## Mail or Telephone Order Merchandise Staff Report to the Federal Trade Commission and Proposed Revised Trade Regulation Rule (16 CFR Part 435)

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This Report, as required by Sience 1.13(f) of the Commissies Rules of Practice, 16 CFR 1.13(f), contains staff analysis of the rule amendment record and its recommendations as to the form of the proposed final Mail, Internet, Toelephone Order Merchandise Rule. The Report has not been endorsed or adopted by the Commission. The Commissionahdetermination in this matter will be based upon the rulemaking record taken as a whole, including the Report and comment on the Report received during the 75-daip peafter the Report is laced on the public record.

Staff recommends that the Commission amend the Mail or Telephone Order Merchandise Rule (the Rule@as the Commission prexisly proposed in its Notice of Proposed Rulemaking (ANPRM@1 That proposal responds to new methods of accessing the Internet and making payments and refunds. Having gathered and analyzed comments based on an Advance Notice of Proposed Rulemaking (NPR@2 and the NPRM, staff now recommends that the Commission amend the Rule to:

- ! Clarify that it covers all Internet merchandise orders, regardless of the method consumers use to access the Internet;
- ! Permit refunds and refund notices by any mealesst as fast and reliable as first class mail;
- ! Clarify sellers refund obligations for orders usin payment methods not specifically enumerated in the Rule; and
- ! Require sellers to process any third party creatid refunds within seven working days of a buyers-right to a refund vesting.

This Report analyzes the rulemaking rectordate, describes the proposed amendments, and recommends that the Commission matchese Rule as previously proposed.

Federal Trade Commission: Mail **Te**lephone Order Merchandise Rule, Notice of Proposed Rulemaking, 76 FR 60765 (Sept. 30, 20 **C**) mments to the NPRM are available at <a href="http://ftc.gov/os/comments/mtoramendments">http://ftc.gov/os/comments/mtoramendments</a>

<sup>&</sup>lt;sup>2</sup> Federal Trade Commission: Mail **Toe**lephone Order Merchandise, Request for Public Comments, 72 FR 51728 (Sept. 11, 2007). Comments to the ANPR are available at http://ftc.gov/os/comments/mailortelephoneorder

## I. Background

The Commission promulgated the Mail Order Mhanodise Rule in 1976 require sellers to ship mail-ordered merchandise on time, or to offer order cathorest and refunds for merchandise not shipped on timeln 1993, the Commission amended the Rule to cover merchandise ordered by telephone (including hnandise ordered through laternet using telephone Internet access), and renamed Matheor Telephone Order Merchandise RuleIn 2007, the Commission initiated a review of the Raus part of its rule review process Pursuant to that review, the Commission has solicipadolic comment through an ANPR and an NPRM.

#### A. ANPR

The Commission issued its ANPR on September 11, 2007 he ANPR requested public comment on the costs, benefits acontinuing need for the Rule. After reviewing the comments and previous Rule proceedings, the Cosmon concluded that benefits of the Rule

<sup>&</sup>lt;sup>3</sup> Federal Trade Commission: Part 435 Mail Order Merchandise, Promulgation of Trade Regulation Rule, 40 FR 51582 (Nov. 5, 1975).

<sup>&</sup>lt;sup>4</sup> Federal Trade Commission: TradegRiation Rule; Mail or Telephone Order Merchandise, Final Trade Regtition Rule, 58 FR 49096 (Sept. 21, 1993).

<sup>&</sup>lt;sup>5</sup> Since 1992, the FTC has conducted a regulatesyatic review of all its rules and guides on a rotating basis to ensure they are upate, effective, and not overly burdensome.

<sup>&</sup>lt;sup>6</sup> 72 FR 51728.

<sup>&</sup>lt;sup>7</sup> 72 FR at 51730.

outweigh its costs. Consequently, on Septen 80, 2011, the Commission issued a Final Rule with minor technical amendments.

The ANPR also requested public comment once and benefits of amending the Rule to: (1) explicitly cover all Internet merchandise orders, (2) repreter refunds and refund notices by any means at least as fast and reliable aschars mail, and (3) refer to payment by means other

ANPR also retpad the 585 to 0.95 in 17/6/16 text to 22 in 3 to 20 in 1817.

transactions. Consequently, NRF stated, sellers cartreat these transactis differently, and it therefore recommended that the Rule imposes time requirements on these transactions.

### II. Comments to the NPRM

The Commission received four comments is sponse to the NPRM. Three supported the proposed amendments. NRF again supported extending the Rtolenternet orders, but did not address the other proposed amendments imberly Clampffer Clampffer and Mary Kate Kott (AKott@supported the proposed amendments es Thromments are discussed in detail below in Sections III and IV.

Matthew Mueller (Mueller (Dip by contrast, advocated eliminating the Rule, and did not address any of the proposed amendments. As analyzed in Sections (b) mment misstated both the Rules requirements and the Resiempact on buyers and sellers.

The Commission announced in the NPRMatth is using expedited rulemaking procedures and that, because written commences adequately presentethriews of interested

NRF-ANPR at 4-5. NRF did not indicated there is no evidence on the record, that sellers have difficulty disagnishing seller-issued credit desirfrom other payment cards. Consequently, the NPRM did not propose amentheorement refund period where the seller is a creditor.

<sup>19</sup> Clampffer-NPRM, Kott-NPRM, NRF-NPRM.

NRF-NPRM at 3. NRF so requested clarification that the mere fact that a sales associate uses the Internet in a custemperesence does not convene transaction from a face-to-face transaction, outside those pe of the Rule, to an Internet order sale covered by the Rule. The Commission addressed this issue on the NPRM. There it stated that the Rule does not presently cover transactions in which a selle presentative merely receives product or inventory information through a telle pre, but the transaction with the buyer is conducted by means of media outside the Rule ope (.g., face-to-face transaction). Footnote 16 further stated that the proposite dendments to the Rule would not cover transactions in which a sells representative uses the Interpretative where the buyer orders the merchandise by means outside of the Rule ope. 76 FR at 60767. as trecommends that the Commission reiterate this guidzen the final Rule notice.

Mueller submitted the only comment that opposed the Rule. This comment did not address any of the proposed amendments. Rathergued that the Rule favors the interests of buyers over sellers by allegedly requiring seller incur expenses to assure timegiveries while preventing sellers from chaining buyers the costs associated

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## IV. The Purposes and Descriptions of the Proposed Amendments

## A. Clarify the Rules Coverage

## 1. Background

When the Commission amended the Rule in 3169 cover Internet merchandise orders made through telephone Internet access, it intended to do Internet ordering. However, there are now alternatives to dial-up telephone in the teaccess, such as cable and wireless Internet access. Therefore, the ANPR requested comment conducts or benefits of amending the Rule to explicitly cover all computer and Internet orders.

This proposal garnered wide support. It have responsive comments supported amending the Rule to explicitly cover merchandise or nether in the Internet grandless of the access method. DMA commented that its own guidelines at all Internet orders uniformly, and its members follow those guidelines. NRF concurred in this position. Paul Dearing commented that a merchant could Aretasonably argue that an order placed over a wireless network was somehow exempt from requirements of the Rule. Furthermore, the NPRM noted that publicly available data confirmensumers have largely switched from dial-up to

<sup>&</sup>lt;sup>28</sup> 72 FR at 51729.

<sup>&</sup>lt;sup>29</sup> Id.

<sup>&</sup>lt;sup>30</sup> Id. at 51730.

<sup>&</sup>lt;sup>31</sup> 76 FR at 60767.

<sup>32</sup> DMA-ANPR at 3.

<sup>33</sup> NRF-ANPR at 3. But seen. 20, supra

broadband Internet access. It further noted that consumeomplaints indicated that Internet buyers suffer from unfair or deceptive actgaredless of means of Internet access, and enforcement actions indicated that some Internet selbers fail to ship merchandise orders on time or at all.<sup>36</sup>

Explicitly covering all Internet order sælæegardless of means of access would meet buyers=expectations that their legarotections are independent their means of Internet access. It also would be constent with the Commission longstanding intent that the Rule address all Internet merchandise orders. Furthermore, the proposal would not impose new costs on sellers, who cannot distinguish between Internet access methods in fulfilling customer orders.

### 2. The record and staff recommendation

NRF continued to support amending the Rule to clearly applyales where a buyer has responded to a solicitation to order merchandisentally, telephone or using the publicly available worldwide web Clampffer stated that also the retail sites expand on the [I]nternet, this rule will help provide guidance to retailers to provide best customer service potential buyers and

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will help to eliminate fraud with sellershop are not providing goods or refunds to buy the sellent stated that If or those who purchase merchandise via mail, telephone, or [I] nternet, the proposed changes will help to structure the sellentidelines. . . Or other NPRM comment addressed this proposed amendment.

Commenters supported amending the Ruleatrify Ithat it coversall Internet order merchandise sales. The comments noted that this ardement would not add costs to sellers. Based on this record and the Commission revious analysis, staff recommends amending the Rule as proposed by inserting the well reternet@between Amail@and Aelephon@n the Rules name, coverage section, around the rale@definition.

<sup>41</sup> Clampffer-NPRM at 2.

<sup>42</sup> Kott-NPRM at 1.

See Dearing-ANPR at 3, DMA-ANPR 3t NRF-ANPR at 2, Nwokeji-ANPR, Clampffer-NPRM, Kott-NPRM, NRF-NPRM at 3.

See Dearing-ANPR at 3, DMA-ANPR at 3, Nwokeji-ANPR, 76 FR at 60768.

Staff recommends that the firaule notice state that the teamternet s not limited to the World Wide Web, and include t 3, Nwoke33.475 -0.95 Td ]TJ e22L9£¯ðÃP6PÞá

## B. Flexibility for Prompt Refund Means

## 1. Background

Sections 435.1(b)(1) and (2) **tofi**e Rule require sellers **to**end prompt refunds by first class mail. The ANPR noted that industry may have developed other means of sending refunds that are as fast and reliable as first class **raad**, it requested comme**ont** the costs and benefits of amending the rule to permit refunds by alternative means.

Two comments supported providing llers with more flexibity when delivering refunds.

DMA suggested that amending the Rule tempienew means of sending refunds would advance the Rules original intent of ensuring buyers receivefunds quickly without unduly burdening sellers.<sup>47</sup> Oriyomi Nwokeji commented that legal quirements should recognize technological changes.

The NPRM described these supportive comments, also noted that such an amendment would harmonize the Rule wifflegulation Z, 12 CFR Part 1026. Regulation Z requires that third party credit cardefunds occur throughthe card issuer

statements Consequently, the NPRM propers amending the definition Prompt refunction permit prompt refunds by any means at least as fast and reliable as first class mail.

### 2. The record and staff recommendation

In her NPRM comment, Clampffer noted that this day and age and with technology continuing to grow, there are manyfferent ways for a seller tousply a refund that are as fast if not faster than first class makend supported the proposed amendment other NPRM comment addressed this proposal.

Based on this record and the Commission previous analysis, aff recommends amending the definition of APrompt refunction the Rule, 16 CFR 435.1(b)(1) and (2), to permit refunds to be made Aby any means at least as fast and reliable as first class as a first class as a fast and reliable as as a

- C. Clarify Seller-s Refund Obligations for Non-Enumerated Payments
  - 1. Background

The Rule covers mail or telephone orders gardless of the method of payment.

However, it sets specific sellesshipment, notification, and restid obligations only when buyers pay by cash, check, money order, or credit.e TAINPR noted that other payment methods have been developed, such as debit carded, that the Rule does not delineate selles gations when buyers use these payment methods The ANPR requested comment on the costs and benefits of amending the Rule to refer to payment they are other than cash, check, money order, or

<sup>&</sup>lt;sup>50</sup> 12 CFR 1026.12(e)(1)

<sup>&</sup>lt;sup>51</sup> 76 FR at 60773-60774.

<sup>&</sup>lt;sup>52</sup> Clampffer-NPRM at 2.

<sup>&</sup>lt;sup>53</sup> 72 FR at 51729.

properly completed ordel 6 CFR 435.1(c) and (c)(1), to referAndher payment methods and to Apayment by means other than cash or creditaff further recommends amending the Reule definition of ARefund 6 CFR 435.1(d), to add a paragraph CFR 435.1(d)(3), that specifies refund requirements where the buyer tender of the unshipped merchandise by any means other than those enumerated in 16 CFR 435.1(d)(1) cash, check, or money order) or 16 CFR 435.1(d)(2).e., by credit). Additionally, staff recommends amending the Reule definition of APrompt refund 6 CFR 435.1(b)(1), to add a reference to 16 CFR 435.1(d)(3). Finally, staff recommends amending the Reule definition of APrompt refund 6 CFR 435.1(b)(1), to specify the requirements for the set of the cannot provide a refund by the same payment method used by the buyearch as a non-refundable gift cast defid.

- D. Alter the Third Party Credit Prompt Refund Period
  - 1. Background

In its ANPR comment, NRF stated that sellers cannot distinguish third party credit card payments from some non-enumerated payments, assidebit card, payroll card, or third party gift card payments. Therefore, different prometimental Rule requirements for these different types of payments would unnecessarily burden seller to address this issue, the NPRM proposed amending the Rule to require prompt refunds for third party credit card payments within the same seven-working-day period as for non-enumerated payments.

The recommended amendment would require the prompt refund be made by cash, check, or money order within seven working defythe date on which the seller discovers it cannot provide a refund by the same method as payment was tendered.

<sup>66</sup> NRF-ANPR at 5.

<sup>&</sup>lt;sup>67</sup> 76 FR at 60769-60770. As described above, the third proposed amendment will set the prompt refund period for non-enumerated perylls at seven working days. The third and

## 2. The record and staff recommendation

NRF-s comment to the NPRM did not dissuts is proposed amendment; again staff interprets this silence as indicating that phroposed amendment addresses the concerns NRF expressed in its ANPR comment. Kott stated that the proposed amendment amendment clarify the selles

collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsibility 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 Commissions privacy policy, a <a href="http://www.ftc.gov/ftc/privacy.htm">http://www.ftc.gov/ftc/privacy.htm</a>

Upon completion of the comment period, the fist will make final recommendations to the Commission about the Rule. If the Consision adopts the proposed revised Rule as recommended by the staff, or alternatively, deternative with make changes to the proposed revised Rule, it will publish in a future Federal Registretice 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.

B. Communications to Commissioners and Commissioner Advisors by Outside Parties

Pursuant to Commission Rule 1.18(c)(th)e Commission has determined that communications with respect to the meritshis proceeding from any outside party to any Commissioner or Commissioner advisor shall be subjectible following treatment. Written communications and summaries or transcriptsraf 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 commission received later. Unless the outside party making an oral commission is a member of Congress, such communications are permitted only if advance notice is published in the Weekly Calendar and Notice of Asunshin Meetings.<sup>71</sup>

<sup>&</sup>lt;sup>71</sup> See 15 U.S.C. 57a(i)(2)(A), 45 FR 50814 (1980), 45 FR 78626 (1980).

## VI. Conclusion

Staff has analyzed the rulemaking record finds that the comments provide evidence supporting the proposed amendments. Constity etaff recommends that the Commission amend the Rule in the manner that the Commission proposed in the NPRM.

Rule Amended as Proposed

PART 435 -- MAIL, INTERNET, OR TELEPHONE ORDER MERCHANDISE

Sec.

435.1 Definitions.

435.2 The rule.

435.3 Limited applicability.

Sec. 435.1 Definitions.

For purposes of this part:

- (a) Mail, Internet, or telephone order saleball mean sales in which the buyer has ordered merchandise from the seller by mail,twealnternet, or by telephone, regardless of the method of payment or the method used to solicit the order.
  - (b) Prompt refund shall mean:

- (i) And the seller is a creditoa copy of a credit memorandum or the like or an account statement sent to the buyer reflecting the removabsence of any remaining charge incurred as a result of the sale from the buyer's account;
- (ii) And a third party is the creditor, apparopriate credit memorandum or the like to the third party creditor which will remove the cloparfrom the buyer's account and a copy of the credit memorandum or the like sent to the buyer inhocludes the date that seller sent the credit memorandum or the like to the third partsyditor and the amount of the charge to be removed, or a statement from the sellet memorandum of the cancellation of the order and representing that it has not tanken action regarding the order in will result in a charge to the buyer's account with the third party;
- (iii) And the buyer tender expartial payment for the unship penerchandise in the form of cash, check, or money order, a return of atthe unship penerchandise in the form of cash, check, or money order sent to the buyer.
- (3) Where the buyer tendered payment for the unshipped merchandise by any means other than those enumerated in pagager(d)(1) or (2) of this section:
- (i) Instructions sent to the entity that tsærred payment to the seller instructing that entity to return to the buyer the amount tendered beinform tendered and a statement sent to the buyer setting forth the instructions sent to the peninticluding the date of the instructions and the amount to be returned to the buyer; or
- (ii) A return of the amount tendered in the form of cash, check, or money order sent to the buyer; or

(iii)	A statement from the seller sentthe buyer acknowledging the cancellation of the

- (a)(1) To solicit any order for the sale more rechandise to be ordered by the buyer through the mail, via the Internet, or by telephone unless the time of the similation, the seller has a reasonable basis to expect that it will be able hip any ordered metrandise to the buyer:
  - (i) Within that time clearly and conspicusly stated in any such solicitation; or
- (ii) If no time is clearly and conspicuously statewithin thirty (30) days after receipt of a properly completed order from the buyel Provided, however, where, at the time the merchandise is ordered the buyer applies to either for credit to pay for the merchandise in whole or in part, the seller shall have fifty (50) days, rather thiatry (30) days, to perform the actions required in this paragraph (a)(1)(ii).
- (2) To provide any buyer with any revised pating date, as provided paragraph (b) of this section, unless, at the time any such relvistre pping date is provided, the seller has a reasonable basis for making such representationarding a definite evised shipping date.
- (3) To inform any buyer that it is unable to make any representation regarding the length of any delay unless:
  - (i) the seller has a reasonable basis for so informing the buyer, and
  - (ii) the seller informs the buyer the reason or reasons for the delay.
- (4) In any action brought by the Federalatte Commission, alleging violation of this part, the failure of a respondental to have records or other cumentary proof establishing its use of systems and procedures which assure therefore the formation of business within any applicable time set for this part will create a rebuttable presumption

that the seller lacked a reasonable basis for expectation of shipment within said applicable time.

- (b)(1) Where a seller is unable to ship merchandwithin the applicable time set forth in paragraph (a)(1) of this section, fail to offer to the buyer, clearly and conspicuously and without prior demand, an option eight consent to a delay in shipping or to cancel the buyer's order and receive a prompt refund. Said offer made within a reasonable time after the seller first becomes aware of its inability to shriphin the applicable time set forth in paragraph (a)(1) of this section, buin no event later than said applicable time.
- (i) Any offer to the buyer of such an option shall fully inforting buyer regarding the buyer's right to cancel the order and to obtain the refund and shall provide a definite revised shipping date, but where the seellacks a reasonable basis for providing a definite revised shipping date, the notice shall inform the bruthmat the seller is unable to make any representation regarding the length of the delay.
- (ii) Where the seller has provided a definite set shipping date which is thirty (30) days or less later than a happlicable time set forth in paragina(a)(1) of this setion, the offer of said option shall expressly inform the buyer that ess the seller receives for to shipment and prior to the expiration of the delite revised shipping date, a response from the buyer rejecting the delay and cancelling thorder, the buyer will be deemed to have consented to a delayed shipment on or before the definite revised shipping date.
- (iii) Where the seller has provided a definite ised shipping date which is more than thirty (30) days later than the applicable time feth in paragraph (a)(1) this section or where

the seller is unable to provided a finite revised shipping date at therefore informs the buyer that it is unable to make any repression regarding the length of a thought of the length of the length

- (A) The seller has shipped the merchandiseinwithirty (30) days of the applicable time set forth in paragraph (a)(1) of this section as received no cancellation prior to shipment; or
- (B) The seller has received from the buyer withhimty (30) days of said applicable time, a response specifically consenting to said shipping delay. Where the seller informs the buyer that it is unable to make any reprentation regarding the length the delay, the buyer shall be expressly informed that, should the buyer contagent indefinite delay, the buyer will have a continuing right to cancel the buyer's order at any time after the apple litime set forth in paragraph (a)(1) of this steep by so notifying the selleprior to actual shipment.
- (iv) Nothing in this paragraph shall probitia seller who furnishes a definite revised shipping date pursuant to paragraph (b)(1)(i) of this section, recognized in the subsequent to the offer of an option pursuant to paragraph (b)his section, the buyer's express consent to a further unanticipated delay beyond the definite revised shipping date in the form of a response from buyer specifically consenting said further delay. Provided, however, that where the seller solicits consentation anticipated indefinite delay the solicitation shall expressly informs 17.92 0 Td (ahall expressluinite ]TJ 0.0011 Tc -0.00L<eally conservided, )]TJ (conservided).

- shipping date provided under pgraph (b)(1)(i) of this section and consented to by the buyer pursuant to paragraph (b)(1)(ii) (biii) of this section, to fail to offer to the buyer, clearly and conspicuously and without prior demand, a renewebido petither to consent to a further delay or to cancel the order and to receive a prompt refused offer shall be made within a reasonable time after the seller first becomeware of its inability to ship there the said definite revised date, but in no event later them expiration of the definite vised shipping date. Provided, however, that where the seller previously has obtained there is express consent to an unanticipated delay until a specific date beyoned definite revised shipping date, pursuant to paragraph (b)(1)(iv) of this section or to a further delay until specific date beyond the definite revised shipping date pursuant paragraph (b)(2) of this section, that date to which the buyer has expressly consented shall supersede the definite delaying date for purposes of paragraph (b)(2) of this section.
- (i) Any offer to the buyeof said renewed option shall provide the buyer with a new definite revised shipping date, but where state lacks a reasonable basis for providing a new definite revised shipping date ethnotice shall inform the buyer that the seller is unable to make any representation regarding the length of the further delay.
- (ii) The offer of a renewed option shall pressly inform the buyer that, unless the seller receives, prior to the expiration of the old definite vised shipping date or any date superseding the old definite revised shipping te, notification from the buyer ecifically consenting to the further delay, the buyer will be deemed to have day further delay, and to have cancelled

- (2) The seller has, pursuant to paragreto)(1)(iii) of this section, provided the buyer with a definite revised shipping data hich is more than thirty (30) days later than the applicable time set forth in paragraph (a)(1) to section or has notified the buyer that it is unable to make any representation regarding the of the delay and the seller:
- (i) Has not shipped the merchandise with iint yh (30) days of the applicable time set forth in paragraph (a) 10f this section, and
- (ii) Has not received the buyer's express contises aid shipping delay within said thirty(30) days;
- (3) The seller is unable to ship within theptipable time set fortin paragraph (b)(2) of this section, and has not received, within the applicable time, the buyer's consent to any further delay;
- (4) The seller has notified the buyer of its inability to make shipment and has indicated its decision not to ship the merchandise;
- (5) The seller fails to offer the option prescribed in paragraph)(b) (this section and has not shipped the merchandise within the application set forth in paragraph (a)(1) of this section.
- (d) In any action brought by the Federalattle Commission, alleging violation of this part, the failure of a respondentaliser to have records or other cumentary proof establishing its use of systems and procedures which assure compelian the ordinary course of business, with any requirement of paragraph (b) or (c) of the stion will create a relatable presumption that the seller failed to comply with said requirement.

other local regulation requiring thatbuyer be notified of a right which is the same as a right provided by this part but requiring at ha buyer be given notice of this right in a language, form, or manner which is different in any way from the quired by this part. It hose instances where any State law, municipal ordinances, other local regulation contrains provisions, some but not all of which are partially or completely supersected in their full force and effect.

(c) If any provision of this part, or itspalication to any personpartnership, corporation, act or practice is held invalid, the remainder of this part oaphpetication of the provision to any other person, partnership, corporation, oaropractice shall not be affected thereby.

# Redline of Proposed Amendments

PART 435 -- MAIL, INTERNET,

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- (i) And the seller is a creditor copy of a credit memorandum or the like or an account statement sent to the buyer reflecting the removabsence of any remaining charge incurred as a result of the sale from the buyer's account;
- (ii) And a third party is the creditor, a copy of an approximate credit memorandum or the like to the third party creditor which will remothe charge from the buyer's account and a copy of the credit memorandum or the like sent to those that includes the date that the seller sent the credit memorandum or the like the third party creditor and the amount of the charge to be removed, or a statement from the sellet memorandum or tealth memorandum or the sellet memorandum or the charge to be removed, a statement from the sellet memorandum the cancellation of the order and representing that it has not taken action regarding the order with will result in a charge to the buyer's account with the third party;
- (iii) And the buyer tender expartial payment for the unship penerchandise in the form of cash, check, or money order, a return of atthe unship penerchandise in the form of cash, check, or money order sent to the buyer.
- (3) Where the buyer tendered payment for the unshipped merchandise by any means other than those enumerated in page br(d)(1) or (2) of this section:
- (i) Instructions sent to the entity that tsærred payment to the seller instructing that entity to return to the buyer the amount tendered beinform tendered and a statement sent to the buyer setting forth the instructions sent to the sentiticluding the date of the instructions and the amount to be returned to the buyer; or
- (ii) A return of the amount tendered in the form of cash, check, or money order sent to the buyer; or

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