



[Billing Code: 6750-01-S]

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

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (“PRA”), the Federal Trade Commission (“FTC” or “Commission”) is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget clearance for information collection requirements in its Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising (“Franchise Rule” or “Rule”). That clearance expires on October 31, 2020.

**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://www.regulations.gov>, 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:** Christine M. Todaro, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room 8607, Washington, DC 20580, (202) 326-3711, ctodaro@ftc.gov.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Franchise Rule, 16 CFR Part 436.

*OMB Control Number:* 3084-0107.

*Type of Review:* Extension without change of currently approved collection.

*Affected Public:* Private Sector: Businesses and other for-profit entities.

*Estimated Annual Burden Hours:* 16,750

*Estimated Annual Labor Costs:* \$3,603,125

*Estimated Annual Non-Labor Costs:* \$7,250,000

*Abstract:*

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 and compare different franchise offerings. The 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 Rule also requires that franchisors maintain records to facilitate enforcement of the Rule.<sup>1</sup> The franchisor must preserve materially different

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<sup>1</sup> The Rule was amended in 2007 to conform its disclosure requirements with the disclosure format accepted by 15 states that have franchise registration or disclosure laws. *See* 72 FR

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.

*Estimated Annual Hours Burden: 16,750*

Based on information from state regulatory authorities and relevant trade journals, staff estimates that there are approximately 2,500 sellers of franchises covered by the Rule, with approximately 10% of that total reflecting an equal amount of new and departing business entrants.<sup>2</sup> Staff estimates that the average annual disclosure burden for established franchisors to update existing disclosure documents will be three hours per seller for a total of 6,750 hours (2,250 franchisors × 3 hours). For new franchisors, staff estimates that preparation of disclosure documents by new sellers of franchise opportunities will require approximately 30 hours for a total of 7,500 hours (250 new franchisors × 30 hours).

Covered franchisors also may need to maintain an alternative version of the FDD for use in non-registration states, which may differ from FDDs used in registration states. Staff estimates that this recordkeeping obligation would require approximately one hour per year. This results in an additional burden of 2,500 hours (2,500 franchisors × 1 hour). Under the Rule, a franchisor is also 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.

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15444 (Mar. 30, 2007). The amended Rule has significantly minimized any compliance burden beyond what is required by state law.

<sup>2</sup> This number appears to be consistent with the number of business format franchise offerings registered in compliance with state franchise laws, and listed in franchise directories.

*Estimated Annual Labor Costs:* \$3,603,125

Labor costs are derived by applying estimated hourly cost figures to the burden hours described above. FTC staff anticipates that an attorney will prepare required disclosure documents at an estimated hourly attorney rate of \$250.<sup>3</sup> For established franchisors, estimates the following annual labor costs: \$750 per established franchisor (3 hours × \$250) for a total annual cost burden of \$1,687,500 (\$750 × 2,250 established franchisors). For new franchisors, this yields an annual cost of \$7,500 per new franchisor (30 hours × \$250) for a total annual cost burden of \$1,875,000 for new franchisors (\$7,500 × 250 new franchisors).

The FTC additionally anticipates that recordkeeping under the Rule will be performed by clerical staff at approximately \$16.25 per hour.<sup>4</sup> Thus, 2,500 hours of recordkeeping burden per year for all covered franchisors will amount to a total annual labor cost of \$40,625.

*Estimated Annual Non-Labor Costs:* \$7,250,000

In developing cost estimates 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 franchisors generally.

FTC staff estimates that the non-labor burden incurred by franchisors differs based on the length of the disclosure document, the number produced, and the method of distribution employed by franchisors. Staff estimates that the estimated 2,500 sellers of franchise opportunities distribute approximately 100 disclosure documents each annually for a total of 250,000 disclosure documents. Staff estimates that 80% of these disclosure documents are

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<sup>3</sup> Commission staff believes this is a reasonable estimate for mean hourly attorney rates for franchisor consultation on compliance with the Rule's disclosure and recordkeeping requirements.

<sup>4</sup> Based on mean hourly wages for file clerks found in Table 1. "National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2018," at <https://www.bls.gov/news.release/ocwage.t01.htm>.

distributed in hard copy format at a cost of \$35 each for printing and mailing costs. This results in a total estimated \$7,000,000 in non-labor costs printing and mailing disclosure documents (200,000 × \$35). Staff estimates that the remaining 20% of disclosure documents (50,000) are distributed electronically, at a cost of \$5 per electronic disclosure. This yields a total non-labor cost burden associated with the electronic distribution of disclosure documents of \$250,000 (50,000 × \$5).

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).

**Request for Comment:**

Pursuant to Section 3506(c)(2)(A) of the PRA, 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.

You can file a comment online or on paper. For the Commission 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. 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 through the <https://www.regulations.gov> website by following the instructions on the web-based form provided. Your comment, including your name and your state – will be placed on the public record of this proceeding, including the <https://www.regulations.gov> 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 public record, 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 <https://www.regulations.gov> – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from <https://www.regulations.gov>, 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.

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>.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

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