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Federal Trade Commission (FTC) Releases Staff Report on Proposed Amendments to Mail or Telephone Order Merchandise Rule

First promulgated in 1975, the FTC's Mail Order Merchandise Rule (frequently referred to as "the mail order rule") required sellers to ship mail ordered merchandise on time or to offer order cancellations and payment refunds to customers when merchandise was not shipped on time. In 1993 the rule was amended to also cover merchandise ordered by telephone—to include Internet sales using telephone Internet access—and was renamed the Mail or Telephone Order Merchandise Rule. In 2007 the FTC began studying whether the rule needed to be amended to reflect changes in ordering and payment technologies. Public comment was invited and received through an Advanced Notice of Proposed Rulemaking. In 2011 the FTC developed and published a Notice of Proposed Rulemaking reflecting comments received but no further rulemaking action was taken.

On April 29, 2013 the FTC released a staff report reviewing further the rulemaking record based on the 2007 and 2011 notices. That report recommends the Commission go forward to final rulemaking with the changes proposed in 2011:

- Clarifying that the rule covers all orders placed over the Internet regardless of the means of Internet access. That is, it applies to access gained via wireless access, mobile applications, and other non-dial-up access.
- Allowing sellers to provide refunds by any means at least as fast and reliable as first class mail.
- Clarifying that the seller's obligations on timely shipment and refunds exist even when purchasers are using payment methods not identified in the original rule (e.g., prepaid gift cards or debit cards).
- Requiring that refunds be made within seven working days for purchases made through third-party credit such as Visa or Master cards. The original refund deadline of one billing cycle remains for sellers who are themselves the creditor as, for example, sellers using their own store charge cards.

Interested and affected parties have until July 15, 2013 to offer comments using the online mechanism at the FTC web site, www.FTC.gov. At the end of the comment period FTC staff will make final recommendations. If the Commission adopts the rule as proposed in 2011 or adopts revisions based on comments received from the 2013 notice, it will publish the final rule in the Federal register at a date to be announced .

U.S. Small Business Administration Broadens Availability of Government Contracts for Women Owned and Economically Disadvantaged Women Owned Small Businesses

On May 7, 2013, the U.S. Small Business Administration (SBA) published an Interim Final Rule substantially increasing the availability of government contracts for women owned small businesses and economically disadvantaged women owned businesses seeking federal contracts. As originally incorporated into the Small Business Act [as 15 U.S.C. 637(m)] the program allowed federal contracting officers to set-aside a contract for women owned or economically disadvantaged women owned businesses if the anticipated award amount did not exceed \$5 million for manufacturing contracts and \$3 million for all other contracts. The federal government had a statutory 5 percent goal of contracts to women owned businesses

In 2012 the limits on award amounts were increased to \$6.5 million for manufacturing contracts and \$4 million for all other contracts as a result of a showing that only 3.97 percent of contracts were awarded to women owned businesses—substantially short of the 5 percent goals. In 2013, section 1697 of the National Defense Authorization Act [P.L. 112-239] removed all dollar value limitations. The new SBA implements this change to allow federal contracting officers to now set aside any contract for women owned small businesses or economically disadvantaged women owned small businesses if two conditions are met:

- There is a reasonable expectation that two or more women owned or economically disadvantaged women owned businesses, in industries where women are under-represented or substantially under-represented, will submit offers for the contract; and
- In then estimation of the contracting officer the contract can be awarded at a fair and reasonable price.

Interested and affected parties wishing to comment on the new rule may do so before June 6, 2013 using the online comment process at www.regulations.gov. The rule identification number is RIN-3245-AG55.

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Small Business Notes
are available on the
Department of
Employment and
Economic
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Minnesota Department
of Employment and
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