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FEDERAL TRADE COMMISSION

16 CFR Part 436

Disclosure Requirements and Prohibitions Concerning Franchising

AGENCY: Federal Trade Commission.

ACTION: Regulatory review; request for public comment.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) is requesting public comment on its Trade Regulation Rule entitled “Disclosure Requirements and Prohibitions Concerning Franchising” (“Franchise Rule” or “Rule”). The Rule makes it an unfair or deceptive act or practice for franchisors to fail to give prospective franchisees a Franchise Disclosure Document providing specified information about the franchisor, the franchise business, and the terms of the franchise agreement. The Rule also prohibits related misrepresentations by franchise sellers. The Commission is soliciting comments about the efficiency, costs, benefits, and regulatory impact of the Rule as part of its systematic review of all current Commission regulations and guides. All interested persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning the Rule.

DATES: Written comments must be received on or before April 21, 2019.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Write “Franchise Rule Regulatory Review, 16 CFR Part 436, Matter No. R511003,” on your comment and file your comment online through <https://www.regulations.gov>. If you prefer to file your comment on paper, mail your

comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue N.W., Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Christine M. Todaro, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Constitution Center, 400 7th Street SW, 8th Floor, Suite 8528, Washington, DC 20024, (202) 326-3711, ctodaro@ftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued the original Franchise Rule pursuant to its authority under Section 5 of the Federal Trade Commission Act to proscribe unfair or deceptive acts or practices.¹ The primary purpose of the Rule is to provide prospective purchasers of franchises the material information they need in order to weigh the risks and benefits of such an investment by providing disclosure requirements in a uniform format that facilitates comparison shopping.² The Commission adopted the Rule on December 21, 1978, and it became fully effective on July 21, 1979.³

¹ Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

² Original Franchise Rule Statement of Basis and Purpose (“Original SBP”), 43 FR 59614 (Dec. 21, 1978).

³ *Id.*

In 1995, the Commission announced a regulatory review of the Franchise Rule.⁴ That proceeding, which concluded that the Rule was still needed but could be improved, led to amendments to the Rule issued in 2007 (the “Amended Rule”), which took effect on July 1, 2008.⁵ The Amended Rule sought, among other changes, to reduce inconsistencies between federal and state pre-sale disclosure requirements and established a set of uniform disclosure requirements in a Franchise Disclosure Document (“FDD”). Commission staff has continued to work closely with the North American Securities Administrators Association, as well as individual state franchise regulators, to promote uniformity regarding franchise disclosure requirements.

The Amended Rule requires franchisors to provide prospective franchisees with their FDD at least 14 calendar days before they make any payment or sign a binding agreement in connection with a proposed franchise sale.⁶ The FDD provides prospective franchise purchasers with 23 items of information material to their investment decision, including the initial fees and estimated initial investment required; the litigation and bankruptcy history of the franchisor, its officers, and key executives; the financial performance of existing company-owned and franchised outlets; contact information for current and former franchisees; and financial statements reflecting the ability of the franchisor to provide promised services and support. The FDD also requires disclosure of any restrictions on the sources of goods and services and any required purchases; a franchisee’s contractual obligations in the establishment and operation of the franchise;

⁴ 60 FR 17656 (Apr. 7, 1995).

⁵ Amended Franchise Rule Statement of Basis and Purpose (“Amended Rule SBP”), 72 FR 15444 (Mar. 30, 2007).

⁶ 16 CFR 436.2(a).

the terms of any financing offered by the franchisor; the training and assistance provided by the franchisor; the extent to which the franchisee's outlet is protected from competition by the franchisor and other franchisees; any restrictions on what the franchisee may sell; the circumstances in which the franchise may be prematurely terminated or in which the franchisee's sale or renewal of the franchise may be refused by the franchisor; how and where any disputes will be resolved; any restrictions on the franchisee's ability to engage in the same or similar business during and after the termination of the franchise; and the number of outlets created, sold, and closed during the past three years. In addition, if the franchisor makes a financial performance representation, the representation must be disclosed in the FDD.

II. Regulatory Review

The Commission reviews its rules and guides periodically to seek information about their costs and benefits and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that may warrant modification or rescission.

As part of this review, the Commission is seeking comment on a number of issues, as outlined in the questions posed in Section III below, including the continuing need for the Amended Rule, its economic impact, the effect of the Rule on the unfair and deceptive practices it was designed to prevent, and the interaction of the Rule with other regulations. The Commission believes that this review is important to determine whether the Rule continues to serve a useful purpose and, if so, how it could or should be improved.

III. Issues for Comment

The Commission requests written comments on any or all of the following questions. Interested parties are invited to comment on any relevant issue, regardless of whether it is identified below. Where comments advocate a change to the Rule, please be specific in stating the unfair or deceptive act or practice to which the change relates, provide evidence of the pervasiveness of the act or practice, and describe the suggested change and any potential costs or benefits the change might have on prospective franchisees, franchisors, and franchise sellers, including those that are small businesses. The Commission requests that responses to its questions be as specific as possible, include a reference to the question being answered, and cite to empirical data or other evidence wherever available and appropriate.

1. Is there a continuing need for the Rule? Why or why not?
2. What benefits, if any, has the Rule provided to prospective franchisees, including small businesses? What evidence supports the asserted benefits?
3. What modifications, if any, should be made to the Rule to increase its benefits to prospective franchisees, including small businesses?
 - a. What evidence supports the proposed modifications?
 - b. How would these modifications affect the costs the Rule imposes on franchisors and franchise sellers, including small businesses?
 - c. How would these modifications affect the benefits to prospective franchisees?
4. What impact has the Rule had on the flow of truthful information and on the flow of deceptive information to prospective franchisees?
5. What significant costs, if any, has the Rule imposed on prospective franchisees, including small businesses? What evidence supports the asserted costs?
6. What modifications, if any, should be made to the Rule to reduce any costs on prospective franchisees, including small businesses?

- a. What evidence supports the proposed modifications?
 - b. How would these modifications affect the benefits provided by the Rule?
7. What benefits, if any, has the Rule provided to franchisors and franchise sellers, including small businesses? What evidence supports the asserted benefits?
8. What modifications, if any, should be made to the Rule to increase its benefits to franchisors and franchise sellers, including small businesses?
 - a. What evidence supports the proposed modifications?
 - b. How would these modifications affect the costs the Rule imposes on franchisors and franchise sellers?
 - c. How would these modifications affect the benefits to prospective franchisees?
9. What significant costs, if any, including costs of compliance, has the Rule imposed on franchisors and franchise sellers, including small businesses? What evidence supports the asserted costs?
10. What modifications, if any, should be made to the Rule to reduce the costs imposed on franchisors and franchise sellers, including small businesses?
 - a. What evidence supports the proposed modifications?
 - b. How would these modifications affect the costs the Rule imposes on franchisors and franchise sellers?
 - c. How would these modifications affect the benefits to prospective franchisees?
11. What evidence is available concerning the degree of industry compliance with the Rule?
12. What modifications, if any, should be made to the Rule to account for changes in relevant technology or economic conditions? What evidence supports the proposed modifications?
13. Provide comment on any overlap or conflict with other federal, state, or local laws, or regulations.
 - a. What evidence supports any asserted conflicts?

- b. With reference to asserted conflicts, should the Rule be modified? If so, why or why not?

IV. Instructions for Submitting Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 21, 2019. Write “Franchise Rule Regulatory Review, 16 CFR Part 310, Matter No. R511003,” on your comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online through the [https://www.regulations.gov/](https://www.regulations.gov) website.

If you file your comment on paper, write [“Franchise Rule Regulatory Review, 16 CFR Part 310, Matter No. R511003”] on your comment and on the envelope and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov/>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone

else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names. As a matter of discretion, the Commission tries to remove individual's home contact information from comments before placing them on www.regulations.gov.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comments to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 21, 2019. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

By direction of the Commission.

April J. Tabor
Acting Secretary