

**FEDERAL TRADE COMMISSION****16 CFR Part 436****Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures**

**AGENCY:** Federal Trade Commission.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Federal Trade Commission (the "Commission") proposes to commence a rulemaking proceeding to amend its Trade Regulation Rule entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures ("the Franchise Rule" or "the Rule").

On April 7, 1995, the Commission solicited comment on the Franchise Rule, as part of its periodic review of all Commission trade regulations and guides. On the basis of the record developed during the review of the Franchise Rule, the Commission proposes to commence a rulemaking to amend the Franchise Rule. The Commission is soliciting written comment, data, and arguments concerning this proposal. In addition, the Commission solicits comment on how the Commission can ensure the broadest participation by affected interests in the Rule amendment process.

**DATES:** Comments must be submitted on or before April 30, 1997.

**ADDRESSES:** Written comments should be identified as "16 CFR Part 436" and sent to Secretary, Federal Trade Commission, Room 159, Sixth Street and Pennsylvania Ave., N.W. Washington, DC 20580. To facilitate prompt and efficient review and dissemination of the comments to the public, all written comments should also be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. Programs based on DOS are preferred. In order for files from other operating systems to be accepted, they should be submitted in ASCII text format.

The Commission will also accept comments submitted to the following E-Mail address: "FRANPR@ftc.gov". In addition, commenters may leave a short comment on a telephone hotline number designated for this purpose: (202) 326-3573.

All comments will be placed on the public record and will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, during normal business days from 8:30 a.m. to 5:00 p.m., at the Public Reference Room, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W. Washington, DC 20580. In addition, comments will be placed on the Internet at the FTC's web site: <http://www.ftc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Steven Toporoff, (202) 326-3135, or Myra Howard (202) 326-2047, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**  
Part A—General Background Information

The Commission is publishing this notice pursuant to Section 18 of the Federal Trade Commission ("FTC") Act, 15 U.S.C. 57a *et seq.*, and the provisions of Part 1, Subpart B of the Commission's Rules of Practice, 16 CFR 1.7, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

The Commission promulgated the Franchise Rule on December 21, 1978, 43 FR 59614. On April 7, 1995, the Commission published a request for comment on the Rule, 60 FR 17656 ("FR Notice"), as part of its continuing review of its trade regulation rules ("Rule Review") to determine their current effectiveness and impact. The FR Notice sought comment on the standard regulatory review questions, such as what are the costs and benefits of the Rule, what changes in the Rule would increase the Rule's benefits to consumers and how would those changes affect compliance costs, and what changes in the marketplace and new technologies may affect the Rule.

The FR Notice also sought comment on several specific issues: (1) Whether the Commission should amend the Rule by replacing the disclosures with those set forth in the revised Uniform Franchise Offering Circular ("UFOC") guidelines; (2) Whether the Commission should amend the Rule to distinguish between disclosures required for business opportunities and those required for franchises; (3) Whether the Commission should retain the

conditional exemption for trade show promoters; (4) Whether the Commission should amend the Rule to require franchisors to disclose earnings information; and (5) Whether the Commission should amend the Rule to address new marketing practices (such as international franchise sales) and new technologies (such as the Internet).

In addition to soliciting written comment on these issues, Commission staff held two public workshop conferences on the Rule. Staff held the first conference on September 11-13, 1995, in Bloomington, Minnesota. The participants discussed whether there is a continuing need for the Rule, and, if so, whether the Commission could improve the Rule. Staff held the second conference in Washington, D.C., on March 11, 1996, and the participants focused on the application of the Franchise Rule to international franchise sales.<sup>1</sup>

The Rule Review elicited 75 written comments.<sup>2</sup> The comments generally express continuing support for the Rule, stating that pre-sale disclosure is a cost-effective way to disseminate material information to prospective franchisees that otherwise might be unavailable.<sup>3</sup> Pre-sale disclosure is also necessary to prevent fraud<sup>4</sup> and to reduce the level of post-sale franchise relationship disputes.<sup>5</sup> Most commenters state that the Rule's benefits outweigh the costs

<sup>1</sup> The transcript of the September 1995 Conference is cited as "[name of commenter], TR at \_\_\_\_;" the transcript of the March 1996 Conference is cited as "[name of commenter], TR2 at \_\_\_\_." For a complete list of panelists, and the abbreviations used to identify each panelist in this Advance Notice of Proposed Rulemaking ("ANPR"), see Attachments 1 and 2. The transcripts are on the public record and are available for public inspection.

<sup>2</sup> The commenters included franchisors, franchisees, franchisor and franchisee trade associations, state franchise and business opportunity regulators, Bar Associations, franchise consultants, academicians, and a journalist. The comments are cited as "[name of commenter], Comment [designated number], at \_\_\_\_." For a complete list of the commenters, and the abbreviations used to identify each commenter in this ANPR, see Attachment 3. All Rule Review comments are on the public record and are available for public inspection.

<sup>3</sup> See, e.g., DSA, Comment 21, at 2; Commissioner McDonald, Comment 30, at 2; Rabenberg, TR at 103-06. See also IFA, Comment 32, at 4; Little Caesars, Comment 31, at 1; Southland Corp., Comment 37, at 2. *But see* Midgol, Comment 3, at 2; AAFD, Comment 39, at 3. Several commenters recommended that the Commission replace its Rule with the UFOC disclosure format. See, e.g., IFA, Comment 32, at 2-3; Simon, Comment 36, at 3-4.

<sup>4</sup> See, e.g., General Ryan, Comment 25, at 1; Bortner, Comment 37, at 1; NASAA, Comment 43, at 1.

<sup>5</sup> See, e.g., ABA AT, Comment 22, at 7-8; SBA Advocacy, Comment 34, at 9; Simon, Comment 36, at 2; Shay, TR at 22-23.

imposed on consumers.<sup>6</sup> On the basis of the Rule Review record, the Commission has decided that the Rule serves a useful purpose. Nonetheless, the Commission seeks additional comment on possible modifications to the Rule, as discussed below.

## Part B—Objectives the Commission Seeks to Achieve and Possible Regulatory Alternatives

### 1. Modifications to the Franchise Rule Disclosure Requirements

#### a. Background

The Commission wants to ensure that the Franchise Rule continues to serve a useful purpose and does not impose unnecessary regulatory burdens. Accordingly, the Commission seeks comment on whether the Rule itself or any specific provisions of the Rule no longer serve a useful purpose and should be deleted.

The Commission also recognizes that many commenters recommend that the Commission revise the Rule's disclosure requirements. In particular, these commenters suggest that the Commission replace the Rule's disclosures with those set forth in the revised UFOC guidelines.<sup>7</sup> They contend that the UFOC's disclosures are superior to those of the Rule, and the UFOC's format is more "user friendly."<sup>8</sup> This group of commenters further believes that revising the Rule to mirror the UFOC guidelines would promote a more uniform, national disclosure standard.<sup>9</sup> Commenters also believe that, as a practical matter, the vast majority of franchisors use the UFOC in order to comply with state registration laws. Thus, they conclude that revising the Rule would cause few franchisors to incur additional costs.<sup>10</sup>

A few commenters, however, oppose revising the Rule based on the UFOC guidelines model. They contend that small or regional franchisors who use the FTC format will incur significant expenses if forced to convert to a

disclosure format akin to the UFOC guidelines.<sup>11</sup>

Some commenters also recommend that, if the Commission revises the Rule based on the UFOC guidelines disclosure requirements, it should first modify or fine-tune several of those disclosures. For example, several commenters recommend that the Commission revise the disclosure of statistics on the franchisees who have left the franchise system (Item 20 of the UFOC). They note that Item 20, as currently written, may cause franchisors to overcount franchisee closures, leading to inflated franchisee failure rates.<sup>12</sup> Commenters also recommend that the Commission continue to permit a three-year phase-in of audited financial statements.<sup>13</sup>

#### b. Objectives and Regulatory Alternatives

On the basis of the Rule Review record, the Commission wishes to explore further whether it should revise the Rule's disclosures based on the UFOC guidelines.<sup>14</sup> At the same time, the Commission recognizes that franchisors and state regulators have more than two years of experience with the revised UFOC disclosure requirements. Accordingly, in considering whether to revise the Rule based upon the UFOC model, the Commission seeks additional comment on whether any of the UFOC's required disclosures should be modified or fine-tuned.

In particular, the Commission seeks comment on whether the litigation disclosures (Item 3 of the UFOC guidelines) should be expanded to include the disclosure of lawsuits filed by franchisors against franchisees. This modification would require the broadest disclosure of lawsuits involving the franchise relationship.

Further, the Commission seeks comment on whether the disclosure of franchisee statistics (Item 20 of the UFOC guidelines) should be modified. In particular, the Commission solicits comment on whether the franchisee

statistics, as required by Item 20 of the UFOC, accurately reflect franchisees' performance history and, if they do not, how could the Commission modify those disclosures to reflect such performance history more accurately? In connection with the disclosure of information concerning former and existing franchisees, the Commission also seeks comment on the use of "gag-order" provisions by franchisors that may effectively bar some franchisees from sharing their experiences with prospective franchisees. The Commission is concerned that such gag-orders may enable franchisors to circumvent the very purpose of a disclosure such as Item 20 of the UFOC—to enable prospective franchisees to learn material information about the franchise system through discussions with former and existing franchisees.

Finally, the Commission wants to ensure that the Rule does not create unreasonable barriers to entry for start-up franchisors. Accordingly, the Commission seeks comment on whether it should retain its policy of permitting a three-year phase-in of audited financial statements for new entrants.

### 2. Distinguishing Between Disclosure Requirements for Business Opportunities and for Franchises

#### a. Background

The Franchise Rule covers different types of business arrangements: package and product franchises and business opportunities. In package and product franchises, the investor sells goods or services that are associated with the franchisor's trademark and are subject to significant control by, or receive significant assistance from, the franchisor.<sup>15</sup> In contrast, business opportunities often do not involve a trademark. Rather, the investor typically distributes goods or services supplied by the seller or an affiliate and receives accounts or locations in which to conduct the business. Vending machine or rack display routes are typical examples of a business opportunity.

The Franchise Rule imposes identical disclosure requirements for business opportunities and franchises. In the FR Notice, the Commission sought comment on whether the Commission should distinguish between these two business formats. The Commission also asked how the Rule should define the

<sup>6</sup> See, e.g., Dub, Comment 2, at 2; McBirney, Comment 7, at 2; ABA AT, Comment 22, at 8-9.

<sup>7</sup> See, e.g., D'Imperio, Comment 16, at 1; ABA AT, Comment 22, at 5-6; General Ryan, Comment 25, at 1; Snap-On, Comment 27, at 1; NASAA, Comment 43, at 2; Forte Hotels, Comment 52, at 1.

<sup>8</sup> See, e.g., Wiczorek, Comment 23, at 2; IFA, Comment 32, at 3-4; AAFD, Comment 39, at 6; CA BLS, Comment 45, at 4; Simon, TR at 211; Perry, TR at 263.

<sup>9</sup> See, e.g., Wiczorek, Comment 23, at 1; Maxey, TR at 36.

<sup>10</sup> See, e.g., McBirney, Comment 7, at 2; Wiczorek, Comment 23, at 1; Lewis, Comment 40, at 1; Hayden, Comment 42, at 1; CA BLS, Comment 45, at 1-2.

<sup>11</sup> See Dub, Comment 2, at 1-2; Nopar, Comment 26, at 1-2. See also Century 21, Comment 41, at 1.

<sup>12</sup> See, e.g., Simon, TR at 224; Perry, TR at 263.

<sup>13</sup> See, e.g., Wiczorek, Comment 23, at 2; IFA, Comment 32, at 4.

<sup>14</sup> This proposal does not contemplate preemption of state law. If the Commission were to revise its Rule based upon the UFOC disclosure requirements, there would be no change in state franchise laws. Franchisors would remain free to use either the UFOC format or the Commission's format, albeit the two formats would be substantially similar. In addition, any state modifications to the UFOC guidelines in the future would not alter the Commission's disclosure requirements, unless the Commission similarly amended its Rule.

<sup>15</sup> Restaurant outlets are a typical example of a package franchise, where the investor typically produces goods or services according to the franchisor's specifications. Gasoline stations are an example of a product franchise, where the investor typically gains the right to distribute the franchisor's trademarked products.

term "business opportunity" and what disclosures are relevant to the sale of business opportunities.

The commenters overwhelmingly recommend that the Commission amend the Rule to distinguish between business opportunities and franchises.<sup>16</sup> Commenters note that business opportunities and franchises are distinct business formats<sup>17</sup> and that it is confusing to use the term "franchise" to describe both formats.<sup>18</sup> There is no consensus, however, on how to define a business opportunity or what pre-sale disclosures are appropriate for the sale of business opportunities.

#### b. Objectives and Regulatory Alternatives

The Rule Review record supports amending the Rule to distinguish between disclosure requirements for business opportunities and for franchises. The record also supports amending the Rule to define precisely the term "business opportunity."

At this time, however, the Commission is not prepared to make specific recommendations on either the appropriate disclosures for business opportunities, or a definition of the term "business opportunity." During the Rule Review, the Commission received only a few comments addressing this issue. Specifically, the Commission received comments from one business opportunity purchaser,<sup>19</sup> one association that arguably represents the interests of some business opportunity sellers,<sup>20</sup> and one attorney who has represented multilevel distributors.<sup>21</sup> At this time, the record is insufficient on this issue.

In order to develop the record more fully on business opportunities, the Commission solicits comment on which types of business opportunities are known to engage in deceptive or fraudulent conduct and what disclosures are material to business opportunity purchasers. In addition, the Commission seeks comment on the appropriate definition of the term "business opportunity."

As a starting point in the discussion, the Commission solicits comment on the following definition of "business opportunity" contained in many Federal

District Court injunctions<sup>22</sup> obtained by the Commission: "Business opportunity" is defined as any written or oral business arrangement, however denominated, which consists of the payment of any consideration for:

A. The right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and

B. More than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business, or the entry by an existing business into a new line or type of business.

The Commission also solicits suggestions of alternative definitions of the term "business opportunity." Finally, the Commission seeks comment on how it can ensure greater participation by business opportunity interests in the rulemaking process.

### 3. Conditional Exemption for Trade Show Promoters

#### a. Background

Trade show promoters are jointly and severally liable for Rule violations as "franchise brokers." However, they are conditionally exempt from liability if they provide attendees at their shows with a specific consumer education notice. In the FR Notice, the Commission solicited comment on whether the Commission should retain this conditional exemption.

Several commenters, including several trade show promoters and their representatives, recommend that the Commission no longer hold trade show promoters jointly and severally liable as brokers for Rule violations. They contend that trade show promoters do not function as franchise brokers as contemplated by the Rule.<sup>23</sup> Further, they believe that trade show promoters lack the ability to monitor franchisor-exhibitors' sales practices at shows<sup>24</sup> and do not have any incentive to mislead consumers.<sup>25</sup> In the alternative, commenters urge the Commission to

retain the conditional exemption for trade show promoters. They contend that holding trade show promoters liable as "brokers" would harm both franchisors and consumers by making it impossible for trade shows to continue in business.<sup>26</sup>

Other commenters recommend that the Commission revoke the conditional exemption on the grounds that trade show promoters should be held accountable for questionable advertising and sales practices made at shows they sponsor.<sup>27</sup> They contend that franchise show promoters should not be able to turn a "blind eye" to violations of the Franchise Rule, while indirectly profiting from such violations.<sup>28</sup>

#### b. Objectives and Regulatory Alternatives

The Commission wishes to explore further whether trade show promoters should no longer be held liable as "franchise brokers." The Rule Review record supports the view that trade show promoters do not act as brokers: they do not participate in the offer and sale of franchises, do not make sales recommendations, and do not create materials used by franchisor-exhibitors to sell franchises (such as brochures, product displays, agreements, or disclosure documents). Further, trade show promoters, as a practical matter, lack the ability to monitor franchisor-exhibitors' sales practices at their shows. Accordingly, the Commission seeks comment on whether the Commission should amend the Rule's definition of the term "franchise broker" to specifically exempt trade show promoters.

At the same time, the Commission seeks comment on whether prospective franchisees attending trade shows should readily be able to verify claims made by franchisor-exhibitors and their sales agents. Our law enforcement experience indicates that franchisors and business opportunity sellers at trade shows may make various oral or written misrepresentations or unsubstantiated earnings claims. Accordingly, the Commission solicits comment on whether a trade show sales section should be added to the Rule that would require franchisors and their sales agents to have readily available for public inspection at each trade show they attend either a specimen copy of their disclosure document or a letter

<sup>16</sup> See, e.g., Kestenbaum, Comment 14, at 1-2; D'Imperio, Comment 16, at 1-3; Commissioner McDonald, Comment 30, at 3-4; SBA Advocacy, Comment 34, at 37-39; NASAA, Comment 43, at 2-3; Rabenberg, TR at 129; Shay, TR at 132.

<sup>17</sup> See, e.g., DSA, Comment 21, at 2.

<sup>18</sup> See, e.g., D'Imperio, Comment 16, at 1; DSA, Comment 21, at 2.

<sup>19</sup> See Rabenberg, Comment 28.

<sup>20</sup> See DSA, Comment 21.

<sup>21</sup> See Brooks, Comment 29.

<sup>22</sup> See, e.g., *F.T.C. v. Telecommunications of America, Inc.*, Civ. No. 95-693-CIV-ORL-22 (M.D. Fla. 1995) (Stipulated Final Order for Permanent Injunction); *F.T.C. v. United States Business Bureau*, Civ. No. 95-6636-CIV-Ferguson (S.D. Fla. 1995) (Stipulated Final Order for Permanent Injunction); *F.T.C. v. Car Checkers of America*, Civ. No. 93-623 (MLP) (D. N.J. 1993) (Stipulated Final Order for Permanent Injunction).

<sup>23</sup> See, e.g., Brownstein Zeidman, Comment 33, at 3-4; Perry, TR at 262.

<sup>24</sup> See, e.g., Q.M. Marketing, Comment 17, at 2; Wiczorek, Comment 23, at 3; CA BLS, Comment 45, at 10.

<sup>25</sup> See Brownstein Zeidman, Comment 33, at 4. See also Huke, TR at 235.

<sup>26</sup> See Brownstein Zeidman, Comment 33, at 8. See also Gaston, Comment 46, at 1.

<sup>27</sup> See, e.g., General Ryan, Comment 25, at 2; Commissioner McDonald, Comment 30, at 6; Bortner, Comment 37, at 3; NASAA, Comment 43, at 2.

<sup>28</sup> See Hayden, Comment 42, at 2.

from an attorney stating that, although they are covered by the Rule's definition of a franchise, they fall within one of the Rule's exclusions or exemptions. In the alternative, the Commission solicits comment on whether the Rule's definition of "personal meeting" should be modified to require all franchisors and their sales agents to have readily available for public inspection at each trade show they attend either a specimen copy of their disclosure document or a letter from an attorney stating that, although they are covered by the Rule's definition of a franchise, they fall within one of the Rule's exclusions or exemptions.

#### 4. Earnings Disclosures

##### a. Background

In the FR Notice, the Commission solicited comment on whether it should modify the Rule to require franchisors to disclose earnings information. The Commission also solicited comment on the extent to which franchisors disclose financial data to prospective franchisees; the types of financial data currently available to franchisors; the costs and benefits of possible required earnings disclosures; and possible earnings disclosure formats and exemptions.

State franchise regulators, franchisees, and franchisee representatives recommend that the Commission mandate earnings disclosures. They believe that earnings information is the most material information prospective franchisees need to make an informed investment decision.<sup>29</sup> They also believe that franchisors already have such information and that it is deceptive for such franchisors to fail to disclose this information to prospective franchisees.<sup>30</sup> They also contend that disclosure of earnings information will reduce the level of false and unsubstantiated oral and written earnings claims.<sup>31</sup> Several commenters also contend that the franchise marketplace and competition would benefit from the free flow of earnings information.<sup>32</sup> Finally, commenters note that a mandatory earnings disclosure would correct the misrepresentation made by some franchisors that the

Franchise Rule or the FTC prohibits the making of earnings disclosures.<sup>33</sup>

Franchisors generally oppose mandatory disclosure of earnings information.<sup>34</sup> They contend that it is impossible for the Commission to create one earnings disclosure format for all franchised businesses that will not be misleading, noting that information collected from franchisees is not uniform<sup>35</sup> and may be inaccurate.<sup>36</sup> In addition, they contend that not all franchisors have the contractual ability to gather earnings data from their franchisees.<sup>37</sup> These commenters are also concerned that earnings information collected from franchisees may have little predictive value to a prospective franchisee<sup>38</sup> and that such information may be misinterpreted as a guarantee of future performance.<sup>39</sup> They also believe that mandating an earnings disclosure would increase the burdens and costs on existing franchisees: franchisors may require them to submit earnings information and may subject them to increased liability for reporting inaccurate earnings information.<sup>40</sup> For these reasons, many commenters believe that mandating earnings disclosures would have a negative impact upon the franchisor-franchisee relationship.<sup>41</sup>

##### b. Objectives and Regulatory Alternatives

The Commission believes that consumers should have access to material information before investing in a franchise or business opportunity. The Rule Review record, however, does not support the view that a franchisor's failure to provide earnings information is necessarily deceptive or unfair. Approximately 20 percent of franchisors

currently choose to make earnings disclosures.<sup>42</sup> Thus, in theory, prospective franchisees can find franchise systems that voluntarily disclose earnings information.<sup>43</sup> If prospective franchisees were to seek out such franchise systems, or demand the disclosure of such information from franchisors, ordinary market forces may compel an increasing number of franchisors to disclose earnings information voluntarily, without federal government intervention.

In addition, the Rule Review record indicates that prospective franchisees can obtain earnings information from other sources. For example, typical expenses, such as labor and rent, may be available from industry trade associations and industry trade press.<sup>44</sup> In addition, prospective franchisees are free to discuss earnings and other performance issues with former and existing franchisees.

Moreover, the Rule Review record does not provide a sufficient basis for the Commission to formulate an earnings disclosure that would be both useful and not misleading to prospective franchisees. Finally, mandating earnings might impose additional burdens and costs on existing franchisees. Yet, the Rule Review record is insufficient to establish that these increased burdens and costs are outweighed by benefits to prospective franchisees.

Nonetheless, the Commission believes that it is important to correct the misrepresentation made by some franchisors that the Commission or the Franchise Rule actually prohibits the disclosure of earnings information. At the same time, the Commission wants to caution prospective franchisees not to rely on unsubstantiated earnings representations. Accordingly, the Commission solicits comment on whether the Rule should be modified to require all franchisors to make the following prescribed statement in their disclosure document:

The FTC's Franchise Rule permits a franchisor to provide you with information about the actual or potential sales, income, or profits of its outlets, provided that there is a reasonable basis for such information and the franchisor offers to provide you with written substantiation. You should not rely on any information on sales, income, or profits provided by a franchisor or its salesperson if written substantiation is not offered.

<sup>29</sup> See, e.g., Lagarias, Comment 13, at 1-2; SBA Advocacy, Comment 34, at 55; AFA, Comment 38, at 1; AAFD, Comment 39, at 6.

<sup>30</sup> See, e.g., Pennell, Comment 5, at 1; Brown, Comment 9, at 3-129; Lagarias, Comment 13, at 3; AFA, Comment 38, at 1.

<sup>31</sup> See, e.g., Lagarias, Comment 13, at 2; AAFD, Comment 39, at 7; Selden, Comment 49, at 4.

<sup>32</sup> See, e.g., ABA AT, Comment 22, at 5-6.

<sup>33</sup> See, e.g., Lagarias, Comment 13, at 2; AFA, Comment 38, at 9; Perry, Comment 44, at 5.

<sup>34</sup> See, e.g., Dub, Comment 2, at 4; RENN, Comment 24, at 2; Snap-On, Comment 27, at 2; IFA, Comment 32, at 14; Gaston, Comment 46, at 1.

<sup>35</sup> See U-Save Auto Rental, Comment 19, at 2; IFA, Comment 32, at 12-13; Simon, Comment 36, at 6.

<sup>36</sup> See, e.g., Glenn, Comment 6, at 2; SRA International, Comment 8, at 3; CA BLS, Comment 45, at 13; Forseth, TR at 298; Tifford, TR at 303-04; Gaston, TR at 533.

<sup>37</sup> See, e.g., Glenn, Comment 6, at 2; U-Save Auto Rental, Comment 19, at 3; Nopar, Comment 26, at 2; Simon, Comment 36, at 7.

<sup>38</sup> See, e.g., Dub, Comment 2, at 4; SRA International, Comment 8, at 2; RENN, Comment 24, at 2; Nopar, Comment 26, at 4.

<sup>39</sup> See, e.g., D'Imperio, Comment 16, at 11; Simon, Comment 36, at 5.

<sup>40</sup> See, e.g., RENN, Comment 24, at 2; Little Caesars, Comment 31, at 2; Simon, Comment 36, at 4-5; Century 21, Comment 41, at 2; Medicap, Comment 48, at 2.

<sup>41</sup> See, e.g., Glenn, Comment 6, at 2; SRA International, Comment 8, at 3; Simon, Comment 36, at 7; Gaston, TR at 531-32. See also ABA AT, Comment 22, at 11.

<sup>42</sup> See, e.g., Bortner, Comment 37, at 3; NASAA, Comment 43, at 3.

<sup>43</sup> See Lewis, Comment 40, at Exhibit G (compilation of sales, cost, and profit information on 145 franchise systems in 70 business categories).

<sup>44</sup> See, e.g., U-Save Auto Rental, Comment 19, at 2; RENN, Comment 24, at 1.

In addition, the Commission solicits comment on whether franchisors who do not disclose earnings information should include the following additional prescribed statement:

This franchisor does not make any representations about sales, income, or profits. We also do not authorize our salespersons to make any such representations either orally or in writing.

### 5. New Marketing Practices and Technological Developments

#### a. Background

In the FR Notice, the Commission sought information on new marketing practices and technological developments that might have an impact on the Rule. In response, several commenters note the increase in international franchise sales by American franchisors.<sup>45</sup> These commenters request that the Commission clarify its position on whether the Franchise Rule applies in such circumstances. In order to develop the record on this issue, Commission staff held a one-day public workshop conference in March 1996.

The Rule Review record strongly supports modification of the Rule to clarify that international franchise sales are not within its purview. Among other factors, commenters note that: (1) the Commission did not contemplate international franchising when it promulgated the Rule;<sup>46</sup> (2) the disclosures required by the Franchise Rule are aimed at the domestic market;<sup>47</sup> (3) foreign franchise purchasers are sophisticated and do not need the Rule's protections;<sup>48</sup> (4) attempting to comply with the Franchise Rule in foreign sales might result in the dissemination of inaccurate or misleading information;<sup>49</sup> and (5) application of the Franchise Rule to international sales would unnecessarily impede competition.<sup>50</sup>

In addition to the international sales issue, the Commission explored whether the Rule should be modified in light of increased sales of franchises and business opportunities through the telephone and the Internet. For

example, one commenter observes that the day may come when franchise sales are conducted solely via computer without any "personal meeting."<sup>51</sup>

The Commission also believes that two additional marketing developments warrant further comment. First, the Commission notes the increased sale of "stream of revenue" package franchises. Most often used in commercial janitorial services franchises, stream of revenue franchises involve a promise by the franchisor to provide the franchisee with accounts that will generate a certain level of income. The franchisee then selects the level of accounts desired and pays a franchise fee that varies in some proportion to the value of those accounts. The Commission believes that the offer of accounts worth a certain value suggests to the prospective franchisee a particular level of potential income, which constitutes the making of an earnings representation under the Rule.

Second, the Commission notes the increasing sale of "co-branded" franchises, in which two or more franchisors combine forces to offer a franchisee the opportunity to operate two or more trademarked franchises in one outlet. For example, an ice cream franchisor and a donuts franchisor might offer one joint franchise system. In such circumstances, the Commission is uncertain whether the franchisee is purchasing two individually trademarked franchises (and thus should receive separate disclosures from each franchisor) or is purchasing a hybrid franchise arrangement that has its own risks (and thus should receive a single unified disclosure document).<sup>52</sup>

#### b. Objectives and Regulatory Alternatives

The Commission wants to ensure that the Rule does not impose unnecessary costs and burdens without corresponding benefits to consumers. Accordingly, the Commission seeks comment on whether it should modify the Rule to clarify that the Rule does not reach the sale of franchises to be located or operated outside the United States, its territories, and possessions. The Commission also seeks comment on the

appropriate language for such a modification.

The Commission also wants to ensure that consumers receive pre-sale disclosures early in the sales process. The Rule requires franchisors to provide prospective franchisees with a disclosure document at the earlier of the "time for making of disclosures"<sup>53</sup> or the first "personal meeting."<sup>54</sup> The Commission believes that the term "personal meeting," which triggers the franchisor's obligation to provide a disclosure document, may be obsolete in light of the increasing use of the telephone and the Internet to market franchises and business opportunities. The term "personal meeting" contained in the Rule was designed to reach that point in the sales process when the franchise seller engages a prospective franchisee in substantive discussion about the venture being offered. Accordingly, the Commission seeks comment on whether the Rule should be modified to replace the term "personal meeting" with a term such as "first substantive discussion." The Commission seeks comment on alternatives, as well as any costs or benefits associated with each such alternative. At the same time, the Commission seeks comment on how franchisors might be able to comply with the Rule's disclosure requirements through the Internet.

In addition, the Commission wants to ensure that franchisors and franchisees are clear about what constitutes an earnings representation that would trigger the Rule's substantiation requirements. Accordingly, the Commission seeks comment on whether it should amend the Rule's treatment of earnings representations to make explicit that the offer of a stream of revenue franchise is the making of an earnings representation that would trigger the Rule's earnings substantiation requirements.

Finally, the Commission wants to ensure that prospective franchisees receive complete and relevant disclosures. Accordingly, the Commission seeks comment on the sale of co-branded franchises. In particular, the Commission seeks information on the extent to which franchise sales involve more than one trademark. It also

<sup>45</sup> See, e.g., IFA, Comment 32, at 15-16; Zwisler, Comment 59, at 6; Tifford, TR at 199. See generally Mazero, Comment 50.

<sup>46</sup> See, e.g., Clanton, TR2 at 169; Baer, TR2 at 160-61; Wulff, TR2 at 154.

<sup>47</sup> See, e.g., Wiczorek, Comment 60, at 3-5; Pepsico, Comment 62, at 2-3; IFA, Comment 63, at 4; Clanton, TR2 at 169.

<sup>48</sup> See, e.g., IFA, Comment 64, at 3; Loewinger, TR2 at 85; Swartz, TR2 at 113. See also Mazero, Comment 50, at 33; Zwisler, Comment 59, at 3.

<sup>49</sup> See, e.g., Friday's, Comment 58, at 1; Mazero, TR at 188. See also Wiczorek, Comment 60, at 3-5; Miolla, TR2 at 74-75; Ainsley, TR2 at 116.

<sup>50</sup> See, e.g., Zeidman, TR2 at 109; Brennan, TR2 at 165; Mills, TR2 at 203.

<sup>51</sup> See Pineles, TR at 180-81.

<sup>52</sup> Co-branding raises a number of disclosure issues. For example, should the purchaser of a co-branded franchise receive disclosures of franchisee statistics from each individual franchisor participating in the co-branded arrangement, or should the purchaser also receive statistics on previous purchasers of the co-branded franchise. Similarly, must termination and renewal rights be consistent for each participating franchisor, or may each participating franchisor impose their own termination and renewal rights?

<sup>53</sup> The term "time for making of disclosures" means ten business days prior to the earlier of: (1) the execution of a franchise agreement or other agreement imposing a binding legal obligation; or (2) the payment of a fee in connection with the sale of the proposed franchise. See 15 CFR § 436.2(g).

<sup>54</sup> The term "personal meeting" means a face-to-face meeting held for the purpose of discussing the sale or possible sale of a franchise. See 16 CFR § 426.2(o).

solicits comment on whether there is any confusion among franchisors with respect to their disclosure obligation when joining forces to sell a co-branded franchise. The Commission also seeks comment on whether any need exists to clarify the Rule to address disclosure obligations with respect to the sale of a co-branded franchise system.

#### 6. *Alternatives to Burdensome Regulations and Enforcement*

##### a. Background

On March 4, 1995, the White House issued a Memorandum directed at all heads of federal departments and agencies on the Regulatory Reinvention Initiative. This memorandum makes regulatory reform a top priority. Among other things, the memorandum asks agencies to learn from those affected by regulation, as well as to consider ways to promote better communication, consensus building, and a less adversarial environment between regulators and the regulated. Specifically, the memorandum asks agencies to consider if the intended goals of regulation can be achieved in a more efficient, less intrusive way, and whether private sector alternatives can better achieve the public good envisioned by the regulation.

In response to the March 4, 1995, memorandum on the Regulatory Reinvention Initiative, the Commission intends to reduce regulatory burdens, where appropriate. The Commission also intends to use the private sector as a partner in a cooperative effort to tackle deceptive and unfair trade practices where they exist. Indeed, developing partnership with industry has become vital in an age of reduced law enforcement resources. Thus, in addition to its role as a vigilant law enforcement agent, the Commission will encourage self-regulation by the private sector, where appropriate.

##### b. Objectives and Regulatory Alternatives

In keeping with the goals of the Regulatory Reinvention Initiative, the Commission seeks comment on whether it should develop a program to reduce or waive civil penalties for violations of the Franchise Rule under limited circumstances. In an age of decreasing resources, the Commission questions whether it should continue to use its limited resources to pursue technical or minor violations of the Franchise Rule, instead of focusing its attention on more serious violations that have caused significant consumer injury.

Accordingly, the Commission solicits comment on: (1) whether it should

develop a program to reduce or waive civil penalties for technical or minor violations of the Franchise Rule; (2) under what circumstances should the Commission consider reducing or waiving civil penalties?; (3) under what circumstances would it be inappropriate for the Commission to reduce or waive a civil penalty?; and (4) what terms and conditions should accompany the waiver or reduction of a civil penalty? The Commission also seeks comments on the costs and benefits of any such program to reduce civil penalties on both franchisors and franchisees?

#### 7. *The Rulemaking Process*

The Commission seeks the broadest participation by the affected interests in the rulemaking. To that end, the Commission will revise the Franchise Rule through an "open rulemaking," which will provide all affected interests numerous opportunities to submit comments and to participate in the rule amendment process.

The Commission encourages all interested parties to submit written comments. The Commission, however, recognizes that some interested parties may find it easier to submit comments through the Internet or by telephone. Accordingly, the Commission will permit comments to be filed via an E-Mail address on the Internet and through a telephone hotline number designated for this purpose.

The Commission also expects the affected interests to assist the Commission in analyzing various options and in drafting a proposed amended rule. The Commission believes that public workshop conferences to discuss the various issues involving the Rule are a productive and efficient means to develop the record and explore various alternatives. The Commission will also use public workshop conferences to assist the Commission in drafting a proposed amended rule.

##### a. Internet Comments

Staff will place a copy of this ANPR on the Internet at the FTC's web site: <http://www.ftc.gov>. In addition, the Commission will accept comments through the Internet. Accordingly, all interested parties may submit a comment through an E-Mail address designated for this purpose: "FRANPR@ftc.gov." Each comment should contain the name and address of the commenter. The Commission will place all comments on the public record and on the Internet at its web site.

##### b. Telephone Hotline

Parties interested in submitting a comment via telephone may do so by calling the Commission's telephone hotline number designated for this purpose: (202) 326-3573. This hotline number is intended to facilitate public comment on the rulemaking; it is not intended as a hotline number for disseminating franchise information or for receiving complaint information. The Commission requests all callers to identify themselves clearly, including their name, address, and telephone number. Staff will transcribe all messages verbatim and place them on the public record and on the Internet at the FTC's web site.

##### c. Public Workshop Conferences

In order to facilitate the greatest participation by the public in the rule amendment process, Commission staff will hold several public workshop conferences to discuss the issues noted above. Staff will announce a schedule of these conferences after the close of the comment period.

#### Part C—Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of the proposed amendments to the Franchise Rule. The Commission requests that factual data upon which the comments are based be submitted with the comments. In addition to the issues raised above, the Commission solicits public comment on the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

#### Questions

##### A. The Franchise Rule

1. Is there a continuing need for the Commission's Franchise Rule? Are there any specific Rule disclosure requirements that no longer serve a useful purpose? Should the Commission modify the Rule to delete those requirements? What would be the costs and benefits to franchisors and to prospective franchisees?

##### B. The UFOC Guidelines

2. Should the Commission revise the Rule based on the UFOC guidelines disclosure requirements? What would be the costs and benefits to franchisors and to prospective franchisees?

3. If the Commission revises the Rule based on the UFOC guidelines disclosure requirements, should the

Commission modify the litigation disclosures (Item 3 of the UFOC) to require franchisors to disclose law suits filed by franchisors against franchisees, in addition to suits by franchisees against franchisors? What would be the costs and benefits to franchisors and to prospective franchisees?

4. If the Commission revises the Rule based on the UFOC guidelines disclosure requirements, should the Commission modify the franchisee statistics disclosures (Item 20 of the UFOC guidelines), and if so, how? What would be the costs and benefits to franchisors and to prospective franchisees?

5. To what extent do franchisors use "gag orders" to inhibit former or existing franchisees from speaking with prospective franchisees or other parties? Should the Commission modify the Rule to prohibit franchisors from using such gag order provisions and, if so, how? What alternatives would ensure that prospective franchisees can freely obtain information from former and existing franchisees about their experiences with the franchise system? What would be the costs and benefits of such alternatives?

6. Should the Commission retain the three-year phase-in of financial statements for new entrants? What alternative phase-in provisions would be appropriate? What are the costs and benefits of each alternative?

7. If the Commission uses the UFOC guidelines as a model for revising the Franchise Rule, should the Commission consider modifying or fine-tuning any of the UFOC disclosure requirements? Which ones should be modified and, if so, how? What would be the costs and benefits to franchisors and to prospective franchisees?

#### C. Business Opportunities

8. What types of business opportunities are common in the United States? What trade associations or other organizations represent the interests of business opportunities?

9. Are there certain types of business opportunities where purchasers are more likely to lose money than others? What are the characteristics of these loss-prone business opportunities? How can the Commission distinguish between the loss-prone business opportunities and those that are more likely to prove profitable?

10. What types of business opportunities are known to engage in fraud? How can the Commission distinguish between fraudulent business opportunities and legitimate business opportunities?

11. Should the minimum investment of \$500 that triggers Franchise Rule coverage be lowered for business opportunities? If so, what should be the minimum threshold? What would be the costs and benefits of such a minimum? What would be the costs and benefits of requiring disclosures for sales that involve investments smaller than \$500.

12. How should the Commission define the term "business opportunity" for Rule purposes? What characteristics distinguish selling a business opportunity from just selling goods or services? How can these characteristics be used to limit the scope of any business opportunity rule? What would be the costs and benefits of any definition offered?

13. What types of offers of assistance are crucial to a business opportunity? In seeking to define the term "business opportunity," what types of assistance should the Commission focus on? What would be the costs and benefits of such proposals?

14. Should the Commission define the term "business opportunity" as:

Any written or oral business arrangement, however denominated, which consists of the payment of any consideration for:

A. The right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and

B. More than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business, or the entry by an existing business into a new line or type of business.

What alternative definitions of the term "business opportunity" would be appropriate? What would be the costs and benefits of each alternative?

15. What pre-sale disclosures are necessary to ensure that business opportunity purchasers receive material information necessary to make an informed investment decision? What would be the costs and benefits of each such disclosure?

16. What pre-sale disclosures are necessary to prevent fraud in the sale of business opportunities? What would be the costs and benefits of each such disclosure?

#### D. Trade Shows

17. Should the Commission modify the Rule to exempt trade show promoters from Rule coverage as brokers? What would be the costs and benefits of such an exemption?

18. Should the Commission modify the Rule to contain a separate trade

show sales provision that would require franchisor-exhibitors, brokers, and their agents to have readily available at trade shows for public inspection either a specimen copy of their disclosure document or a letter explaining why they fall within one of the Rule's exclusions or exemptions? If so, how should the Commission define the term "available for public inspection?" What would be the costs and benefits of this proposal?

19. In the alternative, should the Commission modify the Rule's definition of "personal meeting" to require franchisor-exhibitors, brokers, and their agents to have readily available at trade shows for public inspection either a specimen copy of their disclosure document or a letter explaining why they fall within one of the Rule's exclusions or exemptions? If so, how should the Commission define the term "available for public inspection?" What other alternatives should the Commission consider to reduce the instances of deceptive sales representations at trade shows? What would be the costs and benefits of each proposal?

#### E. Earnings Disclosures

20. To what extent do franchisors represent that either the Rule or the Commission prohibits them from making earnings representations? Is there a need to clarify the Rule to make clear that neither the Commission nor the Rule prohibits franchisors from making earnings representations?

21. Should the Commission modify the Rule to require all franchisors to make the following prescribed statement:

The FTC's Franchise Rule permits a franchisor to provide you with information about the actual or potential sales, income, or profits of its outlets, provided that there is a reasonable basis for such information and the franchisor offers to provide you with written substantiation. You should not rely on any information on sales, income, or profits provided by a franchisor or its salespersons if written substantiation is not offered.

What alternative language would be appropriate? What would be the costs and benefits of such a disclosure?

22. Should the Commission modify the Rule to require all franchisors who do not make earnings disclosures to make the following additional prescribed disclosure:

This franchisor does not make any representations about sales, income, or profits. We also do not authorize our salespersons to make any such

representations either orally or in writing.

Would such a disclosure be interpreted to hold harmless a franchisor whose sales people routinely make unauthorized earnings representations? What alternative language would be appropriate? What would be the costs and benefits of such a disclosure?

23. Should the Commission modify the Rule's treatment of earnings representations to make explicit that the sale of "stream of revenue contracts" is the making of an earnings claim? What would be the costs and benefits of such a modification?

24. Should the Commission modify the Rule's disclosures for earnings claims in advertising? What are the costs and benefits associated with each of the disclosures for earnings claims in advertising? Does the "caution" disclosure provide any information that is not already conveyed by the other required disclosure concerning the percentage of outlets that have achieved the earnings claimed?

25. Should the Commission modify the Rule to require a disclosure for earnings claims only if a significant percentage of outlets do not achieve the earnings claimed? If so, what percentage should trigger the disclosure requirement? What would be the costs and benefits of adopting such an approach?

#### F. New Marketing Approaches and New Technologies

26. Should the Commission modify the Rule to clarify that the Rule does not reach the sale of franchises to be located or operated outside the United States, its territories, and possessions? If so, please provide recommended language for such a modification. What would be the costs and benefits of such a modification?

27. Should the Commission continue to use the term "personal meeting" for making disclosures in light of the use of the telephone, the Internet, and other technologies to sell franchises? Should the Commission replace the term "personal meeting" with the term "first substantive discussion"? If so, how should the term "first substantive discussion" be defined? What other term would be appropriate? What would be the costs and benefits of such a modification?

28. Should the Commission permit franchisors to comply with the Franchise Rule's disclosure obligations by posting disclosure documents on the Internet? What would be the costs and benefits to both franchisors and prospective franchisees? What aspects

of the Rule (or UFOC requirements) might hinder compliance via the Internet? How might the Commission modify the Rule to protect consumers from any potentially deceptive or unfair practices that might arise from firms' efforts to comply with the Rule's disclosure provisions via the Internet?

29. To what extent do franchisors offer for sale multi-trademark franchises ("co-branded" franchises) in the United States? Do franchisors have sufficient guidance under the Rule to determine their disclosure obligations with respect to the sale of co-branded franchises? Do franchisees purchasing a co-branded franchise need additional or different disclosures than those who purchase a single-trademark franchise? Should the Commission modify the Rule to address these concerns and, if so, how? What would be the costs and benefits of any such modification?

#### G. Self Regulation and Alternatives to Law Enforcement

30. Should the Commission develop a program to reduce or waive civil penalties for certain violations of the Franchise Rule? Under what circumstances would it be appropriate for the Commission to waive or reduce civil penalties involving Franchise Rule violations? What terms or conditions should accompany such a waiver or reduction of civil penalties? Under what circumstances would it be inappropriate to reduce or waive civil penalties? What would be the costs and benefits of such a program on franchisors and franchisees?

#### H. Additional Issues

31. How can the Commission ensure the broadest participation in the rulemaking process by affected interests? How can the Commission identify affected interests, facilitate the submission of comments, and increase participation by affected interests at future public workshop conferences?

#### List of Subjects in 16 CFR Part 436

Advertising, Business and industry, Franchising, Trade practices.

Authority: 15 U.S.C. 41-58.

By direction of the Commission.

Donald S. Clark,  
*Secretary.*

Attachment 1—September 1995 Public Workshop Conference

#### Panelists

1. Harold Brown ("Brown"), Brown & Stadfeld
2. Sam Damico ("Damico"), Q.M. Marketing, Inc.
3. Connie B. D'Imperio ("D'Imperio"), Color Your Carpet, Inc.

4. Eric Ellman ("Ellman"), Direct Selling Association ("DSA")
5. Mark B. Forseth ("Forseth"), Locke Purnell Rain Harrell
6. Mike Gaston ("Gaston"), Barkley & Evergreen
7. Susan Kezios ("Kezios"), American Franchisee Association ("AFA")
8. William Kimball ("Kimball"), Iowa Coalition for Responsible Franchising
9. Warren Lewis ("Lewis"), Lewis & Trattner
10. Steven Maxey ("Maxey"), North American Securities Administrators Association, Inc. ("NASAA")
11. Joyce G. Mazero ("Mazero"), Locke Purnell Rain Harrell
12. Barry Pineles ("Pineles"), U.S. Small Business Administration ("SBA Advocacy")
13. Robert Purvin ("Purvin"), American Association of Franchisees & Dealers ("AAFD")
14. Steven Rabenberg ("Rabenberg"), Explore St. Louis
15. Matthew R. Shay ("Shay"), International Franchise Association ("IFA")
16. Neil A. Simon ("Simon"), Hogan & Hartson
17. Robin Spencer ("Spencer"), representing American Franchisee Association
18. Leonard Swartz ("Swartz"), Arthur Andersen & Co.
19. John Tifford ("Tifford"), Brownstein Zeidman & Lore
20. Ronnie Volkening ("Volkening"), The Southland Corporation
21. Dennis E. Wiczorek ("Wiczorek"), Rudnick & Wolfe
22. William J. Wimmer ("Wimmer"), Iowa Coalition for Responsible Franchising

#### Public Participants

1. Peter Denzen ("Denzen")
2. Bob Hessler ("Hessler"), Wendy's
3. Chris Huke, ("Huke"), SC Promotions
4. Michael Jorgensen ("Jorgensen")
5. Robert L. Perry ("Perry")
6. Brian Schnell ("Schnell"), Gray, Plant, Mooty

Attachment 2—March 1996 Public Workshop Conference

#### Panelists

1. Kay M. Ainsley ("Ainsley"), Ziebart International Corp.
2. John R.F. Baer ("Baer"), Keck, Mahin & Cate
3. Michael Brennan ("Brennan"), Rudnick & Wolfe
4. Joel R. Bucksberg ("Bucksberg"), HFA Inc.
5. David A. Clanton ("Clanton"), Baker & McKenzie
6. Kenneth R. Costello ("Costello"), Loeb & Loeb
7. Edward J. Fay ("Fay"), Kwik Kopy Corp.
8. Mark B. Forseth ("Forseth"), Locke Purnell Rain Harrell
9. Byron E. Fox ("Fox"), Hunton & Williams
10. Bruce Harsh ("Harsh"), International Trade Specialist, U.S. Department of Commerce
11. Arnold Janofsky ("Janofsky"), Precision Tune
12. Susan P. Kezios ("Kezios"), American Franchisee Association ("AFA")



13. Alex S. Konigsberg, QC ("Konigsberg"), Lapoint Rosenstein
14. Andrew P. Loewinger ("Loewinger"), Abraham Pressman & Bauer
15. H. Bret Lowell ("Lowell"), Brownstein Zeidman & Lore
16. John Melle ("Melle"), Office of U.S. Trade Representative
17. Raymond L. Miolla ("Miolla"), Burger King Corp.
18. Alec Papadakis ("Papadakis"), Hurt Sinisi Papadakis
19. Matthew R. Shay ("Shay"), International Franchise Association ("IFA")
20. Neil A. Simon ("Simon"), Hogan & Hartson
21. Leonard Swartz ("Swartz"), Arthur Andersen & Co.
22. Greg L. Walther ("Walther"), Outback Steakhouse International
23. Dennis E. Wieczorek ("Wieczorek"), Rudnick & Wolfe
24. Erik B. Wulff ("Wulff"), Hogan & Hartson
25. Philip F. Zeidman ("Zeidman"), Brownstein Zeidman & Lore
26. Carl Zwisler ("Zwisler"), Keck, Mahin & Cate
- Public Participants
1. Jeff Brams ("Brams"), Sign-A-Rama and Shipping Connection
2. Pamela Mills ("Mills"), Baker & McKenzie
- Attachment 3—Table of Commenters
- Comment 1. Robert E. Mulloy, Jr. ("Mulloy")
- Comment 2. Stanley M. Dub ("Dub"), Dworken & Bernstein
- Comment 3. Marvin J. Migdol ("Migdol"), Nationwide Franchise Marketing Services
- Comment 4. SCPromotions, Inc. ("SCPromotions")
- Comment 5. R. Dana Pennell ("Pennell")
- Comment 6. Robin Day Glenn ("Glenn")
- Comment 7. Jack McBirney ("McBirney"), McGraw Consulting
- Comment 8. SRA International ("SRA International")
- Comment 9. Harold Brown ("Brown"), Brown & Stadfeld
- Comment 10. Ronald N. Rosenwasser ("Rosenwasser")
- Comment 11. Louis F. Sokol ("Sokol")
- Comment 12. J. Howard Beales III ("Beales"), Professor, George Washington University
- Comment 13. Peter Lagarias ("Lagarias")
- Comment 14. Harold L. Kestenbaum ("Kestenbaum")
- Comment 15. Walter D. Wilson ("Wilson"), Better Business Bureau of Central Georgia, Inc.
- Comment 16. Connie B. D'Imperio ("D'Imperio"), Color Your Carpet, Inc.
- Comment 17. Q.M. Marketing, Inc. ("Q.M. Marketing")
- Comment 18. David Gurnick ("Gurnick"), Kindel & Anderson
- Comment 19. U-Save Auto Rental ("U-Save Auto Rental")
- Comment 20. The Longaberger Co. ("Longaberger")
- Comment 21. Direct Selling Association ("DSA")
- Comment 22. American Bar Association, Section of Antitrust Law ("ABA AT")
- Comment 23. Dennis E. Wieczorek ("Wieczorek"), Rudnick & Wolfe
- Comment 24. Real Estate National Network ("RENN") (representing Better Homes and Gardens Real Estate Service; Century 21 Real Estate Corp.; Coldwell Bankers Residential Group; Electronic Realty Associates ("ERA"); Realty World Corp.; Re/Max International; and The Prudential Real Estate Affiliates)
- Comment 25. Attorney General Jim Ryan ("General Ryan"), State of Illinois
- Comment 26. Alan S. Nopar ("Nopar"), Bosco, Blau, Ward & Nopar
- Comment 27. Snap-On, Inc. ("Snap-On")
- Comment 28. Steven Rabenberg ("Rabenberg"), Explore St. Louis
- Comment 29. Douglas M. Brooks ("Brooks"), Martland & Brooks
- Comment 30. Robert N. McDonald ("Commissioner McDonald"), Securities Commissioner, State of Maryland
- Comment 31. Little Caesars ("Little Caesars")
- Comment 32. International Franchise Association ("IFA")
- Comment 33. Brownstein Zeidman & Lore ("Brownstein Zeidman")
- Comment 34. Jere W. Glover ("Glover"), Counsel for Advocacy, U.S. Small Business Administration ("SBA Advocacy")
- Comment 35. Jan Meyers ("Representative Meyers"), Chair, House Committee on Small Business
- Comment 36. Neil A. Simon ("Simon"), Hogan & Hartson
- Comment 37. Deborah Bortner ("Bortner"), Washington State Department of Financial Institutions, Securities Division
- Comment 38. American Franchise Association ("AFA")
- Comment 39. American Association of Franchisees & Dealers ("AAFD")
- Comment 40. Warren Lewis ("Lewis"), Lewis & Trattner
- Comment 41. Century 21 Real Estate Corp. ("Century 21")
- Comment 42. John Hayden ("Hayden")
- Comment 43. North American Securities Administrators Association, Inc. ("NASAA")
- Comment 44. Robert L. Perry ("Perry")
- Comment 45. The State Bar of California, Business Law Section ("CA BLS")
- Comment 46. Mike Gaston ("Gaston"), Barkley & Evergreen
- Comment 47. The Southland Corporation ("Southland")
- Comment 48. Medicap Pharmacies, Inc. ("Medicap")
- Comment 49. Rochelle B. Spandorf ("Spandorf"), ABA Forum on Franchising, Andrew C. Selden ("Selden"), David J. Kaufmann ("Kaufmann")
- Comment 50. Joyce G. Mazer ("Mazer"), Locke Purnell Rain Harrell
- Comment 51. Mark B. Forseth ("Forseth"), Locke Purnell Rain Harrell
- Comment 52. Forte Hotels ("Forte Hotels")
- Comment 53. R.A. Politte ("Politte")
- Comment 54. Politte (*see supra*, Comment 53)
- Comment 55. Brown (*see supra*, Comment 9)
- Comment 56. Wieczorek (*see supra*, Comment 23)
- Comment 57. Scott Shane ("Shane"), Georgia Institute of Technology
- Comment 58. Friday's
- Comment 59. Carl E. Zwisler ("Zwisler"), Keck, Mahin & Cate
- Comment 60. Wieczorek (*see supra*, Comment 23)
- Comment 61. Enrique A. Gonzalez ("Gonzalez"), Gonzalez Calvillo Y Forastierei
- Comment 62. Pepsico Restaurants International ("Pepsico")
- Comment 63. IFA (*see supra*, Comment 32)
- Comment 64. Atlantic Richfield Company ("ARCO")
- Comment 65. David Clanton ("Clanton")
- Comment 66. Leonard Swartz ("Swartz"), Arthur Andersen & Co.
- Comment 67. John R.F. Baer ("Baer"), Keck, Mahin & Cate
- Comment 68. Lynn Scott ("Scott")
- Comment 69. Eversheds ("Eversheds")
- Comment 70. Brownstein Zeidman (*see supra*, Comment 33)
- Comment 71. Penny Ward ("Ward"), Baker & McKenzie
- Comment 72. Matthias Stein ("Stein")
- Comment 73. Byron Fox ("Fox"), Hunton & Williams
- Comment 74. Papa Johns Pizza ("Papa Johns")
- Comment 75. Harold L. Kestenbaum (*see supra*, Comment 14)

[FR Doc. 97-4988 Filed 2-27-97; 8:45 am]

BILLING CODE 6750-01-P

**16 CFR Part 601****Proposed Notices of Rights and Duties Under the Fair Credit Reporting Act****AGENCY:** Federal Trade Commission.**ACTION:** Publication of proposed guidance for forms, and request for public comment.

**SUMMARY:** The Federal Trade Commission is publishing for public comment three notices that it is required to prescribe under recent amendments to the Fair Credit Reporting Act. Under those amendments, which become effective September 30, 1997, consumer reporting agencies will be required to provide: A summary of rights under the law to consumers; a notice of responsibilities under the law to parties who regularly furnish such agencies with consumer information, and a notice of responsibilities under the law to parties who obtain consumer reports from the agency. Under the statute, a consumer reporting agency will be in compliance with these requirements if it provides notice forms substantially similar to those prescribed by the Commission.

**DATES:** Comments must be received on or before March 31, 1997.**ADDRESSES:** Comments should be addressed to: Office of the Secretary,