

**Supporting Statement
Business Opportunity Rule¹
16 C.F.R. Part 437
(OMB Control Number: 3084-0142)**

1. Necessity for Collecting the Information

To correct evidence of widespread deceptive and unfair practices in the sale of franchises and business opportunities, the Federal Trade Commission (“FTC” or “Commission”) issued the Business Opportunity Rule (“Rule”). The Rule requires business opportunity sellers to furnish to prospective purchasers a disclosure document that provides information about the seller, the seller’s business, and the nature of the proposed business relationship. Additional disclosures are required if a seller makes claims about the earnings a purchaser can achieve with the business opportunity that is offered for sale. The seller must also preserve the information that forms a reasonable basis for such claims.

The Rule requires that all disclosures be made at least ten business days before any sale, and that sellers use disclosure documents compliant with the form and content specified by the Rule. The Rule also requires disclosures of all material facts. It does not regulate the substantive terms of the relationship between business opportunity seller and purchaser.

2. Use of the Information

Prospective business opportunity buyers use the disclosures both to become better informed about the prospective investment and to verify the seller’s representations.

If the business opportunity seller chooses to make financial performance claims, disclosures are necessary to enable a prospective purchaser to analyze the credibility of those claims. For example, a business opportunity seller might represent to a prospective purchaser that s/he should expect annual sales of \$50,000. Without the Rule, the prospective purchaser might have difficulty in assessing the accuracy or reliability of the claim. To make sure the prospective purchaser can accurately assess the claim, the Rule requires the business opportunity seller to: (1) indicate the number and percentage of purchasers whose performance equaled or exceeded the claim; and (2) save and offer to show prospective purchaser the background material upon which the claim is based. This allows the prospective purchaser to form an

¹ On November 22, 2011, the FTC announced final amendments to the Rule (<http://www.ftc.gov/opa/2011/11/busopp.shtm>) (press release and accompanying rule document). The final Rule will be effective on March 1, 2012. An associated PRA analysis had been prepared within that rulemaking addressing the changes in PRA burden estimates per respondent attributable to the final amendments (largely, reductions in burden due to streamlined disclosure requirements) and the final Rule’s new applicability to work-at-home opportunities. On the same date, the FTC submitted to OMB a Supplemental PRA Supporting Statement for the rulemaking. The information collection requirements and PRA burden estimates in the instant Supporting Statement, however, concern the Rule currently in effect, and are being submitted to OMB for renewed clearance to avoid a potential gap in clearance between December 31, 2011 (when the current clearance otherwise expires) and prospective OMB action on the separately submitted PRA analysis for the final Rule.

independent judgment about the reliability of the claim. It also discourages the use of unrealistic financial performance claims, because the business opportunity seller knows that the prospective purchaser can determine whether an earnings claim is credible by examining the background material. The Rule also requires that any background material must be shown to the Commission during a compliance investigation so that the Commission can evaluate whether or not the basis for the claim is reasonable.

3. Using Improved Information Technology to Reduce Burden

Consistent with the aims of the Government Paperwork Elimination Act, 44 U.S.C. § 3504 note, the final Rule² will permit business opportunity sellers great latitude in using new technologies, in particular the Internet, to reduce compliance costs. Business opportunity sellers will be able to reduce significantly printing and distribution costs through the expanded use of email and the Internet to furnish disclosure documents. The final Rule also will permit the use of electronic signatures and electronic recordkeeping.

4. Efforts to Identify Duplication/Availability of Similar Information

Approximately twenty six states have some kind of business opportunity sales regulations. These state regulations, however, are not uniform, varying widely both in their coverage and in the disclosure requirements. Accordingly, coordination with states to reduce duplication efforts would be difficult. For the final Rule taking effect March 1, 2012, however, the Commission will keep the disclosure obligations arising from the final Rule to a minimum. In fact, business opportunity sellers complying with the final Rule will be able to furnish a single-page disclosure document, with appropriate attachments.

Similarly, the final Rule will reduce duplication by enabling business opportunity sellers to comply with the Rule by using existing materials. For example, rather than repeating its cancellation or refund policy in the disclosure document, a seller can simply check the box indicating that it offers a cancellation or refund policy and then attach to the disclosure document a brochure or other document that already sets forth the required information.

5. Efforts to Minimize Burden on Small Businesses

Unlike business opportunity regulations in many states, the Rule does not require a seller to register or file disclosure documents with the government as a prerequisite to a sale. Moreover, upon the final Rule's taking effect, required disclosures will be kept to a minimum, permitting sellers to reference existing materials, and permitting electronic disclosure.

6. Consequences of Conducting Collection Less Frequently

Any reduction in the frequency of collecting information required by the Rule would not

² See note 1 *supra*.

be appropriate given the Rule's purpose to ensure that all prospective business opportunity purchasers receive valuable and accurate pre-sale information about the proposed investments.

7. Circumstances Requiring Collections Inconsistent with Guidelines

The collection of information in this Rule is consistent with all applicable guidelines contained in 5 C.F.R. Part 1320.5(d)(2).

8. Consultation with Outside Sources

The Commission has had a long history of seeking outside input regarding the Franchise Rule and the Business Opportunity Rule.³ More recently, it sought public comment for the current clearance request (see 76 Fed. Reg. 59,398, Sept. 26, 2011), receiving no comments, and is now providing a second opportunity for public comment on its burden analysis as required by 5 C.F.R. Part 1320.

9. Payment or Gift to Respondents

Not applicable.

10. Assurances of Confidentiality

The collection of information in this Rule is consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2). To the extent that information covered by a recordkeeping requirement of the Rule is collected by the Commission for law enforcement purposes, the confidentiality provisions of Sections 6(f) and 21 of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f) and 57b-2, will apply.

11. Sensitive or Private Information

Under the Rule, a business opportunity seller must disclose certain purchaser's names, business addresses, and telephone numbers. This information lets prospective purchasers conduct their own due diligence investigation of the business opportunity seller's claims; in particular, earnings claims. No other information about individual purchasers must be disclosed.

³ See, e.g., 60 Fed Reg. 17,656 (April 7, 1995) (periodic rule review, including comment sought on whether the Franchise Rule's disclosure requirements were appropriate for business opportunity sellers, whether there should be a separate business opportunity trade regulation rule, etc.); 62 Fed. Reg. 9,115 (February 28, 1997) (Advance Notice of Proposed Rulemaking) (comments sought on amending the Franchise Rule and promulgating a separate business opportunity rule); 64 Fed. Reg. 57,294 (October 22, 1999) (Notice of Proposed Rulemaking) (proposing a revised disclosure law that would, among other things, separate the disclosure requirements pertaining to business opportunities from those pertaining to business-format franchises); 71 Fed. Reg. 19,054 (April 12, 2006) (original Notice of Proposed Rulemaking); 73 Fed. Reg. 16,110 (March 12, 2008) (revised Notice of Proposed Rulemaking); 75 Fed. Reg. 68,559 (Nov. 8, 2010) (seeking public comment on the FTC Staff Report on the Business Opportunity Rule).

For example, sellers who choose to make an earnings claim based upon the earnings history of current purchasers need not identify in the disclosure document the individual purchasers whose information formed the basis of the earnings claim nor disclose their individual earnings.

12. Estimated Annual Hours and Labor Cost Burden

Annual burden hours: 16,750 hours

Based on a review of trade publications and information from state regulatory authorities, staff believes that, on average, from year to year, there are approximately 2,500 business opportunity sellers, with perhaps about 10% of that total reflecting an equal amount of new and departing business entrants.

The burden estimates for compliance will vary depending on the particular business opportunity seller's prior experience with the original Franchise Rule. Staff estimates that 250 or so new business opportunity sellers will enter the market each year, requiring approximately 30 hours each to develop a Rule-compliant disclosure document. Thus, staff estimates that the cumulative annual disclosure burden for new business opportunity sellers will be approximately 7,500 hours. Staff further estimates that the remaining 2,250 established business opportunity sellers will require no more than approximately 3 hours each to update their disclosure document. Accordingly, the cumulative estimated annual disclosure burden for established business opportunity sellers will be approximately 6,750 hours.

Business opportunity sellers might need to maintain additional documentation for the sale of business opportunities in states not currently requiring these records as part of their regulation of business opportunity sellers. This might entail an additional hour of recordkeeping per year. Accordingly, staff estimates that business opportunity sellers will cumulatively incur approximately 2,500 hours of recordkeeping burden per year (2,500 business opportunity sellers x 1 hour).

Thus, the total burden for business opportunity sellers is approximately 16,750 hours (7,500 hours of disclosure burden for new business opportunity sellers + 6,750 hours of disclosure burden for established business opportunity sellers + 2,500 of recordkeeping burden for all business opportunity sellers).

Associated annual labor cost: \$3,595,000

Labor costs are determined by applying applicable wage rates to associated burden hours. Staff presumes an attorney will prepare or update the disclosure document at an estimated \$250 per hour. As applied, this would yield approximately \$3,562,500 in labor costs attributable to compliance with the Rule's disclosure requirements ((250 new business opportunity sellers x \$250 per hour x 30 hours per seller) + (2,250 established business opportunity sellers x \$250 per hour x 3 hours per seller)).

Staff anticipates that recordkeeping would be performed by clerical staff at

approximately \$13 per hour. At 2,500 hours per year for all affected business opportunity sellers (see above), this amounts to an estimated \$32,500 of recordkeeping cost. Thus, the combined labor costs for recordkeeping and disclosure for business opportunity sellers is approximately \$3,595,000.

13. Estimated Capital and Other Non-Labor Costs

Business opportunity sellers must also incur costs to print and distribute the disclosure document. These costs vary based upon the length of the disclosures and the number of copies produced to meet the expected demand. Staff estimates that 2,500 business opportunity sellers print and mail 100 documents per year at a cost of \$15 per document, for a total cost of \$3,750,000 (2,500 business opportunity sellers x 100 documents per year x \$15 per document).

Business opportunity sellers must also complete and disseminate an FTC-required cover sheet that identifies the business opportunity seller, the date the document is issued, a table of contents, and a notice that tracks the language specifically provided in the Rule. Although some of the language in the cover sheet is supplied by the government for the purpose of disclosure to the public, and is thus excluded from the definition of “collection of information” under the PRA, see 5 C.F.R. 1320.3(c)(2), there are residual costs to print and mail these cover sheets, including within them the presentation of related information beyond the supplied text. Staff estimates that 2,500 business opportunity sellers complete and disseminate 100 cover sheets per year at a cost of approximately \$0.55 per cover sheet, or a total cost of approximately \$137,500 (2,500 business opportunity sellers x 100 cover sheets per year x \$0.55 per cover sheet).

Accordingly, the cumulative non-labor cost incurred by business opportunity sellers each year attributable to compliance will be approximately \$3,887,500 (\$3,750,000 for printing and mailing documents + \$137,500 for completing and mailing cover sheets).

14. Estimate of Cost to Federal Government

Based on recent years’ past experience monitoring compliance with and enforcing the Rule, and projected over the prospective 3-year clearance ahead, staff estimates that annualized cost for such activities will be approximately \$154,000. This estimate takes into account the Commission’s cost of identifying non-compliance in the marketplace, investigating targets, and prosecuting law enforcement actions in federal district court. The estimate includes time spent by attorneys, economists, and investigators, as well as clerical and support staff costs.

15. Changes in Burden

Not applicable.

16. Statistical Use of Information

There are no plans to publish any information for statistical use.

17. Failure to Display of the Expiration Date for OMB Approval

Not applicable.

18. Exceptions to the Certification for Paperwork Reduction Act Submissions

Not applicable.