

the offer; statistical analyses of existing franchised and company-owned outlets; information about prior purchasers, including the names and addresses of at least 10 purchasers nearest the prospective buyer; and audited financial statements.

The Commission recognized that requiring these extensive disclosures would likely impose significant compliance costs on businesses covered by the Original Franchise Rule. It therefore sought to strike the proper balance between prospective purchasers' need for pre-sale disclosure and the burden imposed on those selling business ventures covered by the e

⁴ 64 FR 57296 (Oct. 22, 1999).

⁵ *I*.

⁶ The industry term "business format franchise" specifically refers to franchises in which franchisees operate under a common trademark or other commercial symbol and are required to adhere to the specific business format or method of doing business prescribed by the franchisor. Business format franchises are commonly called "franchises" by the general public, and the two terms are used interchangeably here.

² 60 FR 17656 (Apr. 7, 1995).

³ 62 FR 9115 (Feb. 28, 1997).

comment on several proposed regulatory modifications, including the creation of a separate trade regulation rule governing the sale of business opportunities.⁷

Subsequently, the Commission completed all procedural steps prescribed by Section 18 of the FTC Act to finalize the Amended Franchise Rule, along with a Statement of Basis and Purpose, in March 2007.⁸ At that time, the Amended Franchise Rule—no longer covering business opportunities—was codified at Part 436 in Title 16 of the CFR. The Original Franchise Rule with all definitional elements and references regarding business format franchising deleted, was retained and redesignated as Part 437. Part 437 was titled the “interim Business Opportunity Rule.”⁹ The interim Business Opportunity Rule contained no new substantive disclosure requirements or prohibitions, and in all material respects was substantially identical to the Original Franchise Rule. Until the final Rule becomes effective, Part 437 governs sales of non-franchise business opportunities.¹⁰

B. A / s
1. Initial Notice of Proposed Rulemaking and Initial Proposed Business Opportunity Rule

In 2006, having determined that a separate business opportunity rule was necessary, the Commission published an Initial Notice of Proposed Rulemaking (“INPR”), announcing its intention to proceed with its proposal for a separate Business Opportunity Rule (the “initial proposed Business Opportunity Rule” or “IPBOR”).¹¹ The INPR proposed to amend the interim Business Opportunity Rule by updating it, streamlining it, and expanding its scope of coverage.¹² The IPBOR

contained an expansive definition of “business opportunity” that encompassed business opportunities previously covered by the Original Franchise Rule as well as work-at-home, medical billing, and multi-level marketing (MLM)¹³ operations. It also eliminated the \$500 threshold for Rule coverage.¹⁴

Streamlining the interim Business Opportunity Rule and tailoring it to fit business opportunities (as opposed to business format franchises) has been a primary focus of this proceeding. Both the Original Franchise Rule and the interim Business Opportunity Rule require extensive disclosures covering over twenty specified topics. In the INPR, the Commission recognized that these extensive disclosure requirements entail disproportionate compliance costs for sellers of comparatively low-cost business opportunity ventures.¹⁵ Therefore, the Commission proposed to mitigate the compliance burden by simplifying and streamlining the disclosure requirements.¹⁶

Specifically, the INPR proposed a one-page business opportunity pre-sale disclosure document (the “initial proposed disclosure document”) with only six required material disclosures.¹⁷ The initial proposed disclosure document was intended to provide prospective purchasers with essential material information they could use in making a purchase decision. The INPR proposed to require sellers to use the

Proposed Rulemaking, with a 60-day comment period, followed by a 40-day rebuttal period. In addition, pursuant to Section 18(c) of the FTC Act, the Commission announced that it would hold hearings with cross-examination and rebuttal submissions only if an interested party requested a hearing. The Commission also stated that, if requested to do so, it would contemplate holding one or more informal public workshops in lieu of hearings. Finally, pursuant to 16 CFR 1.13(f), the Commission announced that staff would issue a Report on the Business Opportunity Rule (“Staff Report”), which would be subject to additional public comment. 71 FR at 19079–80.

¹³Multi-level marketing is one form of direct selling, and refers to a business model in which a company distributes products through a network of distributors who earn income from their own retail sales of the product and from retail sales made by the distributors’ direct and indirect recruits. Because they earn a commission from the sales their recruits make, each member in the MLM network has an incentive to continue recruiting additional sales representatives into their “down lines.” Peter J. Vander Nat & William W. Keep, *Multilevel Marketing*, 21 J. Pub. Pol’y & Marketing 140 (Spring 2002).

¹⁴Promoters of business opportunities were able to evade coverage under the Original Franchise Rule and the interim Business Opportunity Rule by pricing their offerings opportunities below \$500, the monetary threshold of coverage.

¹⁵ 71 FR at 19057.

¹⁶ *I.*

¹⁷ 71 FR at 19091.

exact form and language set forth by the Commission and to include information regarding (1) the seller; (2) earnings claims; (3) legal actions involving the offered business and its key personnel; (4) the existence of cancellation or refund policies; (5) the number of cancellation or refund requests; and (6) references.¹⁸

In response to the INPR, the Commission received more than 17,000 comments, the overwhelming majority of which came from individuals active in the MLM industry.¹⁹ MLM companies, their representatives and trade associations, as well as individual participants in various MLM plans, expressed grave concern about the burdens the IPBOR would impose on them and urged the Commission to exclude them from the scope of the IPBOR, to implement various safe harbor provisions, and to reduce the required disclosures.²⁰ The Commission also received approximately 187 comments, primarily from individual consumers or consumer groups, in favor of the IPBOR.²¹ Only a handful of comments came from non-MLM companies and industry groups, expressing various concerns about obligations that the IPBOR would impose upon them.²² None of the comments addressed the form of the initial proposed disclosure document.

2. The Revised Notice of Proposed Rulemaking and Revised Proposed Business Opportunity Rule

Based on an extensive review of the comments received in response to the INPR and the Commission’s law enforcement history, the Commission issued a revised Notice of Proposed Rulemaking and Revised Proposed Business Opportunity Rule.

⁷ 62 FR at 9115. In response to the ANPR, the Commission received 166 written comments. The staff also held six public workshops on the issues raised in the comments, three of which specifically addressed business opportunities.

⁸ 72 FR 15444 (Mar. 30, 2007).

⁹ For example, references to “franchisor” and “franchisee” used in the Original Franchise Rule were changed in the interim Business Opportunity Rule to “business opportunity seller” and “business opportunity purchaser,” and the Original Franchise Rule’s definition of “franchise” was changed to “business opportunity.”

¹⁰ 73 FR 16111, 16112 (Mar. 26, 2008).

¹¹ 71 FR 19054 (Apr. 12, 2006).

¹² The INPR also specified the process the Commission would follow in amending the Business Opportunity Rule. Pursuant to the Commission’s Rules of Practice, 16 CFR 1.20, the Commission determined to use a modified version of the rulemaking process set forth in section 1.13 of those Rules. Specifically, the Commission announced that it would publish a Notice of

¹⁸ 71 FR at 19068.

¹⁹ Comments responding to the INPR are available at <http://www.ftc.gov/ohrt/reports/initial-proposed-business-opportunity-rule>. References to INPR comments are cited herein as: Name of the commenter-INPR (e.g., Avon-INPR).

²⁰ Thousands of comments were form letters submitted by participants in various MLM programs. 73 FR at 16113.

²¹ Numerous letters came from individuals having negative experiences with various MLMs. 73 FR at 16113 n.37.

²² 73 FR at 16113.

²³ *I.* at 16110.

²⁴ I . As one commenter described it, the IPBOR would have swept in traditional arrangements for distribution of “food and beverages, construction equipment, manufactured homes, electronic components, computer systems, medical supplies and equipment, automotive parts, automotive tools and other tools, petroleum products, industrial chemicals, office supplies and equipment, and magazines.” IBA–INPR at 5; Timberland–INPR (noting that numerous manufacturers structure their retail distribution in this manner).

²⁵ This amendment was based on concerns raised by some commenters that if a “required payment” did not exclude the purchase of inventory, many traditional product distribution arrangements could be brought within the scope of the Rule. 73 FR at 16113.

²⁶ This amendment was based on concerns raised by some commenters that a broad range of

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robust discussion on various topics, the Commission received follow-up written comment from six individuals and entities.⁴²

4. Staff Report

Pursuant to the Rule amendment process announced in the INPR, the Commission's Bureau of Consumer Protection issued a Staff Report on the Business Opportunity Rule in November 2010.⁴³ The Staff Report explained in detail the history of the Rule amendment proceeding and summarized the issues raised during the various notice and comment periods, particularly those raised in response to the RNPR. It also addressed the public workshop discussion and subsequent comments, as well as additional issues that the staff raised on its own initiative, based on the Commission's law enforcement experience.

Twenty-seven comments were submitted in response to the Staff Report,⁴⁴ including eleven comments submitted by consumer group Consumer Awareness Institute ("CAI"). The Commission also received comments from the Department of Justice ("DOJ"), the Direct Selling Association ("DSA"), MLM companies,⁴⁵ one franchise lead generator, a consumer group named Pyramid Scheme Alert ("PSA"), and ten individuals. A few commenters suggested changes to some of the Rule's definitions and the scope of coverage,⁴⁶

announced in the INPR, T*adopt-1.467 Td(o some of (indefinit1.467 TdT*avoup broadl-1SA'sweepTjTTdSAs.

transcript from the June 2009 Business Opportunity Rule public workshop are cited herein as: Name of commenter, June 09 Tr at page no. (e.g., Jost, June 09 Tr at 12).

⁴² Comments received in response to the Workshop Notice are available at <http://www.ftc.gov/bcp/ohp/20090609>.

References to workshop comments are cited herein as: Name of commenter-Workshop.

⁴³ Bureau of Consumer Protection, *Business Opportunity Rule* (16 CFR 437) (Nov. 2010) ("Staff Report"). The Staff Report is available at <http://www.ftc.gov/bcp/ohp/2010/11/101028>.

In November, the Commission published a notice in the *F.R.D.* announcing the availability of, and seeking comment on, the Staff Report. 75 FR 68559 (Nov. 8, 2010).

⁴⁴ Comments received in response to the Staff Report are available at <http://www.ftc.gov/bcp/ohp/2010/11/101028>.

References to Staff Report comments are cited herein as: Name of commenter—Staff Report.

⁴⁵ Comments on behalf of the MLM industry were submitted by Tupperware and Primerica.

⁴⁶ *E.g.*, Dub-Staff Report; Tupperware-Staff Report.

⁴⁷ DOJ-Staff Report; Primerica-Staff Report; DSA-Staff Report.

⁴⁸ *E.g.*, CAI-Staff Report; PSA-Staff-Report; O'Handley-Staff Report; Brooks-Staff Report; Johnson-Staff Report.

⁴⁹ The Staff Report comments addressing specific provisions of the Rule are discussed within the substantive discussions on the relevant provisions. The comments regarding MLMs are discussed in Subsection C.1.c below, addressing the Commission's decision to exclude MLMs from coverage.

⁵⁰ 73 FR at 16112.

⁵¹ *E.g.*, *F.C.v. M.B.N., I.J.*, No. 05 CIV 2014 (RJH) (S.D.N.Y. 2005) (\$200-\$295 fee); *F.C.v. Seitz/Bandstra* (S.D. Fla. 2005) (\$160 fee); *F.C.v. M.G., LLC*, No. 05 CV 6485 (N.D. Ill. 2005) (\$65 to \$175 registration fees); *F.C.v. E., I.J.*, No. 03-23291-CIV-ALTONAGA (S.D. Fla. 2003) (\$139 fee); *F.C.v. L.E., I.J.*, No. 6:02-CV-681-ORL-19 DAB (M.D. Fla. 2002) (\$150 fee); *F.C.v. H.C.N., I.J.*, No. 2:02-CV-4569 MMM (AMWx) (C.D. Cal. 2002) (\$485 fee); *F.C.v. M.J., I.J.*, No. 92 C 5022 (N.D. Ill. 2002) (\$45 fee); *F.C.v. K.I., I.J.*, No. CV 02-04566 LGB (RNBx) (C.D. Cal. 2002) (\$42 fee); *F.C.v. M.J., LLC*, No. CV01-1896 (CBM) (C.D. Cal. 2001) (\$375 fee); *F.C.v. B.J., I.J.*, No. 01-

⁵⁴In bringing these FTC law enforcement actions, the FTC partnered with sister federal agencies—such as the DOJ and the United States Postal Inspection Service—and with the various state attorneys general, including the District of Columbia. Thus, these “sweeps” entailed many more actions besides those brought by the FTC.

⁵⁵*Et al.*, Project FalSe HopeS, FTC News Release: Federal, State Law Enforcers Complete Bogus Business Opportunity Sweep (Dec. 12, 2006),

[http://www.ftc.gov/ftc/press/20061212/bogus-business-opportunity-sweep.cfm](#); Project Biz Opp Flop, FTC News Release: Criminal and Civil Enforcement Agencies Launch Major Assault Against Promoters of Business Opportunity and Work-at-Home Schemes (Feb. 22, 2005),

[http://www.ftc.gov/ftc/press/200502/20050202/biz-illion.cfm](#); Project Busted Opportunity, FTC News Release: State, Federal Law Enforcers Launch Sting on Business Opportunity, Work-at-Home Scams (June 20, 2002),

[http://www.ftc.gov/ftc/press/200206/20020620/biz-illion.cfm](#); Project Biz-illionS, FTC News Release: State-Federal Crackdown on Phony Business Opportunities Intensifies (March 6, 2000),

[http://www.ftc.gov/ftc/press/200003/20000306/biz-illion.cfm](#); Operam(55w1 1 3. 2000)/udk56 1 Tf-0.0029 Tw 10.603 0 Td(FT-siness Opportunitiesarb7T(Pr5d(FTC News)Tj-

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CV-0396-EA (X) (N.D. Okla. 2001) (\$125 fee); *F C v. L I*, No. 8:00-CV-2114-T-27E (M.D. Fla. 2000) (\$395 to \$495 fee); *C F C* (October 2007) at 48, [http://www.ftc.gov/ftc/press/200710/20071010/median-payment-for-work-at-home-schemes-of-2007.cfm](#) (indicating a median payment for work-at-home schemes of \$200).

⁵²71 FR at 19079 (citing comments submitted in earlier proceedings by NCL, SBA Advocacy, Finnigan, and Purvin).

⁵³*Et al.*, *F C v. D A C*, I J., No. 8:10-cv-00335-JSM-TGW (M.D. Fla. Feb. 2010); *F C v. I M E J I J.*, No. 1:10-cv-00568-NLH-KMW (D.N.J. Feb. 2010); *F C v. J N LLC*, No. 3:10-cv-00538-MLC-LHG (D.N.J. Feb. 2010).

following language contained in the Staff Report: "Two key problems emerged with the IPBOR's breadth of coverage. First, the IPBOR would have unintentionally swept in numerous commercial arrangements where there is little or no evidence that fraud is occurring."⁷⁹ The commenters suggest, incorrectly, that the quoted language reveals a finding by the Commission that there is little or no evidence of fraud occurring within the MLM industry.⁸⁰ This language, however, referred to a passage from the RNPR that addressed traditional product distribution arrangements, not MLMs.⁸¹ The Commission has not made a finding that there is little or no evidence of fraud within the MLM industry; to the contrary, it has specifically recognized, through its own law enforcement experience, that some MLMs may be pyramid schemes in masquerade and may make false and unsubstantiated earnings claims.⁸²

In any event, the comments submitted in response to the Staff Report do not persuade the Commission that the Business Opportunity Rule is the proper tool to address these problems.⁸³ Two of the affirmative disclosure requirements illustrate the difficulty in applying the Rule to MLMs: (1) The disclosure of substantiation for earnings claims; and (2) the disclosure of references.

First, as the Commission has acknowledged, the varied and complex structure of MLMs makes it exceedingly difficult to make an accurate earnings disclosure and likely would require different disclosures for different levels of participation in the company. For instance, it would be difficult to craft an accurate earnings disclosure that would account for "inactive" participants that use their distributorship as a "buyers club" and are interested only in purchasing goods at a wholesale price for their own use.⁸⁴ This problem appears to be unique to MLMs and, so

far as the Commission is aware, does not arise in other forms of business opportunities.

Furthermore, it may be difficult to determine retail income if the MLM is not in a position to verify the extent to which a distributor has resold the product at retail, is warehousing the product, or bought the product for his or her own personal consumption. Even where the MLM has policies in place purportedly to ensure that a portion of its distributors' income is derived from retail sales, these policies could go unenforced, or even where ostensibly enforced, could be circumvented by distributors who may have an incentive to "inflate" their retail sales by

requiring disclosure of the retail price of the product, the date of the sale, and the name of the distributor. Even if the Commission were to require such disclosure, it would be difficult to enforce, and the Commission would have to determine whether such disclosure would be sufficient to protect consumers.

in

require

response to the Commission's request for information.

additional information is available.

to the Commission's request for information.

reimbursement of expenses.

notice, in connection with the

⁷⁹ CAI-Staff Report at 1, 10-41; PSA-Staff Report.

⁸⁰ CAI-Staff Report at 10-41; PSA-Staff Report ("The basis of the exclusion appears to be the extraordinary claim that there is insufficient evidence of widespread fraud in the multi-level marketing field.")

⁸¹ Indeed, the language quoted by CAI and PSA contains a footnote referencing the section of the RNPR that discussed traditional product distribution arrangements. . . . Staff Report at 30 (citing 73 FR at 16113).

⁸² 73 FR at 16119; Staff Report at 20.

⁸³ Indeed, one commenter recommended a completely separate set of disclosures for MLM opportunities, further suggesting that the Business Opportunity Rule is a poor fit for the MLM industry. . . . Johnson-Staff Report (recommending that the FTC convert its consumer education on investing with an MLM into a series of disclosures that would be MLM-specific).

⁸⁴ 73 FR at 16120.

⁸⁵ While CAI presented its proposal for an earnings disclosure, it is clear that the disclosure would be specific to MLMs and would have no application to the other types of business opportunities addressed by the Rule. . . . CAI-Staff Report at 7-33.

⁸⁶ 73 FR at 16121.

⁸⁷ Brooks-Staff Report at 8.

⁸⁸ I .

⁸⁹ Multi-level marketing is a business model in which a company distributes products through a network of distributors who earn income from their own retail sales of the product and from retail sales made by the distributors' direct and indirect recruits. Because they earn a commission from the sales their recruits make, each member in the MLM network has an incentive to continue recruiting additional sales representatives into their "down lines." . . . Vander Nat & Keep, supra note 13.

⁹⁰ Comments submitted in response to the Staff Report did not refute these arguments, but actually bolstered them. For instance, one commenter noted that MLM recruiters will often pretend they are wealthy when they are not, simply to entice others to join the MLM. . . . O'Handley-Staff Report at 2; CAI-Staff Report at 5 (noting that in MLMs, "every major victim is of necessity a perpetrator (recruiter) because to have any hope of recouping their ongoing investments * * * they must recruit others to do what they have done").

⁹⁸ 15 U.S.C. 57a(d)(3).

⁹⁹ *Est. F C v. C*, No. 3:08-cv-01877-JP (D. P.R. 2008) (envelope stuffing scheme marketed in Spanish-language newspapers and on a Web site available in Spanish and English); *F C v. I M*, No. 07-cv-61152 (S.D. Fla. 2007) (envelope stuffing scheme marketed in Spanish-language classified advertisements); *F C v. H*, No. 1:06-cv-00424-ICC-TRJ (E.D. Va. 2006) (assistance in starting a construction, gardening, or cleaning business marketed through Spanish-language television and radio stations); *F C v. J M*, No. 06-61429-CIV-Altonaga (S.D. Fla. 2006) (craft assembly business marketed through Spanish-language advertisements); *F C v.*

with other law enforcement partners. *Ex. .*,
Operation Bottom Dollar (2010); Operation Short
Change (2009); Project FalSe Hope\$ (2006); Project
Biz Opp Flop (2005); Project Busted Opportunity
(2002); Project Telesweep (1995); Project Biz-illion\$
(1999); Operation Money Pit (1998); Project Vend
Up Broke (1998); Project Trade Name Games (1997);
and Operation Missed Fortune (1996). In addition

¹¹⁸ FTC Policy Statement on Deception,
Com. A, 103 F.T.C.
110, 174 (1984).

¹¹⁹ *E. F. C. v. A. E. D.*, 104-
22431-CIV-Martinez (S.D. Fla. 2004); *111 F.3d 2224* (11th Cir. 2000) (8-7-99) (11-0-00).

¹¹⁵ note 96.

¹¹⁶ *F. C. v. G.*, No. 10-CV-
1457 (RNC) (D. Conn. 2010).

¹¹⁷ *F. C. v. C.*, No. 3:08-cv-01877-JP
(D.P.R. 2008).

an illusory refund policy is deceptive under Section 5 of the FTC Act.

Moreover, the failure to honor refund promises is an unfair practice in violation of Section 5(n) of the FTC Act.¹²¹ It often results in substantial injury to business opportunity purchasers that they cannot reasonably avoid.¹²² Moreover, the record is devoid of any evidence suggesting that this harm is outweighed by any countervailing benefits.

To remedy this practice, under the Original Franchise Rule and the interim Business Opportunity Rule, it was a violation for a seller to fail to refund a purchaser's funds, in certain instances. The final Rule continues to address this

¹²¹ An act or practice is unfair if it "causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition." 15 U.S.C. 5(n).

¹²² *FTC v. Phyllis M. Finkelstein*, 108 F.T.C. 263 (1986), *aff'd*, 808 F.2d 1033, 849 F.2d 1354 (11 Cir. 1988).

¹²³ FTC Policy Statement on Deception, *FTC Policy Statement on Deception*, 103 F.T.C. 110, 174 (1984).

¹²⁴ 73 FR at 16126. The Commission's decision to narrow the Rule so that MLMs would not be burdened with unworkable disclosure requirements was similarly prompted by concern that any potential benefits would be outweighed by compliance costs. *Id.* at 16119-21.

¹²⁶ 16 CFR 437.1; Final Interpretive Guides (“Interpretive Guides”) accompanying the Original Franchise Rule, 44 FR 49966 (Aug. 24, 1978).

¹²⁷ At the same time, the final Rule eliminates nine of the interim Business Opportunity Rule’s terms and their definitions, which are no longer necessary: “prospective business opportunity purchaser,” “business day,” “time for making of disclosures,” “fractional business opportunity,” “business opportunity broker,” “sale of a business opportunity,” “cooperative association,” “fiscal year,” and “personal meeting.”

¹²⁸ Section 437.3(a)(3) requires disclosure of “any civil or criminal action for misrepresentation, fraud, securities law violations, or unfair or deceptive practices, including violations of any FTC Rule.”

¹²⁹ The final Rule covers “any sales managers, or any individual who occupies a position or performs

elements: (1) A solicitation to enter into a new business; (2) payment of consideration, directly or indirectly through a third party; and (3) the making of either an “earnings claim” or an offer to provide “business assistance.”¹⁴³ The IPBOR’s definition of “business assistance” included assistance in the form of “tracking or paying, or purporting to track or pay, commissions or other compensation based upon the purchaser’s sale of goods or services or recruitment of other persons to sell goods or services.”¹⁴⁴ The Commission noted that many pyramid schemes offer this type of assistance, purporting to compensate participants not only for their own product sales but also for sales made by their participants’ downline recruits.¹⁴⁵

¹⁵⁶ For example, commenters to the INPR noted that the IPBOR would cover “manufacturers, suppliers and other traditional distribution firms that have relied on the bona fide wholesale price exclusion to avoid coverage” under the Rule. Sonnenschein-INPR at 1–2. The Cosmetic, Toiletry and Fragrance Association posited that the IPBOR would cover the relationship between a manufacturer and an independent contractor who sells the product to beauty supply companies, salons, and others. CTFA-INPR; LHD&L-INPR at 2 (noting that the IPBOR could cover the relationship between a manufacturer and a regional distributor of products).

¹⁵⁷ 73 FR at 16133.

¹⁵⁸ DSA-RNPR. In addition, the Commission received more than 40 comments from various MLMs that expressed support and concurrence with DSA’s comments. . . . Big Ear-RNPR; Jafra Cosmetics-RNPR; Lia Sophia-RNPR; Longaberger-RNPR; Princess House-RNPR; Shaklee-RNPR. Some commenters expressed disappointment that the Commission proposed to exclude MLMs from coverage by the Rule. . . . CAI-RNPR; Durand-RNPR; PSA-RNPR; Aird-RNPR (Rebuttal); Parrington-RNPR. As previously noted, the Commission decided to narrow the scope of the Rule to avoid broadly sweeping in MLMs.

¹⁵⁹ . . . DSA-RNPR; Avon-RNPR; Bates-RNPR; IBA-RNPR; MMS-RNPR; Mary Kay-RNPR; Melaleuca-RNPR; Primerica-RNPR; Pre-Paid Legal-RNPR; IDS-RNPR; Tupperware-RNPR; Venable-RNPR.

¹⁶⁰ DSA requires that its members offer to buy back, at 90% of the salesperson’s cost, all resalable inventory and other sales materials. DSA-INPR at 35.

¹⁶¹ DSA-RNPR at 6 n.14 (noting that “the buy-back provision is the cornerstone of the DSA’s self regulatory regime and a valuable protection for individual direct sellers”); Mary Kay-RNPR at 6; Babener-RNPR; Melaleuca-RNPR.

¹⁴³ . . . 71 FR at 19087.

¹⁴⁴ I . . .

¹⁴⁵ I . . . at 19063 & n.106.

¹⁴⁶ I . . . at 19087 (IPBOR § 437.1(c)(v)).

¹⁴⁷ . . . 73 FR at 16113–14.

¹⁴⁸ Timberland-INPR at 2.

¹⁴⁹ I . . .

¹⁵⁰ IBA-INPR at 4; PMI-INPR at 3.

¹⁵¹ Venable-INPR at 2–3; NAA-INPR at 1–3.

¹⁵² In addition, the RPBOR clarified that a “required payment” does not include payments for the purchase of reasonable amounts of inventory at bona fide prices. The final Rule incorporates this clarification.

¹⁵³ 73 FR at 16124.

¹⁵⁴ I . . .

¹⁵⁵ I . . .

¹⁷⁸ This definition is substantially similar to the Amended Franchise Rule's definition of "financial performance representation," which is the Amended Franchise Rule's equivalent of an earnings claim. . . 16 CFR 436.1(e).

¹⁷⁹ 71 FR at 19065.

¹⁸⁰ 180 *J* .

¹⁸¹ 44 FR at 49982.

Turnoff (S.D. Fla. 2000); *Turnoff v. E*
Turnoff & Business Center, Inc., I J ., No. 4-00-00131 (W.D.
Mo. 2000); and *Turnoff v. G*
Turnoff, I J ., No. 00-6212-CIV-Gold (S.D. Fla. 2000).

¹⁹⁰ Interpretive Guides, 44 FR at 49984-85
(earnings claims made "for general dissemination"
include "claims made in advertising (radio,
television, magazines, newspapers, billboards, . . .)
as well as those contained in speeches or press
releases"). The Commission notes that the
Interpretive Guides recognize several exemptions to
the general media claim, such as claims made to the
press in connection with bona fide news stories, as
well as claims made directly to lending institutions.
I . The Commission has proposed that future
Compliance Guides to the new Business
Opportunity Rule retain these standard general
media claims exemptions. . . *D. F .150 (G 71 490) 65*

were concerned that various types of optional or no-cost assistance that MLM companies frequently offer their sales representatives could be considered to be "otherwise assisting."²¹⁹ These include such things as general advice and training about how to succeed in a new business venture,²²⁰ general advertising for the purpose of promoting the MLM's products or services,²²¹ occasional ad hoc referrals from consumers who contact the company directly,²²² and optional business tools, such as web templates and links to corporate Web sites that some MLM companies offer for sale to its sales representatives. Additionally, one commenter expressed concern that because of this open-ended clause, sellers of general training services, such as training on how to start a new business and advice about how to obtain customers, would be covered by the Rule.²²³

Commenters made a number of suggestions to cure what they perceived to be the overbreadth of this provision. Some commenters suggested omitting the word "customers" from the "otherwise assisting" provision and the corresponding provisions of the "business opportunity" definition.²²⁴ Other commenters recommended that the definition distinguish customers from "near customers" so as to exclude the provision of potential customers or businesses that the seller obtains from publicly available records.²²⁵ Others suggested adding a statement that no-cost general business advice is not "providing customers."²²⁶ Another commenter suggested adding a new clause to the definition of business opportunity that would create an exception when the assistance offered by the seller is limited to advice or

training.²²⁷ Some commenters suggested eliminating the concept of "potential customers" from the scope of the "otherwise assisting" language.²²⁸ Finally, one commenter suggested revising the definition of "business opportunity" to require that the seller's assistance in providing outlets, accounts or customers be a "material inducement" to the purchaser.²²⁹

The Staff Report noted a concern with narrowing the definition in the ways the commenters suggested, because it would allow promoters of fraudulent schemes to craft their sales pitches carefully to evade the Rule. The staff disagreed with commenters who recommended excising the word "customers" from the definition or diluting it in some fashion. Instead, the Staff Report recommended that the Commission continue its long-standing policy of analyzing the significance of assistance in the context of the of the specific business opportunity, focusing on whether the seller's offer is "reasonably likely to have the effect of inducing reliance on [the seller] to provide a prepackaged business."²³⁰

While urging that the word "customers" remain in the definition, the Staff Report did recommend new qualifying language to address the concern that the definition could be read more broadly than intended. Specifically, the Staff Report recommended adding a short proviso to the "otherwise assisting" clause as follows: "provided, however, that advertising and general advice about business development and training shall not be considered as 'providing locations, outlets, accounts, or customers.'"²³¹

The language recommended in the Staff Report received two comments. DOJ strongly agreed that "customers" should remain in the definition, noting that the allure of a business opportunity is the purported ready cash flow to the purchaser, which can come either from locations or customers, depending on the nature of the opportunity being

offered.²³² DOJ also agreed with the staff's recommendation to include the proviso, but objected to further narrowing of coverage, arguing that any loophole would be vigorously exploited by fraudulent business opportunity sellers.²³³ Tupperware similarly encouraged the Commission to adopt the proviso as recommended, stating that the proviso will allow businesses to continue to provide general business advice and training without the risk of inadvertently falling under the aegis of the Rule.²³⁴

The Commission is persuaded by the Staff Report's recommendation not to eliminate the word "customers" from the "otherwise assisting" clause of the definition, and to add qualifying language to the definition to tailor coverage more appropriately. Providing the prospective purchaser with assistance in obtaining customers is a feature common to many business opportunities and should be included in

²¹⁹ *E. v. DSA-RNPR* at 5 (tools are intended to maintain brand uniformity and promote effective customer service).

²²⁰ *E. v. Primerica-RNPR* at 5 (provides advice and training about how to identify potential customers and how to make effective sales presentations); *Tupperware-RNPR* at 4 (provides training about how new representatives can develop own customer bases); *Venable-RNPR*.

²²¹ *DSA-RNPR* at 4 (5/27/2008); *Primerica-RNPR* at 6.

²²² *E. v. Avon-RNPR* at 3 (noting that this practice is designed to help potential customers find a sales representative, not to help sales representatives find potential customers); *Mary Kay-RNPR* at 7 (suggesting that merely providing the ability to search for a sales associate on the company's Web site should not trigger the "providing locations" factor of the "business opportunity" definition); *DSA-RNPR* at 5; *Melaleuca-RNPR* at 2.

²²³ *Venable-RNPR* at 2.

²²⁴ *DSA-RNPR* at 5; *Venable Rebuttal-RNPR* at 3; *Primerica-RNPR* at 5.

²²⁵ *Venable-RNPR*.

²²⁶ *Primerica-RNPR* at 8; *Tupperware-RNPR* at 6; *Avon-RNPR*; *Mary Kay-RNPR*.

²²⁷ *Pre-Paid Legal-RNPR*.

²²⁸ *Mary Kay-RNPR* at 7 (as an alternative *Mary Kay* suggests that in the commentary to the Final Rule, the Commission make clear that passing on ad hoc referrals of customers who contact the company directly would not trigger this provision).

²²⁹ *Melaleuca-RNPR*.

²³⁰ Staff Advisory Opinion 95-10, Business Franchise Guide (CCH) ¶ 6475 (1995).

²³¹ For example, this new proviso was designed to make clear that giving advice about how to demonstrate products, complete product order forms and how to process returns (*Tupperware-RNPR*); or providing product advertising in the general media and training in customer and business development (*Primerica-RNPR*), would not be considered as "providing locations, outlets, accounts, and customers."

²³² DOJ-Staff Report at 1-2.

²³³ *I. v. 2*.

²³⁴ *Tupperware-Staff Report* at 2.

²³⁵ *E. v. F. v. M. v. B. v. N. v. I. v.*, No. 05-CV-2014 (S.D.N.Y. 2005); *F. v. M. v. B. v. I. v.*, No. 3-02CV0702CP (N.D. Tex. 2002); *F. v. E. v. M. v. B. v. I. v.*, No. SACV02-368 AHS (C.D. Cal. 2002); *F. v. G. v. I. v.*, No. 00cv-023D (D. Wyo. 2000) (offering to everything necessary to earn money processing HUD refunds); *F. v. A. v. I. v.*, SACV-00-112-AHS-Anx (C.D. Cal. 2000) (offering to provide list of companies in need of consumer's home-based computer services).

²³⁶ 73 FR at 16123.

²³⁷ Section 437.1(k).

²⁵⁵ *I* .

²⁵⁶ For example, in . . . v. . .
A . . . I J . . ., No. 1:06-cv-152-DAK (D. Utah 2006),
the fraudulent business opportunity seller told
purchasers they could earn significant money by
signing up business owners to pay monthly fees to
display their business cards in rack display “profit

read them, share them with an advisor, and retain them for future use.²⁶⁶

In response to the Staff Report, one commenter expressed concern that the Rule would be overly burdensome if electronic compliance were not permitted.²⁶⁷ Aso

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²⁷⁰ 71 FR at 19067. When the Original extended to 14 calendar days. The interim Business Opportunity Rule maintained the 10 business-day period. ... 72 FR at 15468, 15570.

²⁷¹ 71 FR at 19067.

²⁷² I .

²⁷³ 73 FR at 16134.

²⁷⁴ Planet Antares-RNPR at 13–14.

²⁷⁵ 16 CFR 436.2(a) (fourteen calendar days); § 437.2(g) of the interim Business Opportunity Rule (ten business days).

²⁷⁶ , , F C v. B . C E , I J .., No. 06–CV–4671 (PJS/RLE) (D. Minn. 2006) (representatives told consumers they must invest within one or two weeks in order to take advantage of special “promotional” rate).

²⁶⁶ 71 FR at 19067.

²⁶⁷ NG Franchise-Staff Report.

²⁶⁸ note 261.

²⁶⁹ Section 437.1(s) allows the disclosure document to be provided to purchasers electronically, such as by posting in on the Internet, sending it via email, . Providing the disclosure document through one of these alternative methods does not, however, relieve the seller of the obligation to obtain and maintain copies of signed and dated disclosure documents provided to purchasers.

²⁷⁷ 71 FR at 19067.

²⁷⁸ .

²⁷⁹ § 437.3(a).

document.²⁹⁶ Third, sellers must disclose prior civil or criminal litigation involving claims of misrepresentation, fraud, securities law violations, or unfair or deceptive business practices that involve the business opportunity or its key personnel.²⁹⁷ Fourth, sellers must disclose any cancellation or refund policy.²⁹⁸ Finally, sellers must provide contact information for at least 10 of their purchasers nearest to the prospective purchaser's location.²⁹⁹ A discussion of the record pertaining to each of the required substantive disclosures follows, along with changes made in the final Rule and consistent amendments made to the disclosure document.³⁰⁰ The final disclosure document is Appendix A to this Notice. The Spanish translation of the disclosure document is Appendix B to this Notice.

a. Section 437.3(a)(1): Identifying Information

The first required disclosure under the final Rule is the seller's identifying information. Specifically, § 437.3(a)(1) requires that the seller disclose the name, business address

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²⁹⁶ Section 437.3(a)(2).

²⁹⁷ Section 437.3(a)(3). Key personnel include any of the business opportunity seller's principals, officers, directors, and sales managers, as well as any individual who occupies "a position or performs a function similar to an officer, director, or sales manager of the seller."

²⁹⁸ Section 437.3(a)(4). The IPBOR would have required disclosure of the business opportunity seller's cancellation or refund request history. Some commenters argued that requiring disclosure of the seller's refund history would have had the wayward effect of discouraging legitimate businesses from offering refunds. Because companies with liberal refund policies were more likely to have refund requests than those offering no refunds, disclosure of refund requests could mislead consumers into thinking that a company offering liberal refunds is less reputable than the company offering no refunds. The Commission was persuaded by these commenters and omitted this required disclosure from the RPBOR. . . 73 FR at 16126.

²⁹⁹ Section 437.3(a)(5).

³⁰⁰ In response to the Staff Report, one commenter suggested a myriad of additional changes to the disclosure document such as fields for the buyer's contact information and additional fields for information related to the salesperson. NG Franchise-Staff Report at 4–5. The Commission finds the suggested changes unnecessary.

³⁰¹ Other Commission trade regulation rules similarly require disclosure of identifying information. E.g., Wool Products Labeling Rule, 16 CFR 300.14; Fur Products Labeling Rule, 16 CFR 301.43.

³⁰² 43 FR at 59642.

³⁰³ The Workshop panelists did not discuss this required disclosure.

³⁰⁴ This is consistent with analogous provisions in the Amended Franchise Rule, 16 CFR 436.9, and the interim Business Opportunity Rule, 437.1(c).

³⁰⁵ One workshop panelist commented that an earnings claim is the most important selling feature of any business opportunity, and for that reason, sellers should not be permitted to state they make no earnings claim. Taylor, June 09 Tr at 68. The Commission agrees that the earnings claim is important to purchasers' investment decisions, but recognizes that there is an important distinction between forcing sellers to make an earnings claims and requiring them to substantiate any claims they choose to make.

³⁰⁶ Business opportunity sellers must also make the following prescribed cautionary statement in close proximity to the "yes" or "no" check boxes: "Read this statement carefully. You may wish to show this information to an advisor or accountant."

³⁰⁷ Jost, June 09 Tr at 56.

³⁰⁸ Cantone, June 09 Tr at 55; Taylor, June 09 Tr at 56.

³⁰⁹ *Et. .*, Taylor, June 09 Tr at 57; Cantone, June 09 Tr at 57.

³¹⁰ Macro Report at 15.

³¹¹ *I. .*

required to disclose.³²⁸ The staff recommended, therefore, that § 437.3(a)(3)(ii) be revised to add the following sentence: “For each action, the seller may also provide a brief accurate statement not to exceed 100 words that describes the action.” No comments to the Staff Report addressed this revision.

Upon consideration of the record, the staff’s recommendation, and the rationale for that recommendation, the Commission adopts § 437.3(a)(3)(ii) as recommended in the Staff Report. Non-

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³²⁸ As the Commission previously noted in the RNPR, however, nothing in the Rule would prevent the seller from speaking with the consumer to explain the nature or outcome of any legal action disclosed on the form. 73 FR at 16125.

³²⁹ Jost, June 09 Tr at 36.

³³⁰ The DOJ, upon request of the FTC, has the authority to seek civil penalties for violations of trade regulation rules issued pursuant to the FTC Act, but to obtain such penalties, the government must prove “actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule.” 15 U.S.C. 56(a)(1); 45(m)(1)(A).

³³¹ . . . , *F C v. AM* . . . , *I J* . . . , No. SACV-00-112-AHS-ANx (C.D. Cal. 2001); *F C v. H J* . . . , *I J* . . . , No. SACV 00-111 AHS (Eex) (C.D. Cal. 2001); *F C v. I* . . . , No. 3:00-CV-0312-D (N.D. Tex. 2000); *F C v. E J* . . . , No. 00-1083 WJR (AIX) (C.D. Cal. 2000); *F C v. M* . . . , *I J* . . . , No. 00-01079 (C.D. Cal. 2000). Indeed, allegations that business opportunity sellers misrepresented their refund policies rank among the top 10 complaint allegations in Commission business opportunity cases brought under Section 5. . . 71 FR 19069.

³³² The Commission adopted a similar approach in the TSR. 16 CFR 310.3(a)(1)(iii) (if a seller makes a representation about a refund policy, it must disclose “a statement of all material terms and conditions of such policy”).

³³³ § 437.6.

³³⁴ Taylor, June 09 Tr at 48. One commenter agreed. Brooks-Workshop comment.

³³⁵ MacLeod, June 09 Tr at 50.

³³⁶ 71 FR at 19088 (IPBOR § 437.3(a)(5)).

³³⁷ *I* . . . at 19070.

³³⁸ 73 FR at 16126.

³³⁹ *I* . . . at 16115.

³⁴⁰ *I* . . . at 16126.

Panelists in favor of requiring the disclosure of seller's refund histories presented no arguments other than those previously considered by the Commission. Accordingly, the final Rule does not require this disclosure.

(2) Information To Be Disclosed About Refund and Cancellation Policies

Although workshop participants agreed that information about a seller's cancellation and refund policies is an important component of a potential purchaser's evaluation of a business opportunity, they were universally concerned that § 437.3(a)(4) did not contain enough specificity about what information must be disclosed to potential purchasers and suggested that additional guidance from the Commission was necessary.³⁴¹ The panelist from the Maryland Attorney General's Office thought the Rule should specify that all material terms of a refund policy must be disclosed, because in the context of business opportunity sales, it has been his experience that the requirements to obtain a refund are often so onerous that as a practical matter, no one is ever eligible.³⁴² Some panelists felt the Rule should identify specific information to be disclosed. For example, one commenter noted that the period of time a seller has to exercise a right to cancellation or refund, or any conditions on return of unsold goods are material and should be required to be disclosed to potential purchasers.³⁴³ One panelist suggested that the DSA Code of Ethics' refund requirements might serve as a model to identify types of information that should be disclosed to potential purchasers.³⁴⁴

After considering these comments, the Staff Report recommended modifying § 437.3(a)(4) to track closely a similar disclosure requirement in the TSR.³⁴⁵

The TSR requires that if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, it must provide the purchaser with a statement of all material terms and conditions of its policy.³⁴⁶ Requiring the disclosure of all material terms of a refund or cancellation policy most effectively accomplishes the Commission's stated purpose of ensuring that potential purchasers are provided with information that would assist them in assessing the financial risk associated with the offer. Indeed, the commentary to the IPBOR indicates that the Commission, in fact, intended to require sellers to disclose all material terms of refund and repayment policies to prospective purchasers.³⁴⁷

Therefore, upon consideration of the record, the Commission adopts the staff's recommendation. Accordingly, the penultimate sentence of § 437.3(a)(4) of the final Rule has been clarified to read: "If so, state all material terms and conditions of the refund or cancellation policy in an attachment to the disclosure document." As discussed in Section III.A.9., the final Rule includes a definition of "material" similar to the definition used in the TSR. Specifically, § 437.1(i) defines, in relevant part, "material" to mean "likely to affect a person's choice of, or conduct regarding, goods or services." Examples of material terms and conditions may include, for example, the period of time the purchaser has to cancel a purchase or request a refund; the specific steps necessary to cancel a purchase or request a refund; any fees or penalties

³⁴¹ June 09 Tr at 39–53.

³⁴² Cantone, June 09 Tr at 47 (providing as an example a company offering a 100% buy-back for vending machines and noting the company's failure to disclose that the cost of sending back the vending machine would be borne by the purchaser, and would often exceed any refund due, thereby rendering any potential refund worthless).

³⁴³ Taylor, June 09 Tr at 43.

³⁴⁴ Morrissey, June 09 Tr at 45. The Commission has reviewed applicable provisions of the DSA Code of Ethics, but does not find them applicable. DSA dictates the specific terms of its members' refund policies. The RPBOR, by contrast, did not specify the requirements of a seller's refund or cancellation policy, or even whether the seller must have such policies. Instead, it attempted to ensure that if such policies existed, potential purchasers were aware of how they can exercise their rights under those policies.

³⁴⁵ Specifically, in describing its approach regarding refund and cancellation policy disclosures, the Commission noted that it "adopted the same approach in the TSR." 71 FR at 19069

n.166 (citing 16 CFR 310.3(a)(1)(iii) (if a seller makes a representation about a refund policy, it must disclose "a statement of all material terms and conditions of such policy")).

³⁴⁶ 16 CFR 310.3(a)(1)(iii).

³⁴⁷ 71 FR 19069–70.

³⁴⁸ 72 FR 15565.

³⁴⁹ 71 FR at 19071 n.180.

³⁵⁰ 71 FR at 19088; 73 FR at 16135.

³⁵¹ § 437.3(5)(i).

³⁵² 71 FR at 19071. In the RNPR, the Commission solicited comment on whether giving sellers the ability to provide prospective purchasers with a national list was a viable option. It received no comments responsive to that request.

³⁵³ Sellers that provide the disclosure document electronically would be permitted to attach the national list of references in electronic form as well.

³⁵⁴ 71 FR at 19071.

expectation that the information would be kept private, and (2) disclosure of the information is serious in nature, scope, and or potential impact to cause an “egregious breach of social norms.”

E . . . I . v., 40 Cal. 4th 360, 370–71 (2007). Even when these criteria are met, the individual’s privacy interest must be weighed against legitimate and important competing interests. *I* . When measured against this standard, disclosure of purchaser information pursuant to proposed § 437.3(a)(5) would not give rise to a privacy action. First, the disclosure document plainly notifies potential purchasers that their

been changed to “disclosure document” to conform it to the title of § 437.3.

3. Section 437.3(b): Updating the Disclosure Document

To ensure that a seller’s disclosures are current, § 437.3(b) requires sellers to update their disclosures at least quarterly. Modeled on the Original Franchise Rule and interim Business Opportunity Rule,³⁸² the provision states that it would be a violation of the Rule and Section 5 of the FTC Act for a seller to fail to update the disclosures to reflect any material changes in the information presented in the basic disclosure document on at least a quarterly basis. The Commission has concluded that quarterly updating strikes the right balance between the need for accurate disclosure and the costs and burdens more frequent updating would entail.³⁸³

Section 437.3(b) includes a proviso that would require more frequent updating in one respect: the list of references. Specifically, a seller is required to update the list of references monthly until such time that it is able to include the full list of 10 references. This is particularly necessary for start-up opportunities that may have few or no prior references when they commence business opportunity sales. The Commission has concluded that prospective purchasers’ ability to contact at least 10 references in their due diligence investigations of business opportunity offers outweighs any costs of more frequent updating until the list of 10 is compiled.³⁸⁴

No comments were directed to the requirement of updating the disclosures, and the final Rule contains § 437.3(b) as recommended in the Staff Report.

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³⁸² 16 CFR 436.7(b) and interim Business Opportunity Rule § 437.1(a)(22).
³⁸³ 71 FR at 19072.
³⁸⁴ I .
³⁸⁵ 16 CFR 436.9 and interim Business Opportunity Rule §§ 437.1(b), (c) and (e).

³⁸⁶ The Amended Franchise Rule contains similar requirements. . . 16 CFR 436.1(d)(2) and 436.1(e)(6) (each prospective franchisee to whom the representation is made shall be notified of any material change in the information contained in the earnings claims document).
³⁸⁷ As discussed in the INPR, the Commission did not propose a “geographic relevance” requirement because that prerequisite is subsumed in the “reasonable basis” requirement. . . 71 FR at 19072 n.185.

³⁸⁸ 71 FR at 19072.
³⁸⁹ Section 437.4(a)(4)(iv).
³⁹⁰ 71 FR at 19072.
³⁹¹ I .

clutter the disclosure document with

⁴²¹ Indeed, in response to the INPR, DOJ urged the Commission to exclude state disclosures from the proposed form. In DOJ's experience, "[p]urveyors of fraudulent business opportunities will seek every opportunity to water down this document with extraneous information to hide any negative information it may contain." 73 FR at 16128. The Commission's experience supports DOJ's conclusions.

⁴²² This is the same approach used in the Amended Franchise Rule. 16 CFR 436.6(d).

⁴²³ 73 FR at 16128.

⁴²⁴ In the Amended Franchise Rule, the Commission addressed this problem in the context of sales of business format franchises through a new requirement that franchise sellers include a specific preamble in the financial performance section of their disclosures. Among other things, the preamble makes clear that franchisors can make financial performance information available, assuming they have a reasonable basis for their claims. 16 CFR 436.5(s)(1). Although the same problem exists in the sale of business opportunities, the Commission, in an effort to streamline the business opportunity disclosure document and reduce compliance costs, proposed this different approach for the Business Opportunity Rule, believing it sufficient to address deceptive business opportunity sales. The Commission noted that "whereas the Franchise Rule seeks to encourage franchisors to make earnings claims, no such encouragement is needed in the business opportunity field, where such claims are all too common." 71 FR at 19075 n.211.

⁴²⁵ 71 FR at 19075.

⁴²⁶ 73 FR at 16127.

⁴²⁷ I .

⁴²⁸ The Amended Franchise Rule and the interim Business Opportunity Rule have similar requirements. 16 CFR 436.5(r)(3)(v); 437.1(b)(2); and 437.1(c)(2).

⁴²⁹ *E. v. F. C. v. I. M. E. J. I. J.*, No. 10-CV-00568-NLH-KMW (D.N.J. 2010); *F. C. v. I. J.*, No. 10-CV-00538-MLC-LHG (D.N.J. 2010); *F. C. v. I. J.*, No. 05-20402-CIV-Seitz/Bandstra (S.D. Fla. 2005); *F. C. v. C. J.*, No. A03CA

905 SS (W.D. Tex. 2003); *F C v. A J , I J* .
No. 02-9270 SJL (AJWx) (C.D. Cal. 2002); *F C v.*
M H , No. SA02CA0344 (W.D.
Tex. 2002); *F C v.*

cancellation or refund policy.⁴⁴² As noted above, § 437.6(k) prohibits a seller from misrepresenting, pre-sale, the seller's cancellation or refund policy. Section 437.6(l) complements that section and is intended to address sellers' post-sale conduct, prohibiting the seller from failing to honor cancellation or refund requests when purchasers have satisfied all the terms and conditions disclosed in the seller's disclosure document for obtaining such relief.⁴⁴³ In the Commission's experience, the failure of business opportunity sellers to make promised refunds or to honor cancellation policies ranks high among issues raised by business opportunity purchasers.⁴⁴⁴

No comments received in response to the RNPR or the Staff Report were directed to this provision, and the final Rule contains § 437.6(l) as recommended in the Staff Report.

13. Section 437.6(m): Misrepresenting Business Opportunity as an Employment Opportunity

Section 437.6(m) prohibits business opportunity sellers from misrepresenting a business opportunity as an employment opportunity. The Commission's law enforcement experience demonstrates that some business opportunity sellers lure unsuspecting consumers by falsely representing that they are offering employment when, in fact, they are offering vending, work-at-home, or other business opportunities. For example, in some instances consumers have responded to advertisements seeking sales executives, only to discover that the "position" requires them to purchase equipment or products from the seller and, in turn, to sell those products.⁴⁴⁵ The Commission concludes that this prohibition is necessary to protect consumers against false representations of employment opportunities.

⁴⁴² This is consistent with the interim Business Opportunity Rule approach. 16 CFR 437.1(h).

⁴⁴³ *E. v. F. C. v. AM*, I.J., No. SACV-00-112-AHS-ANx (C.D. Cal. 2001) (failure to honor 90-day money back guarantee); *F. C. v. G*, I.J., No. 00-023 (D. Wyo. 2000) (failure to honor 90-day refund policy).

⁴⁴⁴ 73 FR at 19076.

⁴⁴⁵ *F. C. v. A*, I.J., No. 02-9270 SJL (AJWx) (C.D. Cal. 2002) (defendants placed ads in "Help Wanted" sections of newspaper offering salaried position); *F. C. v. L*, I.J., No. 6:02-CV-681-ORL-19 DAB (M.D. Fla. 2003) (defendants sent emails to job seekers who posted their resumes on job Web sites, falsely representing the availability of jobs and guaranteeing a steady stream of work); *F. C. v. M*, I.J., No. 3:99 CV 1272 (D. Conn. 2000) (defendants sent unsolicited emails falsely offering a \$13.50 per hour position processing applications for credit, loans, or employment).

No comments received in response to the RNPR or the Staff Report were directed to this provision, and the final Rule contains § 437.6(m) as recommended in the Staff Report.

14. Section 437.6(n): Misrepresenting the Exclusivity of Territories

Section 437.6(n) prohibits misrepresentations about the terms of any territorial exclusivity or limited territorial protection offered to a prospective purchaser.⁴⁴⁶ In the Commission's experience, false or misleading promises about territories are a common deceptive practice reported by business opportunity purchasers.⁴⁴⁷ The Commission has stated that representations about territorial exclusivity or more limited territorial protections are material because they often induce a prospective purchaser into believing that he or she will not be competing for customers with the seller or other purchasers, thereby increasing the purchaser's likelihood of success.⁴⁴⁸

No comments received in response to the RNPR or the Staff Report were directed to this provision, and the final Rule contains § 437.6(n) as recommended in the Staff Report.

15. Section 437.6(o): Assigning a Purported Exclusive Territory to Another Purchaser

Section 437.6(o) prohibits a seller from assigning a single "exclusive" territory to more than one purchaser. This prohibition complements § 437.6(n), which prohibit sellers from misrepresenting territories. It is intended to address sellers' post-sale conduct, and prohibits the seller from failing to honor its promises regarding exclusive or protected territories. Consumer complaints indicate, and the Commission's law enforcement experience confirms, that fraudulent business opportunity sellers often sell the same purportedly exclusive territory to several unsuspecting purchasers.⁴⁴⁹ In these circumstances, purchasers who have been lured to invest in an opportunity on the basis of promises of

⁴⁴⁶ 71 FR at 19076. In some instances, a business opportunity seller may offer a prospect an exclusive territory, in which no other person has the right to compete within the territory. In other instances, a seller may offer a more limited protection. For example, the seller may prohibit other purchasers from operating in the territory, but reserve to itself the ability to conduct telemarketing or Internet sales in the territory. Regardless of the scope of the territorial protection, § 437.6(n) prohibits business opportunity sellers from misrepresenting the nature of the territory.

⁴⁴⁷ *I*, at 19065.

⁴⁴⁸ *I*, at 19075.

⁴⁴⁹ *E. v. F. C. v. A*, I.J., No. 1:89-CV-462-RLV (N.D. Ga. 1989).

an exclusive territorial lock on their market find that their chances of success are materially reduced by competition from the other purchasers.

No comments received in response to the RNPR or the Staff Report were directed to this provision, and the final Rule contains § 437.6(o) as recommended in the Staff Report.

16. Section 437.6(p): Misrepresenting Third Party Endorsements or Other Affiliation

Section 437.6(p) prohibits business opportunity sellers from misrepresenting that "any person, trademark or service mark holder, or governmental entity, directly or indirectly benefits from, sponsors, participates in, endorses, approves, authorizes, or is otherwise associated with the sale of the business opportunity or the goods or services sold through the business opportunity."⁴⁵⁰ The Commission's enforcement experience indicates that business opportunity frauds often lure consumers by misrepresenting that their opportunities have been approved or endorsed by a government agency or well-known third party.⁴⁵¹

⁴⁵⁰ *G*, I.J., No. 01-6885-CIV-Ferguson (S.D. Fla. 2001) (misrepresented HUD approval); *F. C. v. G*, I.J., No. 00-023 (D. Wyo. 2000) (misrepresented HUD approval); *F. C. v. B*, I.J., No. 95 8429-CIV-Zloch (S.D. Fla. 1995) (misrepresented FDA approval); *F. C. v. H*, I.J., No. 93-7002 AAH (JGX) (C.D. Cal. 1993) (order restricting use of testimonials and endorsements in the sale of business opportunities).

⁴⁵¹ *E. v. F. C. v. A*, I.J., No. 01-6885-CIV-Ferguson (S.D. Fla. 2001) (misrepresented FDA approval); *F. C. v. G*, I.J., No. 00-023 (D. Wyo. 2000) (misrepresented HUD approval); *F. C. v. B*, I.J., No. 95 8429-CIV-Zloch (S.D. Fla. 1995) (misrepresented FDA approval); *F. C. v. H*, I.J., No. 93-7002 AAH (JGX) (C.D. Cal. 1993) (order restricting use of testimonials and endorsements in the sale of business opportunities).

⁴⁵² *E. v. F. C. v. G*, I.J., No. 96-2494 PHX RCB (D. Ariz. 1996).

⁴⁵³ 71 FR at 19077.

⁴⁵⁴ . . . at n.236 ("After earnings claims, false testimonials and shill references are the most common Section 5 allegations in Commission business opportunities cases.")

⁴⁵⁵ *E. v. F. C. v. A. E. ' D. , I J .*, No. 04-22431-CIV-Martinez (S.D. Fla. 2004); *v. , No. 01-20077-01-KHV* (D. Kan. 2001); *F. C. v. H. M. E. . L. .*, No. 98-222-CIV-T-23 E (M.D. Fla. 1998); *F. C. v. I . j .*, No. 98-2140 (C.D. Cal. 1998); *F. C. v. I M . M . , I J .*, No. 96-6671-CIV-Gonzalez (S.D. Fla. 1996); *F. C. v. A . B . C . G . , I J .*, No. 95-6634-CIV-Ryskamp (S.D. Fla. 1995).

⁴⁵⁶ *E. v. F. C. v. A M . A ' , I J .*, No. 02-CV-0679-D (N.D. Tex. 2002); *F. C. v. , No. 97-2680-CIV-Ungaro-Benages* (S.D. Fla. 1997); 71 FR at 19077 n. 238.

⁴⁵⁷ Indeed, the Commission has long held that the failure to disclose compensation paid to an endorser is a deceptive practice in violation of Section 5.

Rule or the Business Opportunity Rule would not be justified.

invalid by a court, the remainder will still be in effect.⁴⁸¹ No comments received in response to the RNPR or the Staff Report were directed to this provision.

I. Introduction

The Commission is submitting the final Rule and a Supplemental Supporting Statement to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–21. The final Rule amends a trade regulation rule governing business opportunity sales. The final Rule covers those business opportunities currently covered by the interim Business Opportunity Rule (and formerly covered by the Original Franchise Rule, as explained above), as well as certain others not covered by the interim Business Opportunity Rule, such as sellers of work-at-home programs. The final Rule requires business opportunity sellers to disclose specified information and to maintain certain records relating to business opportunity sales transactions. The currently approved estimate for the disclosure and recordkeeping burden under the interim Business Opportunity Rule is 16,750 hours for business opportunity sellers. That estimate was based on an estimated 2,500 business opportunity sellers. As discussed below, the final Rule reduces the existing burden on business opportunity sellers by streamlining disclosure requirements to minimize compliance costs.

In the RNPR, Commission staff estimated there were approximately 3,050 business opportunity sellers covered by the RPBOR. This figure consisted of an estimated 2,500 vending machine, rack display, and other opportunity sellers currently covered by the interim Business Opportunity Rule, and an estimated 550 work-at-home opportunity sellers, which would be newly covered entities under the final Rule. Because the final Rule is no different than the RPBOR regarding the types of entities to which it applies, and the Commission received no information suggesting the need to update these prior estimates, the Commission retains them for the final Rule. Additionally, Commission staff estimates that approximately 174 of those sellers market business opportunities in Spanish and that approximately 79 of the 3,050 business

opportunity sellers market in languages other than English or Spanish.⁴⁸²

A. D

As discussed below, the final Rule is designed to streamline and substantially reduce the quantity of information business opportunity sellers are required to disclose under the interim Business Opportunity Rule. The final Rule impacts sellers differently, depending upon whether they are currently covered by the interim Business Opportunity Rule and what language they use to market the business opportunities.

1. Mandatory Disclosures

For the 2,500 vending machine, rack display, and other business opportunity sellers currently covered by the interim Business Opportunity Rule, the final Rule substantially reduces the disclosures from more than 20 categories of information to five—the seller’s identifying information, earnings claims, lawsuits, refund and cancellation policies, and prior purchasers. This streamlining also will minimize compliance costs for the 550 business opportunity sellers that will be newly subject to the Rule. Business opportunity sellers must disclose whether or not they make earnings claims. The decision to make an earnings claim, however, is optional. While the disclosures of references and earnings claims retain, for the most part, the interim Business Opportunity Rule requirements, the required disclosure of lawsuits is reduced from the interim Business Opportunity Rule.⁴⁸³

The final Rule imposes one additional requirement that was not present in either the interim Business Opportunity Rule or the RPBOR, which was introduced in the Staff Report. For business opportunities marketed in Spanish, § 437.5 of the final Rule

requires that sellers provide potential purchasers with the Spanish version of the disclosure document (Appendix B to the Rule) and provide all other required disclosures in Spanish. For sales conducted in a language other than English or Spanish, the final Rule requires that sellers make the required disclosures in the same language as the sale, using the form and an accurate translation of the language set forth in Appendix A, as well as any additional required disclosures. As discussed in the Statement of Basis and Purpose, this translation requirement is supported by long-standing Commission policy, the Commission’s law enforcement experience, the rulemaking record, and the rationale supporting staff’s recommendation.

2. Incorporation of Existing Materials

The final Rule reduces collection and dissemination costs from those imposed by the interim Business Opportunity Rule, by permitting sellers to reference in their disclosure documents materials already in their possession. For example, a seller need not repeat its refund policy in the text of the disclosure document, but may incorporate its contract or brochures, or other materials that already provide the necessary details.

3. Use of Electronic Dissemination of Information

The final Rule defines the term “written” to include electronic media. Accordingly, all business opportunities covered by the final Rule are permitted to use the Internet and other electronic media to furnish disclosure documents. Allowing this distribution method should greatly reduce sellers’ compliance costs over the long run, especially costs associated with printing and distributing disclosure documents. As a result of this proposal, the Commission expects sellers’ compliance costs will decrease substantially over time.

4. Use of Computerized Data Collection Technology

Finally, because of advances in computerized data collection technology, the Commission anticipates that the costs of collecting information and recordkeeping requirements imposed by the final Rule will be minimal. For example, a seller can easily maintain a spreadsheet of its purchasers, which can be sorted by location. This would enable a seller to easily comply with the reference disclosure requirement (at least 10 prior purchasers in the last three years who are located nearest to the prospective

⁴⁸¹ This provision is comparable to the severability provision in the Amended Franchise Rule, 16 CFR 436.11, as well as the severability provisions in other Commission rules. . . . , . . . , TSR, 16 CFR 310.9.

⁴⁸² To estimate how many of the 3,050 sellers market business opportunities in languages other than English, staff relied upon 2009 United States Census Bureau (“Census”) data. Calculations based upon a recent Census survey reveal that approximately 5.7% of the U.S. population speaks Spanish or Spanish Creole at home and speak English less than “very well.” Calculations based upon that same survey reveal that approximately 2.6% of the U.S. population speaks a language other than Spanish, Spanish Creole, or English at home and speak English less than “very well.” Staff therefore projected that 5.7% of all entities selling business opportunities market in Spanish or Spanish Creole and 2.6% of all entities selling business opportunities market in languages other than English, Spanish and Spanish Creole. ://

⁴⁸³ Section III.C.2.

purchaser, or, if there are not 10 prior purchasers, then all prior purchasers). In the alternative, the final Rule permits a seller to maintain a national list of purchasers.

B. *Recordkeeping*

Section 437.7 of the final Rule prescribes recordkeeping requirements necessary for effective enforcement of the Rule. Specifically, sellers of a covered business opportunity, and their principals, must retain for at least three years the following types of documents: (1) Each materially different version of all documents required by the Rule; (2) each purchaser's disclosure receipt; (3) each executed written contract with a purchaser; and (4) all substantiation upon which the seller relies for each earnings claim made. The final Rule requires that these records be made available for the Commission's inspection, but does not otherwise require their production. As previously noted, because of advances in computerized data collection technology, the Commission anticipates that the costs of collecting information and recordkeeping requirements imposed by the final Rule will be minimal.

C. *Enforcement* *Harassment* *Burden* *Liability*

For the RNPR, the Commission submitted the RPBOR and associated documentation under the PRAsclJs foriation upon whhfvievaJeq7r tht5.4465.8(Fed.4998 342.5282Tj-0.0029 Tw 7 0 0 9 45 725 Tm89.639 34 9..5 Tj-0Tision)Tj-1 -1didrwise29 Tw4.96d n the RPBORnal Rul Comlnspection, two by but (h mate Ru incche)Tj0 Tw T*(ctioe will be T*(int was not pcostsf a)TjT*(ctioin fon. vid

⁴⁸⁶ Bureau of Consumer Protection, *F.C.* (16 *CF* 437) (Nov. 2010) ("Staff Report"), *F.R.D.* 2010/1/101028. In November, the Commission published a notice in the *F.R.D.* announcing the availability of, and seeking comment on, the Staff Report. 75 *FR* 68559 (Nov. 8, 2010).

⁴⁸⁴ 73 *FR* at 16129.

⁴⁸⁵ As discussed within the Statement of Basis and Purpose, this requirement was not present in the RNPR. Rather, it was recommended in the Staff Report, and ultimately adopted in the final Rule.

⁴⁸⁷ DOJ Staff Report at 2. The comment, from the Office of Consumer Litigation, U.S. Department of Justice, registered strong support for the requirement.

⁴⁸⁸ 17.5 cents is staff's estimate of the current

of which came from the MLM industry. The MLM industry urged the Commission to exclude MLM plans from the scope of IPBOR due to the burdens imposed on them through the IPBOR and the IPBOR's failure to differentiate between unlawful pyramid schemes and legitimate companies using an MLM model. In consideration of the comments received in response to the INPR, and a reassessment of the Commission's law enforcement history, the Commission subsequently issued a RNPR, in which the Commission decided to narrow the scope of the IPBOR to avoid broadly sweeping in all sellers of MLM plans. In addition, the Commission proposed a more narrowed definition of "business opportunity" and also eliminated two required disclosures—information about legal actions pertaining to a business opportunity seller's sales personnel, and the number of cancellation or refund requests the seller received. The Commission received fewer than 125 comments and rebuttal comments in response to RNPR addressing these changes. The Commission received written comment from six individuals and entities following the public workshop held by the Commission. Finally, the Commission received 27 comments in response to the Staff Report. Many of those comments opposed the Commission's decision to narrow the scope of the Rule to avoid broadly sweeping in the MLMs.

C. D. E
 N E
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 N E I A

The final Rule primarily applies to "sellers" of business opportunities, including vending, rack display, medical billing, and work-at-home (craft assembly, envelope stuffing) opportunities. The Commission believes that many of these sellers fall into the category of small entities. Determining the precise number of small entities affected by the final Rule, however, is difficult due to the wide range of businesses engaged in business opportunity sales. The staff estimates that there are approximately 3,050 business opportunity sellers, including some 2,500 vending machine, rack display, and related opportunity sellers and 550 work-at-home opportunity sellers. Most established and some start-up business opportunities would likely be considered small businesses according to the applicable Small Business Ad.3pule primaril2 to the wrMee

⁴⁹⁰ Since October 2000, SBA size standards have been based on the North American Industry Classification System ("NAICS"), in place of the Standard Industrial Classification ("SIC") system. In general, a company in a non-manufacturing industry is a small business if its average annual receipts are \$7 million or less.

significant economic impact upon small businesses.

The final Rule requires business opportunity sellers to provide only five affirmative disclosures in a one-page disclosure document. This is a significant reduction from the more than 20 disclosures now required by the Commission's interim Business Opportunity Rule, with which many business opportunity sellers are now obligated to comply.

I. Reporting and recordkeeping requirements, Trade practices.
16 CFR 437

Reporting and recordkeeping requirements, Trade practices.

By direction of the Commission.

D.C.

For the reasons set forth in the preamble, the Federal Trade Commission amends title 16, Code of Federal Regulations, by revising part 437 to read as follows:

PART 437—BUSINESS OPPORTUNITY RULE

Sec.

437.1 Definitions.

437.2 The obligation to furnish written documents.

437.3 The disclosure document.

437.4 Earnings claims.

437.5 Sales conducted in Spanish or other languages besides English.

437.6 Other prohibited practices.

437.7 Record retention.

437.8 Franchise exemption.

437.9 Outstanding orders; preemption.

437.10 Severability.

Appendix A to Part 437—Disclosure of Important Information About Business Opportunity

Appendix B to Part 437—Disclosure of Important Information About Business Opportunity (Spanish-Language Version)

A 15 U.S.C. 41–58.

§ 437.1 Definitions.

The following definitions shall apply throughout this part:

(a) *A* means a criminal information, indictment, or proceeding; a civil complaint, cross claim, counterclaim, or third party complaint in a judicial action or proceeding; arbitration; or any governmental administrative proceeding, including, but not limited to, an action to obtain or issue a cease and desist order, an assurance of voluntary compliance, and an assurance of discontinuance.

(b) *Ad* means an entity controlled by, controlling, or under common control with a business opportunity seller.

(c) *B* means a commercial arrangement in which:

(1) A seller solicits a prospective purchaser to enter into a new business; and

(2) The prospective purchaser makes a required payment; and

(3) The seller, expressly or by implication, orally or in writing, represents that the seller or one or more designated persons will:

(i) Provide locations for the use or operation of equipment, displays, vending machines, or similar devices, owned, leased, controlled, or paid for by the purchaser; or

(ii) Provide outlets, accounts, or customers, including, but not limited to, Internet outlets, accounts, or customers, for the purchaser's goods or services; or

(iii) Buy back any or all of the goods or services that the purchaser makes, produces, fabricates, grows, breeds, modifies, or provides, including but not limited to providing payment for such services as, for example, stuffing envelopes from the purchaser's home.

(d) *D* means any person, other than the seller, whose goods or services the seller suggests, recommends, or requires that the purchaser use in establishing or operating a new business.

(e) *D* or means to give information in writing that is clear and conspicuous, accurate, concise, and legible.

(f) *E* means any oral, written, or visual representation to a prospective purchaser that conveys, expressly or by implication, a specific level or range of actual or potential sales, or gross or net income or profits. Earnings claims include, but are not limited to:

(1) Any chart, table, or mathematical calculation that demonstrates possible results based upon a combination of variables; and

(2) Any statements from which a prospective purchaser can reasonably infer that he or she will earn a minimum level of income (e.g., "earn enough to buy a Porsche," "earn a six-figure income," or "earn your investment back within one year").

(g) *E* means a specified geographic or other actual or implied marketing area in which the seller promises not to locate additional purchasers or offer the same or similar goods or services as the purchaser through alternative channels of distribution.

(h) *G* means any instrumentality through which a person may communicate with the public, including, but not limited to, television, radio, print, Internet, billboard, Web site, commercial bulk email, and mobile communications.

(i) *M* means likely to affect a person's choice of, or conduct regarding, goods or services.

(j) *N* means a business in which the prospective purchaser is not currently engaged, or a new line or type of business.

(k) means an individual, group, association, limited or general partnership, corporation, or any other business entity.

(l) means:

(1) A business from which the seller acquired, directly or indirectly, the major portion of the business' assets; or

(2) Any business previously owned or operated by the seller, in whole or in part.

(m) means furnishing the prospective purchaser with existing or potential locations, outlets, accounts, or customers; requiring, recommending, or suggesting one or more locators or lead generating companies; providing a list of locator or lead generating companies; collecting a fee on behalf of one or more locators or lead generating companies; offering to furnish a list of locations; or otherwise assisting the prospective purchaser in obtaining his or her own locations, outlets, accounts, or customers,

that advertising and general advice about business development and training shall not be considered as "providing locations, outlets, accounts, or customers."

(n) means a person who buys a business opportunity.

(o) means as of January 1, April 1, July 1, and October 1.

(p) means all consideration that the purchaser must pay to the seller or an affiliate, either by contract or by practical necessity, as a condition of obtaining or commencing operation of the business opportunity. Such payment may be made directly or indirectly through a third party. A

(p) means

preserved in tangible form and read. It includes: type-set, word processed, or handwritten documents; information on computer disk or CD-ROM; information sent via email; or information posted on

(i) The beginning and ending dates when the represented earnings were achieved; and

(ii) The number and percentage of all persons who purchased the business opportunity prior to the ending date in paragraph (b)(3)(i) of this section who achieved at least the stated level of earnings.

(c) Disseminate industry financial, earnings, or performance information unless the seller has written substantiation demonstrating that the information reflects, or does not exceed, the typical or ordinary financial, earnings, or performance experience of purchasers of the business opportunity being offered for sale.

(d) Fail to notify any prospective purchaser in writing of any material changes affecting the relevance or reliability of the information contained in an earnings claim statement before the prospective purchaser signs any contract or makes a payment or provides other consideration to the seller, directly or indirectly, through a third party.

§ 437.5 Sales conducted in Spanish or other languages besides English.

(a) If the seller conducts the offer for sale, sale, or promotion of a business opportunity in Spanish, the seller must provide the disclosure document required by § 437.3(a) in the form and language set forth in appendix B to this part, and the disclosures required by §§ 437.3(a) and 437.4 must be made in Spanish.

(b) If the seller conducts the offer for sale, sale, or promotion of a business opportunity in a language other than English or Spanish, the seller must provide the disclosure document required by § 437.3(a) using the form and an accurate translation of the language set forth in appendix A to this part, and the disclosures required by §§ 437.3(a) and 437.4 must be made in that language.

§ 437.6 Other prohibited practices.

In connection with the offer for sale, sale, or promotion of a business opportunity, it is a violation of this part and an unfair or deceptive act or practice in violation of Section 5 of the FTC Act for any seller, directly or indirectly through a third party, to:

(a) Disclaim, or require a prospective purchaser to waive reliance on, any statement made in English or Spanish by §§ 437.3(a) and 437.4 must be made in

any time from before to within six months after commencing operation of the franchisee's business is less than \$500, or

(b) Under § 436.8(a)(7), there is no written document describing any material term or aspect of the relationship or arrangement.

§ 437.9 Outstanding orders; preemption.

(a) A business opportunity required by prior FTC or court order to follow the Franchise Rule, 16 CFR part 436, may

petition the Commission to amend the order or to stipulate to an amendment of the court order so that the business opportunity may follow the provisions of this part.

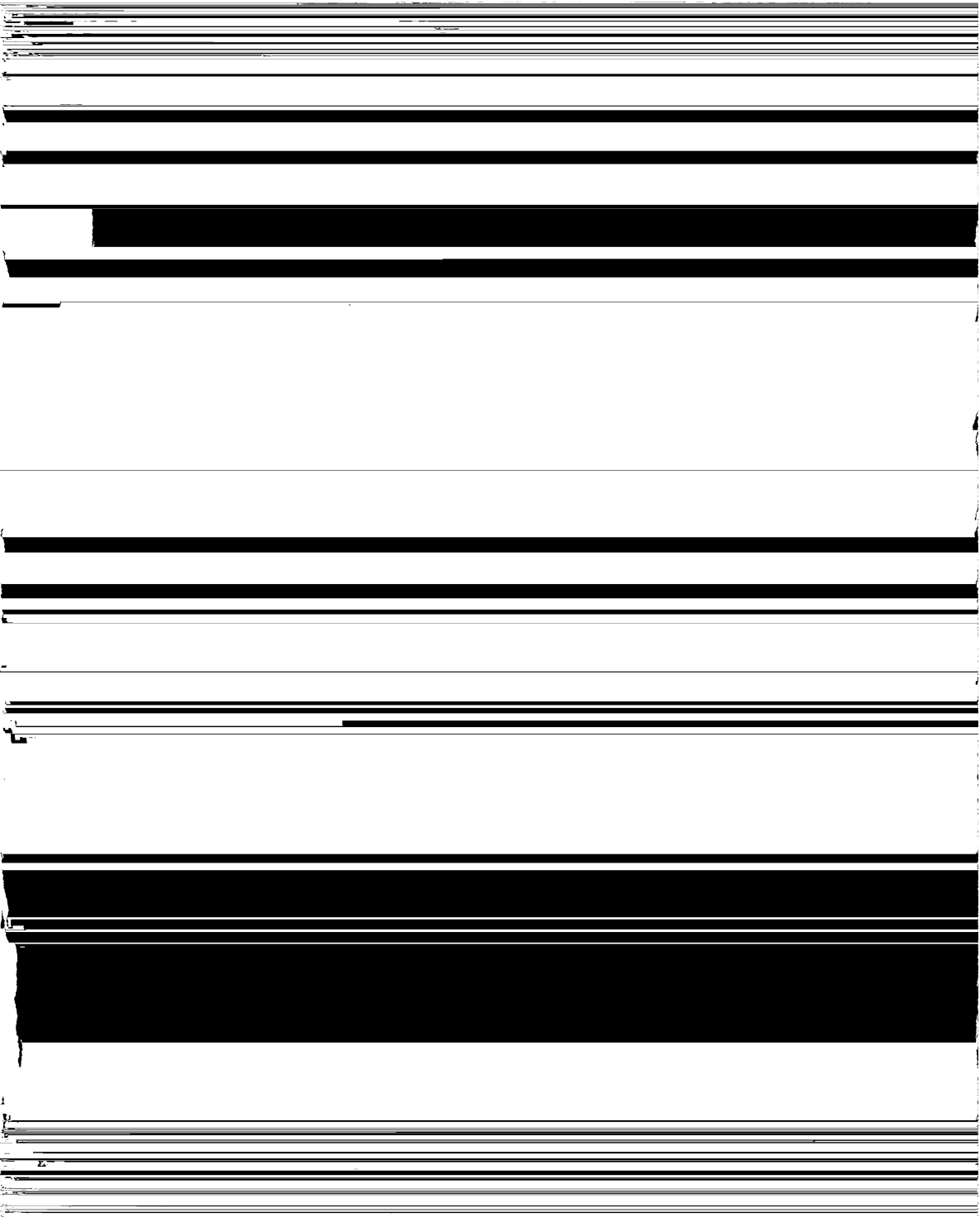
(b) The FTC does not intend to preempt the business opportunity sales practices laws of any state or local government, except to the extent of any conflict with this part. A law is not in conflict with this Rule if it affords prospective purchasers equal or greater protection, such as registration of

disclosure documents or more extensive disclosures. All such disclosures, however, must be made in a separate state disclosure document.

§ 437.10 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall continue in effect.

APPENDIX A to PART 437



Required by the Federal Trade Commission, Rule 16 C.F.R. Part 437

Name of Seller: _____ Address: _____

Phone: _____ Salesperson: _____ Date: _____

