

# Market Conditions Creating “New” Potential Federal Regulatory Duties

Since 1975<sup>[1]</sup>, the FTC has had a Rule, currently called the “Mail, Internet, or Telephone Order Merchandise Rule” (“Rule”) that requires sellers who solicit buyers to order merchandise through the mail, via the Internet, or by phone to make disclosures regarding the shipment time for ordered merchandise. Sellers must have a reasonable basis to expect that they can ship ordered merchandise within an advertised time frame, or, if no time frame is specified, within 30 days. The 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.

For a number of reasons, this Rule has not historically been relevant to dealers. However, with the confluence of: (a) the increase in remote delivery of vehicles; (b) the current new vehicle inventory shortage, and (c) the increased acceptance of vehicle orders (and reservations), this Rule may unexpectedly become relevant to dealers.

Basically, the Rule requires:

1. That when you advertise merchandise (like a vehicle or a part) that can be ordered by a buyer over the phone or internet for shipment to that buyer, you must either:

state when the merchandise will be delivered, or

if you make no shipment statement, you must have a reasonable basis for believing that you can ship within 30 days of a completed order.

2. If, after taking a customer’s order, you learn you cannot ship within the time stated or 30 days, you must:

seek the consumer’s consent to a delayed shipment, or

if no consent is obtained, promptly refund all the money the customer paid.

There are several additional key details in the Rule that dealers should consider, but if you:

1. Take orders by mail, internet, or phone for vehicles, parts or other merchandise that are not available for immediate delivery;

2. Deliver that merchandise to consumers, and;

3. Advertise merchandise that is not certain to be available for delivery within 30 days,

—then you may be required to make certain disclosures in your advertisements (including online ads or website inventory), and you could be subject to further disclosure, consent, refund, and other requirements under the Rule.

Bottom line - this is an old Rule with new potential significance. If you think this could apply to you or your dealership’s operations, you should consult with counsel about the potential impact of this Rule. Dealers can also consult the FTC business guide for this Rule for more details.

*[1] The rule was issued in 1975 to cover mail orders and was amended in 1993 to include telephone orders, and in 2014 to include all internet orders.*

*This memo is not legal advice and only addresses this federal obligation, not any similar or related obligations under federal or state law. Consult your attorney for about this rule or any related compliance obligation.*