>) which are direct competitors. One does not ship to U.S. Territories, but the other does.

<sup>18</sup> The Postal Service recently issued an alert when its offices in Puerto Rico were closed due to the earthquakes there. See generally *Service Alerts*, USPS, <https://about.usps.com/newsroom/service-alerts/>.

<sup>19</sup> See, e.g., *Setting Up Your Shipping Options*, eBay, <https://www.ebay.com/help/selling/shipping-items/setting-shipping-options?id=4089>; *Setting Buyer Requirements*, eBay, <https://www.ebay.com/help/selling/listings/creating-managing-listings/setting-buyer-requirements?id=4152>; *Shipping Policy*, Etsy, <https://www.etsy.com/legal/shipping/>. Etsy members explained to each other on community.etsy.com that the Postal Service's zone pricing would affect the postal cost to a particular area (including Hawaii, Alaska, or Puerto Rico) depending on what zone the individual seller and buyer are in, which may affect what the sellers charge or where they want to ship to. See *Price List*, USPS, <https://pe.usps.com/text/dmm300/Notice123.htm> (providing the Postal Service's latest price changes effective January 26, 2020).

### **C. Additional Potential Shipping Issues for Puerto Rico.**

In addition to potential issues related to cost, distance, and delivery logistics, there may be additional issues with regard to shipping to Puerto Rico. Consumers, individual sellers, and others have pointed out the following issues, which may be addressed through educational measures, as described below: (a) having to use an additional line in the address for an urbanization name may be confusing to some sellers<sup>20</sup>; (b) inconsistencies in how addresses are filled out may be confusing<sup>21</sup>; and (c) individual sellers might not understand that Puerto Rico is a U.S. Territory and thus assume that shipping costs are prohibitive.<sup>22</sup>

### **IV. Shipping Options Available from Postal Service and Private Companies.**

As noted in the House Report, the Postal Service and private shipping companies serve Alaska, Hawaii, Puerto Rico, and the other U.S. Territories. Although the pricing for several of the Postal Service’s delivery options does not depend on the shipment’s destination, the private delivery options may be more expensive because they have fewer delivery options for Alaska, Hawaii, Puerto Rico, and the other U.S. Territories than in the contiguous states. Services available from the Postal Service and private shipping companies often take longer than deliveries to locations within the contiguous states.

#### **A. Postal Service.**

The Postal Service describes itself as “the only delivery service that reaches every address in the United States. Everyone living in the United States and its territories—regardless of their location—has access to postal products and services . . . .”<sup>23</sup> The Postal Service’s First Class, Flat Rate Priority Mail, and certain other delivery options cost the same regardless of

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<sup>20</sup> An urbanization name “denotes an area, sector, or residential development within a geographic area.” It is “commonly used in Puerto Rican urban areas” because “identical street names and address number ranges can be found within the same ZIP Code.” *Delivery Address Line*, USPS, [https://pe.usps.com/text/pub28/28api\\_008.htm](https://pe.usps.com/text/pub28/28api_008.htm). Government officials have also been confused by these designations. *See, e.g.*, Todd M. Richardson, *Puerto Rico Addresses*, HUD User, <https://www.huduser.gov/portal/pdredge/pdr-edge-firm-asst-sec-070918.html>. Individual sellers on eBay also reported some confusion.

<sup>21</sup> *See Puerto Rico Addresses*, *supra* note 20 (“The reason the addresses in HUD’s data systems were so bad was that on the single address line, the street name, the urbanization (subdivision) name, the house or building number, and the apartment number were all mixed up for each address . . .”). Etsy sellers reported that confusion occurred if a buyer listed “PR” as the country, rather than the state.

<sup>22</sup> Individual sellers on Amazon and Etsy were confused about whether shipping to Puerto Rico was “international” until other sellers explained that Puerto Rico is a U.S. Territory and the Postal Service’s Flat Rate for shipping is the same. *See infra* note 24. Such confusion may be because at least one private shipping company classifies shipments to Puerto Rico as “international.” *See FedEx Service Guide*, FedEx, 65 (Jan. 1, 2018), [https://www.fedex.com/content/dam/fedex/us-united-states/services/Service\\_Guide\\_2018.pdf](https://www.fedex.com/content/dam/fedex/us-united-states/services/Service_Guide_2018.pdf).

<sup>23</sup> *United States Postal Service FY2019 Annual Report to Congress*, USPS, 18, <https://about.usps.com/what/financials/annual-reports/fy2019.pdf>.

whether the destination is in the contiguous states, Alaska, Hawaii, Puerto Rico, or the other U.S. Territories.<sup>24</sup>

However, when distance-based pricing is used, shipping may cost more due to a greater distance between the origin and the destination. Indeed, the pricing for several of the delivery options offered by the Postal Service depends in part on “how far the mailpiece travels to get to its destination: the farther it travels the more you pay in postage. The actual distance is measured by ‘zones.’”<sup>25</sup> Because the contiguous states are often closer to each other, zoned delivery options for shipments between the contiguous states frequently cost less than deliveries to Alaska, Hawaii, Puerto Rico, and the other U.S. Territories. Importantly, certain locations within the contiguous states are farther from each other than from Alaska, Hawaii, Puerto Rico, or the other U.S. Territories. For example, Washington, D.C. (ZIP Code 20580) is closer to San Juan (ZIP Code 00901) than to Seattle (ZIP Code 98174), which is reflected in the Postal Service’s Domestic Zone Chart.<sup>26</sup> Accordingly, any delivery option offered by the Postal Service that depends on zoned pricing would cost more to ship to Seattle than to San Juan from Washington, D.C. The FTC is not aware of any delivery option provided by the Postal Service where the pricing is affected by whether the destination is specifically in Alaska, Hawaii, Puerto Rico, or the other U.S. Territories (as opposed to the distance between the sender and recipient).

It may also take longer to ship packages via the Postal Service to Alaska, Hawaii, Puerto Rico, and the other U.S. Territories. The Postal Service notes, “The timeliness of service to or from destinations outside the contiguous US may be affected by the limited availability of transportation.”<sup>27</sup> Indeed, two of the Postal Service’s more economical domestic delivery options, Package Services and Retail Ground, have considerably longer delivery times for destinations outside of the contiguous states. While the delivery time is typically 2–9 days, the Postal Service notes that “[d]ue to the variability of transportation, Package Services and USPS

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<sup>24</sup> The Postal Service categorizes its delivery options as “domestic” or “international,” and defines domestic mail as “mail transmitted within, among, and between the United States of America, its territories and possessions.” *Domestic Mail Manual*, USPS, <https://pe.usps.com/text/dmm300/608.htm#ep1255642>. Specific domestic delivery options that do not take destination into account for pricing purposes include: First-Class Mail, USPS Marketing Mail, Library Mail, Media Mail, and Flat Rate options for Priority Mail Express and Priority Mail. *See How Distance Affects Prices*, USPS, <https://pe.usps.com/BusinessMail101/Index?ViewName=Distance>. Flat Rate options are available when the sender uses Flat Rate packaging provided by the Postal Service and the package weighs no more than 70 pounds. *Id.* Although shipments to Guam are considered domestic for pricing purposes, they may require a Customs Form. *See What US Possessions, US Territories, and Freely Associated States Are Considered Domestic?* USPS, <https://faq.usps.com/s/article/What-US-Possessions-US-Territories-and-Freely-Associated-States-are-Considered-Domestic>.

<sup>25</sup> *How Distance Affects Prices*, *supra* note 24. There are nine zones. *See Domestic Mail Manual*, USPS, <https://pe.usps.com/text/dmm300/608.htm#ep1271413>. Zone 8 includes all destinations greater than 1,800 miles from the origin, except for the Freely Associated States, which fall under Zone 9. *Id.*

<sup>26</sup> *See generally Domestic Zone Chart*, USPS, <https://postcalc.usps.com/DomesticZoneChart> (allowing visitor to enter the first three digits of a ZIP Code to see the respective zones for all other ZIP Codes).

<sup>27</sup> *See, e.g., Postage Price Calculator*, USPS, <https://postcalc.usps.com> (upon performing a price calculation); *Mail & Shipping Services*, USPS, n.4, <https://www.usps.com/ship/mail-shipping-services.htm#p4>.

Retail Ground® packages may take up to three to five weeks to reach Hawaii, Alaska, Puerto Rico and any U.S. Territories.”<sup>28</sup> Overnight delivery may also be affected.<sup>29</sup>

## **B. Private Shipping Companies.**

Like the Postal Service, private shipping companies provide numerous delivery options to locations throughout Alaska, Hawaii, Puerto Rico, and the other U.S. Territories.<sup>30</sup> However, these delivery options may cost considerably more for a destination in Alaska, Hawaii, Puerto Rico, and the other U.S. Territories than for the contiguous states. Unlike the Postal Service, this additional cost is included regardless of the distance between the sender and the recipient. For example, one private shipping company charges approximately \$150 to ship a small package from Seattle (ZIP Code 98174) to Juneau (ZIP Code 99801) in two days, whereas the same package would cost approximately \$65 to ship a much greater distance from Seattle to Washington, D.C (ZIP Code 20580) in two days.<sup>31</sup> The same company would charge approximately \$70 to ship the same package from Washington, D.C. to San Juan (ZIP Code 00901).<sup>32</sup> Similarly, another private shipping company charges approximately \$60 to mail a flat envelope from Seattle to Juneau in two days, \$30 from Seattle to Washington, D.C., and \$45 from Washington, D.C. to San Juan.<sup>33</sup>

Some next-day delivery options from private shipping companies may also be unavailable or take an extra day. For example, one private shipper’s Next Day Air Early service is not available for Hawaii, Puerto Rico, or non-metro Alaska and, although it “[g]uarantee[s] on-time overnight delivery on business days by 8:00 a.m. to major cities in the 48 contiguous states,” delivery to Anchorage, Alaska, may be delayed by approximately an hour.<sup>34</sup> Another private shipper’s First Overnight and 2DAY A.M. services are unavailable for Hawaii, and it takes two business days, rather than one, to deliver certain shipments to Alaska and Hawaii using

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<sup>28</sup> *What is the Estimated Delivery Time for Package Services?* USPS, <https://faq.usps.com/s/article/What-is-the-Estimated-Delivery-Time-for-Package-Services>.

<sup>29</sup> Although the Postal Service website states that overnight delivery is “available to most U.S. addresses and PO Boxes,” *Mail & Shipping Services*, *supra* note 27, at n.2, it is not offered for every location. The Postal Service encourages customers to use its price calculator to determine if it is possible to use overnight delivery, and using that calculator shows that, for example, such delivery is not available from the East Coast to Puerto Rico. *See Postage Price Calculator*, *supra* note 27.

<sup>30</sup> For example, FedEx and UPS provide several shipping options to Alaska, Hawaii, and Puerto Rico. *See, e.g., FedEx Service Guide*, *supra* note 22, at 50 (pricing FedEx Express delivery options to “metro” and “rural” areas in Alaska and Hawaii); *id.* at 65 (pricing FedEx Express delivery options to Puerto Rico); *2020 UPS Rate & Service Guide*, UPS, 60, [https://www.ups.com/assets/resources/media/en\\_US/daily\\_rates.pdf](https://www.ups.com/assets/resources/media/en_US/daily_rates.pdf) (pricing UPS 2nd Day Air options to Puerto Rico and “metro” and “remote” areas in Alaska and Hawaii).

<sup>31</sup> *See FedEx Rates and Transit Times*, FedEx, <https://www.fedex.com/ratefinder/standalone>.

<sup>32</sup> *Id.*

<sup>33</sup> *See Calculate Time and Cost*, UPS, <https://wwwapps.ups.com/ctc/request>.

<sup>34</sup> *See, e.g., 2020 UPS Rate & Service Guide*, *supra* note 30, at 44.



its Priority Overnight service.<sup>35</sup> Thus, not only do delivery options from private shipping companies frequently cost more for destinations in Alaska, Hawaii, Puerto Rico, and the other U.S. Territories, the companies' most expedient options may not be available.

## **V. Consumer and Business Education.**

Increasing consumer awareness and understanding regarding shipping costs and limitations can lead to less consumer frustration and greater exercise of consumer choice. Shipping companies should consider providing additional information on their websites that will assist smaller shippers in clearly communicating shipping policies to retail customers. Additionally, online businesses may need to be more transparent about their ability (or inability) to ship certain items to certain locations. Clear and conspicuous disclosures of shipping restrictions that retail customers can easily find before selecting products would address some consumer frustration, allowing the consumers to quickly switch to a competitor that might offer a more attractive shipping option. Such transparency might also lead sellers to consider whether arranging alternative shipping methods to reach, and satisfy, a broader audience for their goods and services is a viable option. Consumers should be encouraged to check shipping restrictions early in the shopping process, allowing them to compare shipping policies and choose the most competitive option.

On March 11, 2020, FTC staff published a blog post for consumers in English and Spanish titled "Look Before They Ship"<sup>36</sup> and a blog post aimed at businesses and individual sellers when they are considering what products can be shipped and to whom titled "Signed, Sealed, Delivered: Shipping Basics for Your Business."<sup>37</sup> Links to these blogs were emailed to more than 377,000 subscribers, they are available on the FTC's website, and they have been provided to the Postal Service should it wish to publish them—or any of the tips included therein—on its site.

## **VI. Conclusion.**

The Internet has transformed the retail goods marketplace. To attract and retain customers in this environment in which shipping and delivery considerations may determine which retailer makes the sale, sellers and marketers should consider whether they could be more transparent with consumers and provide necessary shipping information earlier in the sales transaction so that consumers can comparison shop. Companies should disclose delivery

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<sup>35</sup> See, e.g., *FedEx Service Guide*, *supra* note 22, at 2, 50. See also *FedEx Delivery Commitments for Alaska and Hawaii*, FedEx, <https://www.fedex.com/content/dam/fedex/us-United-states/services/alaskahawaii/commitments.pdf> (identifying FedEx services unavailable for specific locations in Alaska and Hawaii).

<sup>36</sup> Available at <https://www.consumer.ftc.gov/blog/2020/03/look-they-ship> and in Spanish at <https://www.consumidor.ftc.gov/blog/2020/03/fijate-antes-de-que-te-lo-envien>. In calendar year 2019, the Consumer Center blog had more than 296,000 subscribers (more than 243,000 in English, nearly 53,000 in Spanish). The FTC's consumer resources logged more than 41 million pageviews during 2019.

<sup>37</sup> Available at <https://www.ftc.gov/news-events/blogs/business-blog/2020/03/signed-sealed-delivered-shipping-basics-your-business>. In calendar year 2019, the FTC's Business Center blog had nearly 81,000 subscribers. The FTC's business resources logged 5.2 million pageviews during 2019.

restrictions up front, and consumers should check shipping restrictions earlier in the shopping process and communicate with sellers about all delivery options.