



[Billing Code: 6750-01-S]

**FEDERAL TRADE COMMISSION
Agency Information Collection Activities;
Proposed Collection; Comment Request**

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (“OMB”) to extend for an additional three years the current Paperwork Reduction Act (“PRA”) clearance for information collection requirements contained in its Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising (“Franchise Rule” or “Rule”). That clearance expires on November 30, 2017.

DATES: Comments must be submitted by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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, PRA Comment, FTC File No. P094400” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/franchiserulePRA> by following the instructions on the web-based form. 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, NW, Suite CC-5610 (Annex J), 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 J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Craig Tregillus, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room 8607, Washington, DC 20580, (202) 326-2970.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. “Collection of information” means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Franchise Rule, 16 CFR Part 436 (OMB Control No. 3084-0107).

The FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The Franchise Rule ensures that consumers who are considering a franchise investment have access to the material information they need to make an informed investment decision

provided in a format that facilitates comparisons of different franchise offerings. The Rule requires that franchisors disclose this information to consumers and maintain records to facilitate enforcement of the Rule.

Amendments to the Rule promulgated on March 30, 2007, which took effect after a one-year phase-in on July 1, 2008, merged the Rule's disclosure requirements with the disclosure format accepted by 15 states that have franchise registration or disclosure laws.¹ The amended Rule has significantly minimized any compliance burden beyond what is already required by state law.

The amended Rule requires franchisors to furnish prospective purchasers with a Franchise Disclosure Document ("FDD") that provides information relating to the franchisor, its business, the nature of the proposed franchise, and any representations by the franchisor about financial performance regarding actual or potential sales, income, or profits made to a prospective franchise purchaser. The franchisor must preserve materially different copies of its FDD for 3 years, as well as information that provides a reasonable basis for any financial performance representation it elects to make. These requirements are subject to the PRA and underlie the Commission's pursuit of renewed OMB clearance.

Estimated annual hours burden: 16,750 hours

Based on a review of trade publications and information from state regulatory authorities, staff believes that, on average, from year to year, there are approximately 2,500 sellers of franchises covered by the Rule, with perhaps about 10% of that total reflecting an equal amount of new and departing business entrants.² Commission staff's burden hour estimate reflects the

¹ 72 FR 15544 *et seq.*

² This number, which was also used in the FTC's 2014 clearance request, appears to be consistent with the number of business format franchise offerings registered in compliance with state franchise laws, and listed in franchise directories.

incremental tasks that the Rule may impose beyond the information and recordkeeping requirements imposed by state law and/or followed by franchisors who have been using the FDD disclosure format nationwide. This estimate likely overstates the actual incremental burden because some franchisors, for various reasons, may not be covered by the Rule (*e.g.*, they sell only franchises that qualify for the Rule's large franchise investment exemption of at least \$1 million).

Staff estimates that the average annual disclosure burden to update existing disclosure documents will be three hours each for the 2,250 established franchisors, or 6,750 hours cumulatively for them, and 30 hours apiece each year for the 250 or so new-entrant franchisors to prepare their initial disclosure documents, or 7,500 hours, cumulatively, for the latter group. These estimates parallel staff's 2014 estimates for the amended Rule.³ No public comments were received on those prior estimates. Accordingly, the FTC retains them for this analysis subject to further opportunity for public comment.

Under the Rule, a franchisor is required to retain copies of receipts of disclosure documents, as well as materially different versions of its disclosure documents. Such recordkeeping requirements, however, are consistent with, or less burdensome than, those imposed by the states that have franchise registration and disclosure laws. Accordingly, staff believes that incremental recordkeeping burden, if any, would be *de minimis*.

Covered franchisors also may need to maintain a record of the single additional FDD for use in non-registration states, which may differ from FDDs used in registration states. This may require as much as an additional hour of recordkeeping per year. Assuming, as FTC staff has in

³ See 79 FR 41284 (Jul. 15, 2014); 79 FR 59771 (Oct. 3, 2014) ("2014 Notices").

the past, an hour of incremental recordkeeping per covered franchisor, this yields an additional cumulative total of 2,500 hours for all covered franchisors.

Based on the above assumptions and estimates, average annual burden for new and established franchisors during a prospective three-year clearance would be 16,750 hours ((30 hours of annual disclosure burden x 250 new franchisors) + (3 hours of average annual disclosure burden x 2,250 established franchisors) + (1 hour of annual recordkeeping burden x 2,500 franchisors)).

Estimated annual labor cost burden: \$3,600,000

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below are estimated averages.

Commission staff anticipates that an attorney will prepare the disclosure document. Applying the above assumptions to an estimated hourly attorney rate of \$250⁴ yields the following annual totals: \$7,500 (30 hours x \$250) per new franchisor (or, \$1,875,000, cumulatively, for 250 new franchisors) and \$750 (3 hours x \$250) per established franchisor (or, \$1,687,500, cumulatively, for 2,250 established franchisors).

The FTC additionally anticipates that recordkeeping under the Rule will be performed by clerical staff at approximately \$15 per hour.⁵ Thus, 2,500 hours of recordkeeping burden per year for all covered franchisors will amount to a total annual labor cost of \$37,500.

⁴ Commission staff believes this is a reasonable proxy for mean hourly attorney rates for franchisor consultation on compliance with the Rule's disclosure and recordkeeping requirements.

⁵ Based on mean hourly wages for file clerks found in "Occupational Employment and Wages – May 2016," U.S. Department of Labor, released March 31, 2017, Table 1, *available at* <https://www.bls.gov/news.release/ocwage.nr0.htm>. In contrast to labor costing above for attorneys, *see note 4 supra* and accompanying text, FTC staff has drawn upon BLS wage data for file clerks because staff believes it presents a representative proxy for recordkeeping tasks under the Rule. The mean hourly wage rate for "lawyers" within this BLS table, however, is just \$67.25, which staff believes greatly understates the hourly cost for lawyer consultation tied to the Rule.

Cumulatively, then, total estimated labor cost under the Rule is \$3,600,000 (((\$7,500 attorney costs x 250 new franchisors = \$1,875,000) + (\$750 attorney costs x 2,250 established franchisors = \$1,687,500) + (\$15 clerical costs x 2,500 franchisors = \$37,500)).

Estimated non-labor costs: \$8,000,000

In developing cost estimates initially for this Rule, FTC staff consulted with practitioners who prepare disclosure documents for a cross-section of franchise systems. The FTC believes that its cost estimates remain representative of the costs incurred by franchise systems generally. In addition, many franchisors establish and maintain websites for ordinary business purposes, including advertising their goods or services and to facilitate communication with the public. Accordingly, any costs franchisors would incur specifically as a result of electronic disclosure under the Rule appear to be minimal.

As set forth in the 2014 Notices, FTC staff estimates that the non-labor burden incurred by franchisors under the Franchise Rule differs based on the length of the disclosure document and the number of them produced. Staff estimates that 2,000 franchisors (80% of total franchisors covered by the Rule) will print and mail 100 disclosure documents at \$35 each. Thus, these franchisors would each incur an estimated \$3,500 in printing and mailing costs. Staff estimates that the remaining 20% of covered franchisors (500) will transmit 50% of their 100 disclosure documents electronically, at \$5 per electronic disclosure. Thus, these franchisors will each incur \$2,000 in distribution costs (((\$250 for electronic disclosure [\$5 for electronic disclosure x 50 disclosure documents]) + (\$1,750 for printing and mailing [\$35 for printing and mailing x 50 disclosure documents])).

Accordingly, the cumulative annual non-labor costs for the Rule is approximately \$8,000,000 (((\$3,500 printing and mailing costs x 2,000 franchisors = \$7,000,000) + (\$250

electronic distribution costs + \$1,750 printing and mailing costs) x 500 franchisors = \$1,000,000)).

Request for Comment: You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Franchise Rule, PRA Comment, FTC File No. P094400” 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 public Commission Website, at <https://www.ftc.gov/policy/public-comments>.

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. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/franchiserulePRA>, by following the instructions on the web-based form. When this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that Website.

If you file your comment on paper, write “Franchise Rule, PRA Comment, FTC File No. P094400” 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 J), 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 FTC Website at <https://www.ftc.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 by 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.

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 comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, 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. 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 [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. 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>.

David C. Shonka,

Acting General Counsel.

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