

**Federal Trade Commission
Supporting Statement
Business Opportunity Rule
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 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 seven calendar 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 material facts, but it does not regulate the substantive terms of the relationship between business opportunity seller and purchaser. It also requires sellers to keep for a period of three years copies of: (1) each materially different version of documents required by the Rule; (2) each purchaser’s disclosure receipt and contract; and (3) substantiation for any earnings claims.

For business opportunities marketed in Spanish, Section 437.5 of the 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 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 to the Rule, as well as any additional required disclosures through attachments to the disclosure document.

2. Use of the Information

Prospective business opportunity buyers use the required 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

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. Consideration of Using Improved Information Technology to Reduce Burden

Consistent with the aims of the Government Paperwork Elimination Act, 44 U.S.C. § 3504 note, the Rule permits business opportunity sellers great latitude in using new technologies, in particular the Internet, to reduce compliance costs. Business opportunity sellers can reduce significantly printing and distribution costs through the expanded use of email and the Internet to furnish disclosure documents. The Rule also permits 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. The Commission intends to keep the disclosure obligations arising from the Rule to a minimum. In most instances, business opportunity sellers complying with the Rule will be able to furnish a single-page disclosure document, with appropriate attachments.

Similarly, the Rule reduces 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. Thus, compliance with the Rule does not invoke the fees usually associated with registering or filing disclosure documents, a consideration that might be especially important to small businesses. The Rule, moreover, keeps required disclosures 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 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.

To reduce the required disclosures, which are already streamlined, likely would diminish the Rule's effectiveness.

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.¹ More recently, the Commission sought public comment for the current clearance request (see 82 Fed. Reg. 45,288, Sept. 28, 2017), received no relevant 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

No assurance of confidentiality is necessary, because the Rule does not require business opportunity sellers to register or file any documents with the Commission. To the extent that information covered by a recordkeeping requirement is collected by the Commission for law enforcement purposes, the confidentiality provisions of Sections 6(f) and 21 of the FTC Act, 15 U.S.C. §§ 46(f), 57b-2, will apply.

11. Sensitive or Private Information

Under the Rule, a business opportunity seller must disclose certain purchaser's names, states, 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. For example,

¹ 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); 78 Fed. Reg. 18,712 (April 24, 2009) (Notice announcing public workshop, revised disclosure document, and request for public comment); 75 Fed. Reg. 68,559 (Nov. 8, 2010) (seeking public comment on the FTC Staff Report on the Business Opportunity Rule).

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, or the earnings of any individual purchaser.

Further, to ensure that purchasers understand that their contact information may be disclosed, a privacy statement is included in the disclosure document attached to the Rule: “If you buy a business opportunity from [Name of Seller], your contact information can be disclosed in the future to other potential buyers.” Provided this information, a purchaser concerned about the release of his/her contact information may elect not to make the purchase.

12. Estimated Annual Hours Burden and Labor Cost

FTC staff estimates there are approximately 3,050 business opportunity sellers covered by the Rule, including vending machine, rack display, work-at-home, and other opportunity sellers. Staff also estimates that approximately 10% of the 3,050 business opportunity sellers covered by the Rule reflects an equal amount of new and departing business entrants (thus, for simplicity, staff assumes that, for a given year, there are 2,745 existing business opportunity sellers plus 305 new entrants to the field). Additionally, staff estimates that approximately 165 of business opportunity sellers market business opportunities in Spanish (in addition to English) and approximately 95 sellers market in languages other than English or Spanish² (in addition to English).

A. Estimated Hours Burden

The burden estimates for compliance will vary depending on the particular business opportunity seller’s prior experience with the Rule. Commission staff estimates that the projected 2,745 existing business opportunity sellers will require no more than approximately two hours to update the disclosure document [5,490 total hours]. Staff further projects that the estimated 305 new business opportunity sellers will require no more than approximately five hours to develop the disclosure document [1,525 total hours]. Both existing and new business opportunity sellers will require approximately one hour to file and store records [3,050 total hours], for a cumulative total of 10,065 hours [5,490 hours + 1,525 hours + 3,050 hours] per year to meet the Rule’s disclosure and recordkeeping requirements.

² To estimate how many of the 3,050 sellers market business opportunities in languages other than English, FTC staff relies upon 2015 United States Census Bureau (“Census”) data. http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_S1601&prodType=table. Calculations based upon this data reveal that approximately 5.4% of the United States population speaks Spanish at home and speaks English less than “very well.” Calculations based upon that same survey reveal that approximately 3.1% of the United States population speaks a language other than Spanish or English at home and speak English less than “very well.” Staff thus projected that 5.4% of all entities selling business opportunities market in Spanish and 3.1% of all entities selling business opportunities market in languages other than English or Spanish.

B. Estimated Labor Cost

Labor costs are determined by applying applicable wage rates to associated burden hours. Commission staff assumes that an attorney likely would prepare or update the disclosure document at an estimated hourly rate of \$250. Accordingly, staff estimates that cumulative labor costs are \$2,516,250 [10,065 hours x \$250 per hour].

13. Estimated Capital and Other Non-Labor Costs

A. Printing and Mailing of the Disclosure Document

Business opportunity sellers must also incur costs to print and distribute the single-page disclosure document, plus any attachments. These costs vary based upon the length of the attachments and the number of copies produced to meet the expected demand. Commission staff estimates that 3,050 business opportunity sellers will print and mail approximately 1,000 disclosure documents per year at a cost of \$1.00 per document, for a total cost of \$3,050,000. Conceivably, many business opportunity sellers will elect to furnish disclosures electronically; thus, the total cost could be much less.

B. Translating the Required Disclosures Into a Language Other Than English

The Rule requires that sellers update their disclosures. The costs associated with translating the disclosures will vary depending upon a business opportunity seller's prior experience with the Rule and the language the seller uses to market the opportunity. For example, existing and new business opportunity sellers marketing in Spanish will not incur costs to translate the disclosure document as Appendices A and B to the Rule provide, respectively, illustrations of the requisite disclosure documents in English and Spanish. Existing sellers, regardless of the non-English language used to present disclosures, may incur translation costs to update the document. New entrants that market business opportunities in languages other than English or Spanish (in addition to an assumed use of disclosure documents in English) will incur translation costs to translate Appendix A from English and to enter equivalent responses in these other languages.

As stated above, using assumptions informed by Census data (see footnote 2), FTC staff estimates that 165 sellers market business opportunities in Spanish and an additional 95 sellers market in languages other than English or Spanish. This includes an estimated 10 new entrants in the latter sub-category (based on the assumption that 10% yearly of a given group consists of new entrants with an equal offset for departing business entities). Those new entrants will incur initial translation costs to draft a disclosure document consistent with Appendix A to the Rule.

There are 485 words in Appendix A to the Rule. Therefore, the total cost burden to translate the disclosure document for the 10 new business opportunity sellers marketing in a

language other than English or Spanish will be approximately \$849 [10 sellers x (17.5 cents³ per word x 485 words)].

For purposes of this PRA analysis, staff assumes that both new and existing business opportunity sellers marketing business opportunities in languages other than English [260 sellers]: (1) are marketing in both English and another language; (2) are not incorporating any existing materials into their disclosure document; (3) have been the subject of civil or criminal legal actions; (4) are making earnings claims; (5) have a refund or cancellation policy; and (6) because of all of the above assumptions, require approximately 250 words (approximately one standard, double-spaced page) to translate their updates, in the case of existing business opportunity sellers, or supply and translate their initial disclosures, in the case of new business opportunity sellers. Therefore, the total cost to translate the updates or to translate from English the initial disclosures is approximately \$11,375 [260 sellers x (17.5 cents per word x 250 words)].

Thus, cumulative estimated non-labor costs are \$3,062,224 (\$3,050,000 + \$849 + \$11,375).

14. Estimate of Cost to Federal Government

Based on recent years' past experience monitoring compliance with the Rule and projected over the prospective 3-year clearance ahead, staff estimates that annualized cost for such activities will be approximately \$62,000. This estimate takes into account the Commission's cost of identifying non-compliance in the marketplace. The estimate includes time spent by attorneys and investigators.

15. Changes in Burden

Minor differences in hours and costs from the most recent prior submitted clearance request are due to changed estimates of industry population. The estimates of time to develop a disclosure document for entities newly exposed to the Rule (5 hours) and for other entities to update their disclosure documents (2 hours) remain the same.

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.

³ Staff estimates that it will cost approximately 17.5 cents to translate each word into the language the sellers use to market the opportunities.

18. Exceptions to the Certification for Paperwork Reduction Act Submissions

Not applicable.