

SUBCHAPTER D—TRADE REGULATION RULES

PART 408—UNFAIR OR DECEPTIVE ADVERTISING AND LABELING OF CIGARETTES IN RELATION TO THE HEALTH HAZARDS OF SMOKING

CROSS REFERENCE: For a statement of basis and purpose of Trade Regulation Rule, see 29 FR 8325 of July 2, 1964.

[30 FR 9485, July 29, 1965]

PART 410—DECEPTIVE ADVERTISING AS TO SIZES OF VIEWABLE PICTURES SHOWN BY TELEVISION RECEIVING SETS

§ 410.1 The Rule.

In connection with the sale of television receiving sets, in commerce, as “commerce” is defined in the Federal Trade Commission Act, it is an unfair method of competition and an unfair and deceptive act or practice to use any figure or size designation to refer to the size of the picture shown by a television receiving set or the picture tube contained therein unless such indicated size is the actual size of the viewable picture area measured on a single plane basis. If the indicated size is other than the horizontal dimension of the actual viewable picture area such size designation shall be accompanied by a statement, in close connection and conjunction therewith, clearly and conspicuously showing the manner of measurement.

NOTE 1: For the purposes of this part, measurement of the picture area on a single plane basis refers to a measurement of the distance between the outer extremities (sides) of the picture area which does not take into account the curvature of the tube.

NOTE 2: Any referenced or footnote disclosure of the manner of measurement by means of the asterisk or some similar symbol does not satisfy the “close connection and conjunction” requirement of this part.

Examples of proper size descriptions when a television receiving set shows a 20-inch picture measured diagonally, a 19-inch picture measured horizontally, a 15-inch picture measured vertically, and a picture area of 262 square inches include:

“20 inch (50.80 cm) picture measured diagonally” or
“20 inch (50.80 cm) diagonal”
“19 inch × 15 inch (48.26 cm × 38.10 cm) picture” or
“19 inch (48.26 cm) picture” or
“19 inch (48.26 cm)” or
“262 square inch (1,690.32 cm. sq.) picture.”

Examples of improper size descriptions of a television set showing a picture of the size described above include:

“21 inch (53.34 cm) set” or
“21 inch (53.34 cm) diagonal set” or
“21 inch (53.34 cm) over-all diagonal” or
“Brand Name 21.”

NOTE 3: The numbers in parentheses reflect the metric equivalent of the English measurements. They are provided for information purposes only, and are not required to be included in the disclosures.

(38 Stat. 717, as amended, 15 U.S.C. 41-58)

[36 FR 21518, Nov. 10, 1971; 36 FR 22286, Nov. 24, 1971; as amended at 59 FR 54812, Nov. 2, 1994]

PART 423—CARE LABELING OF TEXTILE WEARING APPAREL AND CERTAIN PIECE GOODS AS AMENDED

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APPENDIX A TO PART 423—GLOSSARY OF STANDARD TERMS

AUTHORITY: 38 Stat. 717, as amended; (15 U.S.C. 41, et seq.)

SOURCE: 48 FR 22743, May 20, 1983; 48 FR 24869, June 3, 1983, unless otherwise noted.

§ 423.1 Definitions.

(a) *Care label* means a permanent label or tag, containing regular care information and instructions, that is attached or affixed in such a manner that it will not become separated from the product and will remain legible during the useful life of the product.

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(b) *Certain Piece Goods* means textile products sold by the piece from bolts or rolls for the purpose of making home sewn textile wearing apparel. This includes remnants, the fiber content of which is known, that are cut by or for a retailer but does not include manufacturers' remnants, up to ten yards long, that are clearly and conspicuously marked *pound goods* or *fabrics of undetermined origin* (i.e., fiber content is not known and cannot be easily ascertained) and trim, up to five inches wide.

(c) *Dryclean* means a commercial process by which soil is removed from products or specimens in a machine which uses any common organic solvent (e.g. petroleum, perchlorethylene, fluorocarbon). The process may also include adding moisture to the solvent, up to 75% relative humidity, hot tumble drying up to 160 degrees F (71 degrees C) and restoration by steam press or steam-air finishing.

(d) *Machine Wash* means a process by which soil is removed from products in a specially designed machine using water, detergent or soap and agitation. When no temperature is given, e.g., *warm* or *cold*, hot water up to 145 degrees F (63 degrees C) can be regularly used.

(e) *Regular Care* means customary and routine care, not spot care.

(f) *Textile Product* means any commodity, woven, knit or otherwise made primarily of fiber, yarn or fabric and intended for sale or resale, requiring care and maintenance to effectuate ordinary use and enjoyment.

(g) *Textile Wearing Apparel* means any finished garment or article of clothing made from a textile product that is customarily used to cover or protect any part of the body, including hosiery, excluding footwear, gloves, hats or other articles used exclusively to cover or protect the head or hands.

[48 FR 22743, May 20, 1983; 48 FR 24869, June 3, 1983, as amended at 65 FR 47275, Aug. 2, 2000]

§ 423.2 Terminology.

(a) Any appropriate terms may be used on care labels or care instructions so long as they clearly and accurately describe regular care procedures and

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otherwise fulfill the requirements of this regulation.

(b) Any appropriate symbols may be used on care labels or care instructions, in addition to the required appropriate terms so long as the terms fulfill the requirements of this part. See § 423.8(g) for conditional exemption allowing the use of symbols without terms.

(c) The terminology set forth in appendix A may be used to fulfill the requirements of this regulation.

[48 FR 22743, May 20, 1983; 48 FR 24869, June 3, 1983; 62 FR 29008, May 29, 1997]

§ 423.3 What this regulation does.

This regulation requires manufacturers and importers of textile wearing apparel and certain piece goods, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, to provide regular care instructions at the time such products are sold to purchasers through the use of care labels or other methods described in this rule.

§ 423.4 Who is covered.

Manufacturers and importers of textile wearing apparel and certain piece goods are covered by this regulation. This includes any person or organization that directs or controls the manufacture or importation of covered products.

§ 423.5 Unfair or deceptive acts or practices.

(a) *Textile wearing apparel and certain piece goods*. In connection with the sale, in or affecting commerce, of textile wearing apparel and certain piece goods, it is an unfair or deceptive act or practice for a manufacturer or importer:

(1) To fail to disclose to a purchaser, prior to sale, instructions which prescribe a regular care procedure necessary for the ordinary use and enjoyment of the product;

(2) To fail to warn a purchaser, prior to sale, when the product cannot be cleaned by any cleaning procedure, without being harmed;

(3) To fail to warn a purchaser, prior to sale, when any part of the prescribed regular care procedure, which a consumer or professional cleaner could

reasonably be expected to use, would harm the product or others being cleaned with it;

(4) To fail to provide regular care instructions and warnings, except as to piece goods, in a form that can be referred to by the consumer throughout the useful life of the product;

(5) To fail to possess, prior to sale, a reasonable basis for all regular care information disclosed to the purchaser.

(b) *Violations of this regulation.* The Commission has adopted this regulation to prevent the unfair or deceptive acts or practices, defined in paragraph (a) of this section. Each manufacturer or importer covered by this regulation must comply with the requirements in §§ 423.2 and 423.6 through 423.8 of this regulation. Any manufacturer or importer who complies with the requirements of §§ 423.2 and 423.6 through 423.8 does not violate this regulation.

(Approved by the Office of Management and Budget under control number 3084-0046)

§ 423.6 Textile wearing apparel.

This section applies to textile wearing apparel.

(a) Manufacturers and importers must attach care labels so that they can be seen or easily found when the product is offered for sale to consumers. If the product is packaged, displayed, or folded so that customers cannot see or easily find the label, the care information must also appear on the outside of the package or on a hang tag fastened to the product.

(b) Care labels must state what regular care is needed for the ordinary use of the product. In general, labels for textile wearing apparel must have either a washing instruction or a drycleaning instruction. If a washing instruction is included, it must comply with the requirements set forth in paragraph (b)(1) of this section. If a drycleaning instruction is included, it must comply with the requirements set forth in paragraph (b)(2) of this section. If either washing or drycleaning can be used on the product, the label need have only one of these instructions. If the product cannot be cleaned by any available cleaning method without being harmed, the label must so state. [For example, if a product would be harmed both by washing and by dry-

cleaning, the label might say "Do not wash—do not dryclean," or "Cannot be successfully cleaned."] The instructions for washing and drycleaning are as follows:

(1) Washing, drying, ironing, bleaching and warning instructions must follow these requirements:

(i) *Washing.* The label must state whether the product should be washed by hand or machine. The label must also state a water temperature—in terms such as *cold*, *warm*, or *hot*—that may be used. However, if the regular use of hot water up to 145 degrees F (63 degrees C) will not harm the product, the label need not mention any water temperature. [For example, *Machine wash* means hot, warm or cold water can be used.]

(ii) *Drying.* The label must state whether the product should be dried by machine or by some other method. If machine drying is called for, the label must also state a drying temperature that may be used. However, if the regular use of a high temperature will not harm the product, the label need not mention any drying temperature. [For example, *Tumble dry* means that a high, medium, or low temperature setting can be used.]

(iii) *Ironing.* Ironing must be mentioned on a label only if it will be needed on a regular basis to preserve the appearance of the product, or if it is required under paragraph (b)(1)(v) of this section, *Warnings*. If ironing is mentioned, the label must also state an ironing temperature that may be used. However, if the regular use of a hot iron will not harm the product, the label need not mention any ironing temperature.

(iv) *Bleaching.* (A) If all commercially available bleaches can safely be used on a regular basis, the label need not mention bleaching.

(B) If all commercially available bleaches would harm the product when used on a regular basis, the label must say "No bleach" or "Do not bleach."

(C) If regular use of chlorine bleach would harm the product, but regular use of a non-chlorine bleach would not, the label must say "Only non-chlorine bleach, when needed."

(v) *Warnings.* (A) If there is any part of the prescribed washing procedure

which consumers can reasonably be expected to use that would harm the product or others being washed with it in one or more washings, the label must contain a warning to this effect. The warning must use words “Do not,” “No,” “Only,” or some other clear wording. [For example, if a shirt is not colorfast, its label should state “Wash with like colors” or “Wash separately.” If a pair of pants will be harmed by ironing, its label should state “Do not iron.”]

(B) Warnings are not necessary for any procedure that is an alternative to the procedure prescribed on the label. [For example, if an instruction states “Dry flat,” it is not necessary to give the warning “Do not tumble dry.”]

(2) *Drycleaning*—(i) *General*. If a drycleaning instruction is included on the label, it must also state at least one type of solvent that may be used. However, if all commercially available types of solvent can be used, the label need not mention any types of solvent. The terms “Drycleanable” or “Commercially Dryclean” may not be used in an instruction. [For example, if drycleaning in perchlorethylene would harm a coat, the label might say “Professionally dryclean: fluorocarbon or petroleum.”]

(ii) *Warnings*. (A) If there is any part of the drycleaning procedure which consumers or drycleaners can reasonably be expected to use that would harm the product or others being cleaned with it, the label must contain a warning to this effect. The warning must use the words “Do not,” “No,” “Only,” or some other clear wording. [For example, the drycleaning process normally includes moisture addition to solvent up to 75% relative humidity, hot tumble drying up to 160 degrees F and restoration by steam press or steam-air finish. If a product can be drycleaned in all solvents but steam should not be used, its label should state “Professionally dryclean. No steam.”]

(B) Warnings are not necessary to any procedure which is an alternative to the procedure prescribed on the label. [For example, if an instruction states “Professionally dryclean, fluorocarbon,” it is not necessary to give the

warning “Do not use perchlorethylene.”]

(c) A manufacturer or importer must establish a reasonable basis for care information by processing prior to sale:

(1) Reliable evidence that the product was not harmed when cleaned reasonably often according to the instructions on the label, including instructions when silence has a meaning. [For example, if a shirt is labeled “Machine wash. Tumble dry. Cool iron,” the manufacturer or importer must have reliable proof that the shirt is not harmed when cleaned by machine washing (in hot water), with any type of bleach, tumble dried (at a high setting), and ironed with a cool iron]; or

(2) Reliable evidence that the product or a fair sample of the product was harmed when cleaned by methods warned against on the label. However, the manufacturer or importer need not have proof of harm when silence does not constitute a warning. [For example, if a shirt is labeled “Machine wash warm. Tumble dry medium”, the manufacturer need not have proof that the shirt would be harmed if washed in hot water or dried on high setting]; or

(3) Reliable evidence, like that described in paragraph (c)(1) or (2) of this section, for each component part of the product in conjunction with reliable evidence for the garment as a whole; or

(4) Reliable evidence that the product or a fair sample of the product was successfully tested. The tests may simulate the care suggested or warned against on the label; or

(5) Reliable evidence of current technical literature, past experience, or the industry expertise supporting the care information on the label; or

(6) Other reliable evidence.

[48 FR 22743, May 20, 1983; 48 FR 24869, June 3, 1983, as amended at 65 FR 47275, Aug. 2, 2000]

§ 423.7 Certain piece goods.

This section applies to certain piece goods.

(a) Manufacturers and importers of certain piece goods must provide care information clearly and conspicuously on the end of each bolt or roll.

(b) Care information must say what regular care is needed for the ordinary

use of the product, pursuant to the instructions set forth in § 423.6. Care information on the end of the bolt need only address information applicable to the fabric.

§ 423.8 Exemptions.

(a) Any item of textile wearing apparel, without pockets, that is totally reversible (i.e., the product is designed to be used with either side as the outer part or face) is exempt from the care label requirement.

(b) Manufacturers or importers can ask for an exemption from the care label requirement for any other textile wearing apparel product or product line, if the label would harm the appearance or usefulness of the product. The request must be made in writing to the Secretary of the Commission. The request must be accompanied by a labeled sample of the product and a full statement explaining why the request should be granted.

(c) If an item is exempt from care labeling under paragraph (a) or (b), of this section the consumers still must be given the required care information for the product. However, the care information can be put on a hang tag, on the package, or in some other conspicuous place, so that consumers will be able to see the care information before buying the product.

(d) Manufacturers and importers of products covered by § 423.5 are exempt from the requirement for a permanent care label if the product can be cleaned safely under the harshest procedures. This exemption is available only if there is reliable proof that all of the following washing and drycleaning procedures can safely be used on a product:

- (1) Machine washing in hot water;
- (2) Machine drying at a high setting;
- (3) Ironing at a hot setting;
- (4) Bleaching with all commercially available bleaches;
- (5) Drycleaning with all commercially available solvents. In such case, the statement "wash or dry clean, any normal method" must appear on a hang tag, on the package, or in some other conspicuous place, so that consumers will be able to see the statement before buying the product.

If a product meets the requirements outlined above, it is automatically exempt from the care label requirement. It is not necessary to file a request for this exemption.

(e) Manufacturers and importers need not provide care information with products sold to institutional buyers for commercial use.

(f) All exemption granted under § 423.1(c) (1) or (2) or the Care Labeling Rule issued on December 9, 1971, will continue to be in effect if the product still meets the standards on which the original exemption was based. Otherwise, the exemption is automatically revoked.

(g) The symbol system developed by the American Society for Testing and Materials (ASTM) and designated as ASTM Standard D5489-96c Guide to Care Symbols for Care Instructions on Consumer Textile Products may be used on care labels or care instructions in lieu of terms so long as the symbols fulfill the requirements of this part. In addition, symbols from the symbol system designated as ASTM Standard D5489-96c may be combined with terms so long as the symbols and terms used fulfill the requirements of this part. Provided, however, that for the 18-month period beginning on July 1, 1997, such symbols may be used on care labels in lieu of terms only if an explanation of the meaning of the symbols used on the care label in terms is attached to, or provided with, the item of textile wearing apparel. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASTM Standard D5489-96c Guide to Care Symbols for Care Instructions on Textile Products may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or may be inspected at the Federal Trade Commission, room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/

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code_of_federal_regulations/ibr_locations.html.

(15 U.S.C. 41–58)

[48 FR 22743, May 20, 1983; 48 FR 24869, June 3, 1983, as amended at 62 FR 29008, May 29, 1997; 69 FR 18803, Apr. 9, 2004]

§ 423.9 Conflict with flammability standards.

If there is a conflict between this regulation and any regulations issued under the Flammable Fabrics Act, the Flammable Fabrics regulation govern over this one.

§ 423.10 Stayed or invalid parts.

If any part of this regulation is stayed or held invalid, the rest of it will stay in force.

APPENDIX A TO PART 423—GLOSSARY OF STANDARD TERMS

1. *Washing, Machine Methods:*

a. “Machine wash”—a process by which soil may be removed from products or specimens through the use of water, detergent or soap, agitation, and a machine designed for this purpose. When no temperature is given, e.g., “warm” or “cold,” hot water up to 145 degrees F (63 degrees C) can be regularly used.

b. “Hot”—initial water temperature ranging from 112 to 145 degrees F [45 to 63 degrees C].

c. “Warm”—initial water temperature ranging from 87 to 111 degrees F [31 to 44 degrees C].

d. “Cold”—initial water temperature up to 86 degrees F [30 degrees C].

e. “Do not have commercially laundered”—do not employ a laundry which uses special formulations, sour rinses, extremely large loads or extremely high temperatures or which otherwise is employed for commercial, industrial or institutional use. Employ laundering methods designed for residential use or use in a self-service establishment.

f. “Small load”—smaller than normal washing load.

g. “Delicate cycle” or “gentle cycle”—slow agitation and reduced time.

h. “Durable press cycle” or “permanent press cycle”—cool down rinse or cold rinse before reduced spinning.

i. “Separately”—alone.

j. “With like colors”—with colors of similar hue and intensity.

k. “Wash inside out”—turn product inside out to protect face of fabric.

l. “Warm rinse”—initial water temperature setting 90° to 110 °F (32° to 43 °C).

m. “Cold rinse”—initial water temperature setting same as cold water tap up to 85 °F (29 °C).

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n. “Rinse thoroughly”—rinse several times to remove detergent, soap, and bleach.

o. “No spin” or “Do not spin”—remove material start of final spin cycle.

p. “No wring” or “Do not wring”—do not use roller wringer, nor wring by hand.

2. *Washing, Hand Methods:*

a. “Hand wash”—a process by which soil may be manually removed from products or specimens through the use of water, detergent or soap, and gentle squeezing action. When no temperature is given, e.g., “warm” or “cold”, hot water up to 150 °F (66 °C) can be regularly used.

b. “Warm”—initial water temperature 90° to 110 °F (32° to 43 °C) (hand comfortable).

c. “Cold”—initial water temperature same as cold water tap up to 85 °F (29 °C).

d. “Separately”—alone.

e. “With like colors”—with colors of similar hue and intensity.

f. “No wring or twist”—handle to avoid wrinkles and distortion.

g. “Rinse thoroughly”—rinse several times to remove detergent, soap, and bleach.

h. “Damp wipe only”—surface clean with damp cloth or sponge.

3. *Drying, All Methods:*

a. “Tumble dry”—use machine dryer. When no temperature setting is given, machine drying at a hot setting may be regularly used.

b. “Medium”—set dryer at medium heat.

c. “Low”—set dryer at low heat.

d. “Durable press” or “Permanent press”—set dryer at permanent press setting.

e. “No heat”—set dryer to operate without heat.

f. “Remove promptly”—when items are dry, remove immediately to prevent wrinkling.

g. “Drip dry”—hang dripping wet with or without hand shaping and smoothing.

h. “Line dry”—hang damp from line or bar in or out of doors.

i. “Line dry in shade”—dry away from sun.

j. “Line dry away from heat”—dry away from heat.

k. “Dry flat”—lay out horizontally for drying.

l. “Block to dry”—reshape to original dimensions while drying.

m. “Smooth by hand”—by hand, while wet, remove wrinkles, straighten seams and facings.

4. *Ironing and Pressing:*

a. “Iron”—Ironing is needed. When no temperature is given iron at the highest temperature setting may be regularly used.

b. “Warm iron”—medium temperature setting.

c. “Cool iron”—lowest temperature setting.

d. “Do not iron”—item not to be smoothed or finished with an iron.

e. “Iron wrong side only”—article turned inside out for ironing or pressing.

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f. “No steam” or “Do not steam”—steam in any form not to be used.

g. “Steam only”—steaming without contact pressure.

h. “Steam press” or “Steam iron”—use iron at steam setting.

i. “Iron damp”—articles to be ironed should feel moist.

j. “Use press cloth”—use a dry or a damp cloth between iron and fabric.

5. *Bleaching:*

a. “Bleach when needed”—all bleaches may be used when necessary.

b. “No bleach” or “Do not bleach”—no bleaches may be used.

c. “Only non-chlorine bleach, when needed”—only the bleach specified may be used when necessary. Chlorine bleach may not be used.

6. *Washing or Drycleaning:*

a. “Wash or dryclean, any normal method”—can be machine washed in hot water, can be machine dried at a high setting, can be ironed at a hot setting, can be bleached with all commercially available bleaches and can be drycleaned with all commercially available solvents.

7. *Drycleaning, All Procedures:*

a. “Dryclean”—a process by which soil may be removed from products or specimens in a machine which uses any common organic solvent (for example, petroleum, perchlorethylene, fluorocarbon) located in any commercial establishment. The process may include moisture addition to solvent up to 75% relative humidity, hot tumble drying up to 160 °F (71 °C) and restoration by steam press or steam-air finishing.

b. “Professionally dryclean”—use the drycleaning process but modified to ensure optimum results either by a drycleaning attendant or through the use of a drycleaning machine which permits such modifications or both. Such modifications or special warnings must be included in the care instruction.

c. “Petroleum”, “Fluorocarbon”, or “Perchlorethylene”—employ solvent(s) specified to dryclean the item.

d. “Short cycle”—reduced or minimum cleaning time, depending upon solvent used.

e. “Minimum extraction”—least possible extraction time.

f. “Reduced moisture” or “Low moisture”—decreased relative humidity.

g. “No tumble” or “Do not tumble”—do not tumble dry.

h. “Tumble warm”—tumble dry up to 120 °F (49 °C).

i. “Tumble cool”—tumble dry at room temperature.

j. “Cabinet dry warm”—cabinet dry up to 120 °F (49 °C).

k. “Cabinet dry cool”—cabinet dry at room temperature.

l. “Steam only”—employ no contact pressure when steaming.

m. “No steam” or “Do not steam”—do not use steam in pressing, finishing, steam cabinets or wands.

8. *Leather and Suede Cleaning:*

a. “Leather clean”—have cleaned only by a professional cleaner who uses special leather or suede care methods.

[48 FR 22743, May 20, 1983; 48 FR 24868, June 3, 1983; 48 FR 27225, June 14, 1983, as amended at 65 FR 47275, Aug. 2, 2000]

PART 424—RETAIL FOOD STORE ADVERTISING AND MARKETING PRACTICES

Sec.

424.1 Unfair or deceptive acts or practices.

424.2 Defenses.

AUTHORITY: 88 Stat. 2193, as amended: 15 U.S.C. 57a(a)(1)(B).

§ 424.1 Unfair or deceptive acts or practices.

In connection with the sale of offering for sale by retail food stores of food, grocery products or other merchandise to consumers in or affecting commerce as “commerce” is defined in section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, it is an unfair or deceptive act or practice in violation of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), to offer any such products for sale at a stated price, by means of an advertisement disseminated in an area served by any stores which are covered by the advertisement, if those stores do not have the advertised products in stock and readily available to customers during the effective period of the advertisement, unless the advertisement clearly and adequately discloses that supplies of the advertised products are limited or the advertised products are available only at some outlets.

[54 FR 35467, Aug. 28, 1989]

§ 424.2 Defenses.

No violation of § 424.1 shall be found if:

(a) The advertised products were ordered in adequate time for delivery in quantities sufficient to meet reasonably anticipated demand;

(b) The food retailer offers a “raincheck” for the advertised products;

(c) The food retailer offers at the advertised price or at a comparable price reduction a similar product that is at least comparable in value to the advertised product; or

(d) The food retailer offers other compensation at least equal to the advertised value.

DISSENTING STATEMENT OF COMMISSIONER
CALVANI

I dissent from the Commission’s decision today to amend the Retail Food Store Advertising and Marketing Practices Trade Regulation Rule (the Unavailability Rule). The Commission has acknowledged today that the original Unavailability Rule is not justified, and approved amendments designed to lower its costs to grocers. However, in my view, common sense tells us that in the highly competitive grocery store business, where consumers return week after week to the same store, any supermarket that frustrates its customers through unavailability of advertised items will not long keep those customers. In other words, it is clear to me that existing market forces adequately police unavailability, and that, therefore, no Federal Trade Commission rule is necessary, amended or otherwise. The Commission’s action today to retain even an amended Unavailability Rule does not conform to common sense.

STATEMENT OF COMMISSIONER ANDREW J.
STRENIO, JR., RETAIL FOOD STORE ADVERTISING AND MARKETING PRACTICES RULE

Although revising the “Unavailability Rule” has a certain intuitive appeal, there is insufficient evidence on the record to conclude that these changes will result in net consumer benefits. Accordingly, I could not support amending the Rule in this manner. However, now that the step has been taken, it is to be hoped that experience will bear out the optimistic expectations of the Commission majority.

[54 FR 35467, Aug. 28, 1989]

**PART 425—USE OF
PRENOTIFICATION NEGATIVE OPTION PLANS**

§ 425.1 The rule.

(a) In connection with the sale, offering for sale, or distribution of goods and merchandise in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, it is an

unfair or deceptive act or practice, for a seller in connection with the use of any negative option plan to fail to comply with the following requirements:

(1) Promotional material shall clearly and conspicuously disclose the material terms of the plan, including:

(i) That aspect of the plan under which the subscriber must notify the seller, in the manner provided for by the seller, if he does not wish to purchase the selection;

(ii) Any obligation assumed by the subscriber to purchase a minimum quantity of merchandise;

(iii) The right of a contract-complete subscriber to cancel his membership at any time;

(iv) Whether billing charges will include an amount for postage and handling;

(v) A disclosure indicating that the subscriber will be provided with at least ten (10) days in which to mail any form, contained in or accompanying an announcement identifying the selection, to the seller;

(vi) A disclosure that the seller will credit the return of any selections sent to a subscriber, and guarantee to the Postal Service or the subscriber postage to return such selections to the seller when the announcement and form are not received by the subscriber in time to afford him at least ten (10) days in which to mail his form to the seller;

(vii) The frequency with which the announcements and forms will be sent to the subscriber and the maximum number of announcements and forms which will be sent to him during a 12-month period.

(2) Prior to sending any selection, the seller shall mail to its subscribers, within the time specified by paragraph (a)(3) of this section:

(i) An announcement identifying the selection;

(ii) A form, contained in or accompanying the announcement, clearly and conspicuously disclosing that the subscriber will receive the selection identified in the announcement unless he instructs the seller that he does not want the selection, designating a procedure by which the form may be used

for the purpose of enabling the subscriber so to instruct the seller, and specifying either the return date or the mailing date.

(3) The seller shall mail the announcement and form either at least twenty (20) days prior to the return date or at least fifteen (15) days prior to the mailing date, or provide a mailing date at least ten (10) days after receipt by the subscriber, provided, however, that whichever system the seller chooses for mailing the announcement and form, such system must provide the subscriber with at least ten (10) days in which to mail his form.

(b) In connection with the sale or distribution of goods and merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, it shall constitute an unfair or deceptive act or practice for a seller in connection with the use of any negative option plan to:

(1) Refuse to credit, for the full invoiced amount thereof, the return of any selection sent to a subscriber, and to guarantee to the Postal Service or the subscriber postage adequate to return such selection to the seller, when:

(i) The selection is sent to a subscriber whose form indicating that he does not want to receive the selection was received by the seller by the return date or was mailed by the subscriber by the mailing date;

(ii) Such form is received by the seller after the return date, but has been mailed by the subscriber and postmarked at least 3 days prior to the return date;

(iii) Prior to the date of shipment of such selection, the seller has received from a contract-complete subscriber, a written notice of cancellation of membership adequately identifying the subscriber; however, this provision is applicable only to the first selection sent to a canceling contract-complete subscriber after the seller has received written notice of cancellation. After the first selection shipment, all selection shipments thereafter are deemed to be unordered merchandise pursuant to section 3009 of the Postal Reorganization Act of 1970, as adopted by the Federal Trade Commission in its public notice, dated September 11, 1970;

(iv) The announcement and form are not received by the subscriber in time to afford him at least ten (10) days in which to mail his form.

(2) Fail to notify a subscriber known by the seller to be within any of the circumstances set forth in paragraphs (b)(1)(i) through (iv) of this section, that if the subscriber elects, the subscriber may return the selection with return postage guaranteed and receive a credit to his account.

(3) Refuse to ship within 4 weeks after receipt of an order merchandise due subscribers as introductory and bonus merchandise, unless the seller is unable to deliver the merchandise originally offered due to unanticipated circumstances beyond the seller's control and promptly makes a reasonably equivalent alternative offer. However, where the subscriber refuses to accept alternatively offered introductory merchandise, but instead insists upon termination of his membership due to the seller's failure to provide the subscriber with his originally requested introductory merchandise, or any portion thereof, the seller must comply with the subscriber's request for cancellation of membership, provided the subscriber returns to the seller any introductory merchandise which already may have been sent him.

(4) Fail to terminate promptly the membership of a properly identified contract-complete subscriber upon his written request.

(5) Ship, without the express consent of the subscriber, substituted merchandise for that ordered by the subscriber.

(c) For the purposes of this part:

(1) *Negative option plan* refers to a contractual plan or arrangement under which a seller periodically sends to subscribers an announcement which identifies merchandise (other than annual supplements to previously acquired merchandise) it proposes to send to subscribers to such plan, and the subscribers thereafter receive and are billed for the merchandise identified in each such announcement, unless by a date or within a time specified by the seller with respect to each such announcement the subscribers, in conformity with the provisions of such plan, instruct the seller not to send the identified merchandise.

(2) *Subscriber* means any person who has agreed to receive the benefits of, and assume the obligations entailed in, membership in any negative option plan and whose membership in such negative option plan has been approved and accepted by the seller.

(3) *Contract-complete subscriber* refers to a subscriber who has purchased the minimum quantity of merchandise required by the terms of membership in a negative option plan.

(4) *Promotional material* refers to an advertisement containing or accompanying any device or material which a prospective subscriber sends to the seller to request acceptance or enrollment in a negative option plan.

(5) *Selection* refers to the merchandise identified by a seller under any negative option plan as the merchandise which the subscriber will receive and be billed for, unless by the date, or within the period specified by the seller, the subscriber instructs the seller not to send such merchandise.

(6) *Announcement* refers to any material sent by a seller using a negative option plan in which the selection is identified and offered to subscribers.

(7) *Form* refers to any form which the subscriber returns to the seller to instruct the seller not to send the selection.

(8) *Return date* refers to a date specified by a seller using a negative option plan as the date by which a form must be received by the seller to prevent shipment of the selection.

(9) *Mailing date* refers to the time specified by a seller using a negative option plan as the time by or within which a form must be mailed by a subscriber to prevent shipment of the selection.

(38 Stat. 717, as amended; 15 U.S.C. 41-58)

[38 FR 4896; Feb. 22, 1973; 38 FR 6991, Mar. 15, 1973, as amended at 63 FR 44562, Aug. 20, 1998]

**PART 429—RULE CONCERNING
COOLING-OFF PERIOD FOR
SALES MADE AT HOMES OR AT
CERTAIN OTHER LOCATIONS**

Sec.

429.0 Definitions.

429.1 The Rule.

429.2 Effect on State laws and municipal ordinances.

429.3 Exemptions.

AUTHORITY: Sections 1-23, FTC Act, 15 U.S.C. 41-58.

§ 429.0 Definitions.

For the purposes of this part the following definitions shall apply:

(a) *Door-to-Door Sale*—A sale, lease, or rental of consumer goods or services with a purchase price of \$25 or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller (e.g., sales at the buyer's residence or at facilities rented on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds and restaurants, or sales at the buyer's workplace or in dormitory lounges). The term *door-to-door sale* does not include a transaction:

(1) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or

(2) In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act (15 U.S.C. 1635) or regulations issued pursuant thereto; or

(3) In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within 3 business days; or

(4) Conducted and consummated entirely by mail or telephone; and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services; or

(5) In which the buyer has initiated the contact and specifically requested the seller to visit the buyer's home for

the purpose of repairing or performing maintenance upon the buyer's personal property. If, in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion; or

(6) Pertaining to the sale or rental of real property, to the sale of insurance, or to the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission.

(b) *Consumer Goods or Services*—Goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.

(c) *Seller*—Any person, partnership, corporation, or association engaged in the door-to-door sale of consumer goods or services.

(d) *Place of Business*—The main or permanent branch office or local address of a seller.

(e) *Purchase Price*—The total price paid or to be paid for the consumer goods or services, including all interest and service charges.

(f) *Business Day*—Any calendar day except Sunday or any federal holiday (e.g., New Year's Day, Presidents' Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.)

[60 FR 54186, Oct. 20, 1995]

§ 429.1 The Rule.

In connection with any door-to-door sale, it constitutes an unfair and deceptive act or practice for any seller to:

(a) Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the

buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

The seller may select the method of providing the buyer with the duplicate notice of cancellation form set forth in paragraph (b) of this section, *provided however*, that in the event of cancellation the buyer must be able to retain a complete copy of the contract or receipt. Furthermore, if both forms are not attached to the contract or receipt, the seller is required to alter the last sentence in the statement above to conform to the actual location of the forms.

(b) Fail to furnish each buyer, at the time the buyer signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned either "NOTICE OF RIGHT TO CANCEL" or "NOTICE OF CANCELLATION," which shall (where applicable) contain in ten point bold face type the following information and statements in the same language, e.g., Spanish, as that used in the contract.

NOTICE OF CANCELLATION

[enter date of transaction]

(Date)

You may CANCEL this transaction, without any Penalty or Obligation, within THREE BUSINESS DAYS from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within TEN BUSINESS DAYS following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the

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return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your Notice of Cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this Cancellation Notice or any other written notice, or send a telegram, to [Name of seller], at [address of seller's place of business] NOT LATER THAN MIDNIGHT OF [date].

I HEREBY CANCEL THIS TRANSACTION.
(Date) _____
(Buyer's signature) _____

(c) Fail, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

(d) Include in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this section including specifically the buyer's right to cancel the sale in accordance with the provisions of this section.

(e) Fail to inform each buyer orally, at the time the buyer signs the contract or purchases the goods or services, of the buyer's right to cancel.

(f) Misrepresent in any manner the buyer's right to cancel.

(g) Fail or refuse to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to: (i) Refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

(h) Negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

(i) Fail, within 10 business days of receipt of the buyer's notice of cancellation, to notify the buyer whether the seller intends to repossess or to abandon any shipped or delivered goods.

[37 FR 22934, Oct. 26, 1972, as amended at 38 FR 30105, Nov. 1, 1973; 38 FR 31828, Nov. 19, 1973; 53 FR 45459, Nov. 10, 1988; 60 FR 54186, Oct. 20, 1995]

§ 429.2 Effect on State laws and municipal ordinances.

(a) The Commission is cognizant of the significant burden imposed upon door-to-door sellers by the various and often inconsistent State laws that provide the buyer the right to cancel a door-to-door sales transaction. However, it does not believe that this constitutes sufficient justification for preempting all of the provisions of such laws and the ordinances of the political subdivisions of the various States. The rulemaking record in this proceeding supports the view that the joint and coordinated efforts of both the Commission and State and local officials are required to insure that consumers who have purchased from a door-to-door seller something they do not want, do not need, or cannot afford, be accorded a unilateral right to rescind, without penalty, their agreements to purchase those goods or services.

(b) This part will not be construed to annul, or exempt any seller from complying with, the laws of any State or the ordinances of a political subdivision thereof that regulate door-to-door sales, except to the extent that such laws or ordinances, if they permit door-to-door selling, are directly inconsistent with the provisions of this part. Such laws or ordinances which do not accord the buyer, with respect to the particular transaction, a right to cancel a door-to-door sale that is substantially the same or greater than that provided in this part, which permit the imposition of any fee or penalty on the buyer for the exercise of such right, or which do not provide for giving the

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buyer a notice of the right to cancel the transaction in substantially the same form and manner provided for in this part, are among those which will be considered directly inconsistent.

[60 FR 54187, Oct. 20, 1995]

§ 429.3 Exemptions.

(a) The requirements of this part do not apply for sellers of automobiles, vans, trucks or other motor vehicles sold at auctions, tent sales or other temporary places of business, provided that the seller is a seller of vehicles with a permanent place of business.

(b) The requirements of this part do not apply for sellers of arts or crafts sold at fairs or similar places.

[60 FR 54187, Oct. 20, 1995]

PART 432—POWER OUTPUT CLAIMS FOR AMPLIFIERS UTILIZED IN HOME ENTERTAINMENT PRODUCTS

Sec.

- 432.1 Scope.
- 432.2 Required disclosures.
- 432.3 Standard test conditions.
- 432.4 Optional disclosures.
- 432.5 Prohibited disclosures.
- 432.6 Liability for violation.

AUTHORITY: 38 Stat. 717, as amended; (15 U.S.C. 41-58).

SOURCE: 39 FR 15387, May 3, 1974, unless otherwise noted.

§ 432.1 Scope.

(a) Except as provided in paragraph (b) of this section, this part shall apply whenever any power output (in watts or otherwise), power band or power frequency response, or distortion capability or characteristic is represented, either expressly or by implication, in connection with the advertising, sale, or offering for sale, in commerce as "commerce" is defined in the Federal Trade Commission Act, of sound power amplification equipment manufactured or sold for home entertainment purposes, such as for example, radios, record and tape players, radio-phonograph and/or tape combinations, component audio amplifiers, self-powered speakers for computers, multimedia systems and sound systems, and the like.

(b) Representations shall be exempt from this part if all representations of performance characteristics referred to in paragraph (a) of this section clearly and conspicuously disclose a manufacturer's rated power output and that rated output does not exceed two (2) watts (per channel or total).

(c) It is an unfair method of competition and an unfair or deceptive act or practice within the meaning of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) to violate any applicable provision of this part.

[39 FR 15387, May 3, 1974, as amended at 63 FR 37235, July 9, 1998]

§ 432.2 Required disclosures.

(a) Whenever any direct or indirect representation is made of the power output, power band or power frequency response, or distortion characteristics of sound power amplification equipment, the following disclosure shall be made clearly, conspicuously, and more prominently than any other representations or disclosures permitted under this part: The manufacturer's rated minimum sine wave continuous average power output, in watts, per channel (if the equipment is designed to amplify two or more channels simultaneously) at an impedance of 8 ohms, or, if the amplifier is not designed for an 8-ohm impedance, at the impedance for which the amplifier is primarily designed, measured with all associated channels fully driven to rated per channel power. *Provided*, however, when measuring maximum per channel output of self-powered combination speaker systems that employ two or more amplifiers dedicated to different portions of the audio frequency spectrum, such as those incorporated into combination subwoofer-satellite speaker systems, only those channels dedicated to the same audio frequency spectrum should be considered associated channels that need be fully driven simultaneously to rated per channel power.

(b) In addition, whenever any direct or indirect representation is made of the power output, power band or power frequency response, or distortion characteristics of sound power amplification equipment in any product brochure or manufacturer specification sheet, the following disclosures also

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shall be made clearly, conspicuously, and more prominently than any other representations or disclosures permitted under this part:

(1) The manufacturer's rated power band or power frequency response, in Hertz (Hz), for the rated power output required to be disclosed in paragraph (a) of this section; and

(2) The manufacturer's rated percentage of maximum total harmonic distortion at any power level from 250 mW to the rated power output, and its corresponding rated power band or power frequency response.

[65 FR 81239, Dec. 22, 2000]

§ 432.3 Standard test conditions.

For purposes of performing the tests necessary to make the disclosures required under § 432.2 of this part:

(a) The power line voltage shall be 120 volts AC (230 volts when the equipment is made for foreign sale or use, unless a different nameplate rating is permanently affixed to the product by the manufacturer in which event the latter figure would control), RMS, using a sinusoidal wave containing less than 2 percent total harmonic content. In the case of equipment designed for battery operation only, tests shall be made with the battery power supply for which the particular equipment is designed and such test voltage must be disclosed under the required disclosures of § 432.2 of this part. If capable of both AC and DC battery operation, testing shall be with AC line operation;

(b) The AC power line frequency for domestic equipment shall be 60 Hz and 50 Hz for equipment made for foreign sale or use;

(c) The amplifier shall be preconditioned by simultaneously operating all channels at one-eighth of rated power output for one hour using a sinusoidal wave at a frequency of 1,000 Hz; *provided, however*, that for amplifiers utilized as a component in a self-powered subwoofer system, the sinusoidal wave used as a preconditioning signal may be any frequency within the amplifier's intended operating bandwidth that will allow the amplifier to be driven to one-eighth of rated power for one hour;

(d) The preconditioning and testing shall be in still air and an ambient temperature of at least 77 °F (25 °C);

(e) Rated power shall be obtainable at all frequencies within the rated power band without exceeding the rated maximum percentage of total harmonic distortion after input signals at said frequencies have been continuously applied at full rated power for not less than five (5) minutes at the amplifier's auxiliary input, or if not provided, at the phono input.

(f) At all times during warm-up and testing, tone loudness-contour and other controls shall be preset for the flattest response.

[39 FR 15387, May 3, 1974, as amended at 65 FR 81240, Dec. 22, 2000]

§ 432.4 Optional disclosures.

Other operating characteristics and technical specifications not required in § 432.2 of this part may be disclosed: *Provided:*

(a) That any other power output is rated by the manufacturer, is expressed in minimum watts per channel, and such power output representation(s) complies with the provisions of § 432.2 of this part; except that if a peak or other instantaneous power rating, such as music power or peak power, is represented under this section, the maximum percentage of total harmonic distortion (see § 432.2(d) of this part) may be disclosed only at such rated output: *And provided further,*

(b) That all disclosures or representations made under this section are less conspicuously, and prominently made than the disclosures required in § 432.2 of this part; and

(c) The rating and testing methods or standards used in determining such representations are disclosed, and well known and generally recognized by the industry at the time the representations or disclosures are made, are neither intended nor likely to deceive or confuse the consumers and are not otherwise likely to frustrate the purpose of this part.

NOTE 1: For the purpose of paragraph (b) of this section, optional disclosures will not be considered less prominent if they are either bold faced or are more than two-thirds the height of the disclosures required by § 432.2.

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NOTE 2: Use of the asterisk in effecting any of the disclosures required by § 432.2 and permitted by § 432.4 shall not be deemed conspicuous disclosure.

[39 FR 15387, May 3, 1974; 39 FR 17838, May 21, 1974]

§ 432.5 Prohibited disclosures.

No performance characteristics to which this part applies shall be represented or disclosed if they are not obtainable as represented or disclosed when the equipment is operated by the consumer in the usual and normal manner without the use of extraneous aids.

§ 432.6 Liability for violation.

If the manufacturer or, in the case of foreign made products, the importer or domestic sales representative of a foreign manufacturer, of any product covered by this part furnishes the information required or permitted under this part, then any other seller of the product shall not be deemed to be in violation of § 432.5 of this part due to his reliance upon or transmittal of the written representations of the manufacturer or importer if such seller has been furnished by the manufacturer, importer, or sales representative a written certification attesting to the accuracy of the representations to which this part applies: *And provided further*, That such seller is without actual knowledge of the violation contained in said written certification.

PART 433—PRESERVATION OF CONSUMERS' CLAIMS AND DEFENSES

Sec.

433.1 Definitions.

433.2 Preservation of consumers' claims and defenses, unfair or deceptive acts or practices.

433.3 Exemption of sellers taking or receiving open end consumer credit contracts before November 1, 1977 from requirements of § 433.2(a).

AUTHORITY: 38 Stat. 717, as amended; (15 U.S.C. 41, et seq.)

§ 433.1 Definitions.

(a) *Person*. An individual, corporation, or any other business organization.

(b) *Consumer*. A natural person who seeks or acquires goods or services for personal, family, or household use.

(c) *Creditor*. A person who, in the ordinary course of business, lends purchase money or finances the sale of goods or services to consumers on a deferred payment basis; *Provided*, such person is not acting, for the purposes of a particular transaction, in the capacity of a credit card issuer.

(d) *Purchase money loan*. A cash advance which is received by a consumer in return for a "Finance Charge" within the meaning of the Truth in Lending Act and Regulation Z, which is applied, in whole or substantial part, to a purchase of goods or services from a seller who (1) refers consumers to the creditor or (2) is affiliated with the creditor by common control, contract, or business arrangement.

(e) *Financing a sale*. Extending credit to a consumer in connection with a "Credit Sale" within the meaning of the Truth in Lending Act and Regulation Z.

(f) *Contract*. Any oral or written agreement, formal or informal, between a creditor and a seller, which contemplates or provides for cooperative or concerted activity in connection with the sale of goods or services to consumers or the financing thereof.

(g) *Business arrangement*. Any understanding, procedure, course of dealing, or arrangement, formal or informal, between a creditor and a seller, in connection with the sale of goods or services to consumers or the financing thereof.

(h) *Credit card issuer*. A person who extends to cardholders the right to use a credit card in connection with purchases of goods or services.

(i) *Consumer credit contract*. Any instrument which evidences or embodies a debt arising from a "Purchase Money Loan" transaction or a "financed sale" as defined in paragraphs (d) and (e) of this section.

(j) *Seller*. A person who, in the ordinary course of business, sells or leases goods or services to consumers.

[40 FR 53506, Nov. 18, 1975]

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§ 433.2 Preservation of consumers' claims and defenses, unfair or deceptive acts or practices.

In connection with any sale or lease of goods or services to consumers, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice within the meaning of section 5 of that Act for a seller, directly or indirectly, to:

(a) Take or receive a consumer credit contract which fails to contain the following provision in at least ten point, bold face, type:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

or,

(b) Accept, as full or partial payment for such sale or lease, the proceeds of any purchase money loan (as purchase money loan is defined herein), unless any consumer credit contract made in connection with such purchase money loan contains the following provision in at least ten point, bold face, type:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

[40 FR 53506, Nov. 18, 1975; 40 FR 58131, Dec. 15, 1975]

§ 433.3 Exemption of sellers taking or receiving open end consumer credit contracts before November 1, 1977 from requirements of § 433.2(a).

(a) Any seller who has taken or received an open end consumer credit contract before November 1, 1977, shall be exempt from the requirements of 16 CFR part 433 with respect to such con-

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tract provided the contract does not cut off consumers' claims and defenses.

(b) *Definitions.* The following definitions apply to this exemption:

(1) All pertinent definitions contained in 16 CFR 433.1.

(2) Open end consumer credit contract: a consumer credit contract pursuant to which "open end credit" is extended.

(3) "Open end credit": consumer credit extended on an account pursuant to a plan under which a creditor may permit an applicant to make purchases or make loans, from time to time, directly from the creditor or indirectly by use of a credit card, check, or other device, as the plan may provide. The term does not include negotiated advances under an open-end real estate mortgage or a letter of credit.

(4) Contract which does not cut off consumers' claims and defenses: A consumer credit contract which does not constitute or contain a negotiable instrument, or contain any waiver, limitation, term, or condition which has the effect of limiting a consumer's right to assert against any holder of the contract all legally sufficient claims and defenses which the consumer could assert against the seller of goods or services purchased pursuant to the contract.

[42 FR 19490, Apr. 14, 1977, as amended at 42 FR 46510, Sept. 16, 1977]

PART 435—MAIL OR TELEPHONE ORDER MERCHANDISE

Sec.

- 435.1 The rule.
- 435.2 Definitions.
- 435.3 Limited applicability.
- 435.4 Effective date of the rule.

AUTHORITY: 15 U.S.C. 57a; 5 U.S.C. 552.

SOURCE: 58 FR 49121, Sept. 21, 1993, unless otherwise noted.

§ 435.1 The rule.

In connection with mail or telephone order sales in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, it constitutes an unfair method of competition, and an unfair or deceptive act or practice for a seller:

(a)(1) To solicit any order for the sale of merchandise to be ordered by the buyer through the mails or by telephone unless, at the time of the solicitation, the seller has a reasonable basis to expect that it will be able to ship any ordered merchandise to the buyer:

(i) Within that time clearly and conspicuously stated in any such solicitation, or

(ii) if no time is clearly and conspicuously stated, within thirty (30) days after receipt of a properly completed order from the buyer, Provided, however, where, at the time the merchandise is ordered the buyer applies to the seller for credit to pay for the merchandise in whole or in part, the seller shall have 50 days, rather than 30 days, to perform the actions required in § 435.1(a)(1)(ii) of this part.

(2) To provide any buyer with any revised shipping date, as provided in paragraph (b) of this section, unless, at the time any such revised shipping date is provided, the seller has a reasonable basis for making such representation regarding a definite revised shipping date.

(3) To inform any buyer that it is unable to make any representation regarding the length of any delay unless

(i) the seller has a reasonable basis for so informing the buyer and

(ii) the seller informs the buyer of the reason or reasons for the delay.

(4) In any action brought by the Federal Trade Commission, alleging a violation of this part, the failure of a respondent-seller to have records or other documentary proof establishing its use of systems and procedures which assure the shipment of merchandise in the ordinary course of business within any applicable time set forth in this part will create a rebuttable presumption that the seller lacked a reasonable basis for any expectation of shipment within said applicable time.

(b)(1) Where a seller is unable to ship merchandise within the applicable time set forth in paragraph (a)(1) of this section, to fail to offer to the buyer, clearly and conspicuously and without prior demand, an option either to consent to a delay in shipping or to cancel the buyer's order and receive a prompt refund. Said offer shall be made within a reasonable time after the sell-

er first becomes aware of its inability to ship within the applicable time set forth in paragraph (a)(1) of this section, but in no event later than said applicable time.

(i) Any offer to the buyer of such an option shall fully inform the buyer regarding the buyer's right to cancel the order and to obtain a prompt refund and shall provide a definite revised shipping date, but where the seller lacks a reasonable basis for providing a definite revised shipping date the notice shall inform the buyer that the seller is unable to make any representation regarding the length of the delay.

(ii) Where the seller has provided a definite revised shipping date which is thirty (30) days or less later than the applicable time set forth in paragraph (a)(1) of this section, the offer of said option shall expressly inform the buyer that, unless the seller receives, prior to shipment and prior to the expiration of the definite revised shipping date, a response from the buyer rejecting the delay and cancelling the order, the buyer will be deemed to have consented to a delayed shipment on or before the definite revised shipping date.

(iii) Where the seller has provided a definite revised shipping date which is more than thirty (30) days later than the applicable time set forth in paragraph (a)(1) of this section or where the seller is unable to provide a definite revised shipping date and therefore informs the buyer that it is unable to make any representation regarding the length of the delay, the offer of said option shall also expressly inform the buyer that the buyer's order will automatically be deemed to have been cancelled unless:

(A) The seller has shipped the merchandise within thirty (30) days of the applicable time set forth in paragraph (a)(1) of this section, and has received no cancellation prior to shipment, or

(B) The seller has received from the buyer within thirty (30) days of said applicable time, a response specifically consenting to said shipping delay. Where the seller informs the buyer that it is unable to make any representation regarding the length of the delay, the buyer shall be expressly informed that, should the buyer consent

to an indefinite delay, the buyer will have a continuing right to cancel the buyer's order at any time after the applicable time set forth in paragraph (a)(1) of this section by so notifying the seller prior to actual shipment.

(iv) Nothing in this paragraph shall prohibit a seller who furnishes a definite revised shipping date pursuant to paragraph (b)(1)(i) of this section, from requesting, simultaneously with or at any time subsequent to the offer of an option pursuant to paragraph (b)(1) of this section, the buyer's express consent to a further unanticipated delay beyond the definite revised shipping date in the form of a response from the buyer specifically consenting to said further delay. Provided, however, That where the seller solicits consent to an unanticipated indefinite delay the solicitation shall expressly inform the buyer that, should the buyer so consent to an indefinite delay, the buyer shall have a continuing right to cancel the buyer's order at any time after the definite revised shipping date by so notifying the seller prior to actual shipment.

(2) Where a seller is unable to ship merchandise on or before the definite revised shipping date provided under paragraph (b)(1)(i) of this section and consented to by the buyer pursuant to paragraph (b)(1) (ii) or (iii) of this section, to fail to offer to the buyer, clearly and conspicuously and without prior demand, a renewed option either to consent to a further delay or to cancel the order and to receive a prompt refund. Said offer shall be made within a reasonable time after the seller first becomes aware of its inability to ship before the said definite revised date, but in no event later than the expiration of the definite revised shipping date: Provided, however, That where the seller previously has obtained the buyer's express consent to an unanticipated delay until a specific date beyond the definite revised shipping date, pursuant to paragraph (b)(1)(iv) of this section or to a further delay until a specific date beyond the definite revised shipping date pursuant to paragraph (b)(2) of this section, that date to which the buyer has expressly consented shall supersede the definite re-

vised shipping date for purposes of paragraph (b)(2) of this section.

(i) Any offer to the buyer of said renewed option shall provide the buyer with a new definite revised shipping date, but where the seller lacks a reasonable basis for providing a new definite revised shipping date, the notice shall inform the buyer that the seller is unable to make any representation regarding the length of the further delay.

(ii) The offer of a renewed option shall expressly inform the buyer that, unless the seller receives, prior to the expiration of the old definite revised shipping date or any date superseding the old definite revised shipping date, notification from the buyer specifically consenting to the further delay, the buyer will be deemed to have rejected any further delay, and to have cancelled the order if the seller is in fact unable to ship prior to the expiration of the old definite revised shipping date or any date superseding the old definite revised shipping date: Provided, however, That where the seller offers the buyer the option to consent to an indefinite delay the offer shall expressly inform the buyer that, should the buyer so consent to an indefinite delay, the buyer shall have a continuing right to cancel the buyer's order at any time after the old definite revised shipping date or any date superseding the old definite revised shipping date.

(iii) Paragraph (b)(2) of this section shall not apply to any situation where a seller, pursuant to the provisions of paragraph (b)(1)(iv) of this section, has previously obtained consent from the buyer to an indefinite extension beyond the first revised shipping date.

(3) Wherever a buyer has the right to exercise any option under this part or to cancel an order by so notifying the seller prior to shipment, to fail to furnish the buyer with adequate means, at the seller's expense, to exercise such option or to notify the seller regarding cancellation.

Nothing in paragraph (b) of this section shall prevent a seller, where it is unable to make shipment within the time set forth in paragraph (a)(1) of this section or within a delay period consented to by the buyer, from deciding to consider the order cancelled and

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providing the buyer with notice of said decision within a reasonable time after it becomes aware of said inability to ship, together with a prompt refund.

(c) To fail to deem an order cancelled and to make a prompt refund to the buyer whenever:

(1) The seller receives, prior to the time of shipment, notification from the buyer cancelling the order pursuant to any option, renewed option or continuing option under this part;

(2) The seller has, pursuant to paragraph (b)(1)(iii) of this section, provided the buyer with a definite revised shipping date which is more than thirty (30) days later than the applicable time set forth in paragraph (a)(1) of this section or has notified the buyer that it is unable to make any representation regarding the length of the delay and the seller

(i) Has not shipped the merchandise within thirty (30) days of the applicable time set forth in paragraph (a)(1) of this section, and

(ii) Has not received the buyer's express consent to said shipping delay within said thirty (30) days;

(3) The seller is unable to ship within the applicable time set forth in paragraph (b)(2) of this section, and has not received, within the said applicable time, the buyer's consent to and further delay;

(4) The seller has notified the buyer of its inability to make shipment and has indicated its decision not to ship the merchandise;

(5) The seller fails to offer the option prescribed in paragraph (b)(1) of this section and has not shipped the merchandise within the applicable time set forth in paragraph (a)(1) of this section.

(d) In any action brought by the Federal Trade Commission, alleging a violation of this part, the failure of a respondent-seller to have records or other documentary proof establishing its use of systems and procedures which assure compliance, in the ordinary course of business, with any requirement of paragraphs (b) or (c) of this section will create a rebuttable presumption that the seller failed to comply with said requirement.

§ 435.2 Definitions.

For purposes of this part:

(a) *Mail or telephone order sales* shall mean sales in which the buyer has ordered merchandise from the seller by mail or telephone, regardless of the method of payment or the method used to solicit the order.

(b) *Telephone* refers to any direct or indirect use of the telephone to order merchandise, regardless of whether the telephone is activated by, or the language used is that of human beings, machines, or both.

(c) *Shipment* shall mean the act by which the merchandise is physically placed in the possession of the carrier.

(d) *Receipt of a properly completed order* shall mean, where the buyer tenders full or partial payment in the proper amount in the form of cash, check, money order, or authorization from the buyer to charge an existing charge account, the time at which the seller receives both said payment and an order from the buyer containing all of the information needed by the seller to process and ship the order. Provided, however, That where the seller receives notice that the check or money order tendered by the buyer has been dishonored or that the buyer does not qualify for a credit sale, *receipt of a properly completed order* shall mean the time at which:

(i) The seller receives notice that a check or money order for the proper amount tendered by the buyer has been honored,

(ii) The buyer tenders cash in the proper amount, or

(iii) The seller receives notice that the buyer qualifies for a credit sale.

(e) *Refund* shall mean:

(1) Where the buyer tendered full payment for the unshipped merchandise in the form of cash, check or money order, a return of the amount tendered in the form of cash, check or money order;

(2) Where there is a credit sale:

(i) And the seller is a creditor, a copy of a credit memorandum or the like or an account statement reflecting the removal or absence of any remaining charge incurred as a result of the sale from the buyer's account;

(ii) And a third party is the creditor, a copy of an appropriate credit memorandum or the like to the third party creditor which will remove the charge

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from the buyer's account or a statement from the seller acknowledging the cancellation of the order and representing that it has not taken any action regarding the order which will result in a charge to the buyer's account with the third party;

(iii) And the buyer tendered partial payment for the unshipped merchandise in the form of cash, check or money order, a return of the amount tendered in the form of cash, check or money order.

(f) *Prompt refund* shall mean:

(1) Where a refund is made pursuant to paragraph (e) (1) or (2)(iii) of this section, a refund sent to the buyer by first class mail within seven (7) working days of the date on which the buyer's right to refund vests under the provisions of this part;

(2) Where a refund is made pursuant to paragraph (e)(2) (i) or (ii) of this section, a refund sent to the buyer by first class mail within one (1) billing cycle from the date on which the buyer's right to refund vests under the provisions of this part.

(g) The *time of solicitation* of an order shall mean that time when the seller has:

(1) Mailed or otherwise disseminated the solicitation to a prospective purchaser,

(2) Made arrangements for an advertisement containing the solicitation to appear in a newspaper, magazine or the like or on radio or television which cannot be changed or cancelled without incurring substantial expense, or

(3) Made arrangements for the printing of a catalog, brochure or the like which cannot be changed without incurring substantial expense, in which the solicitation in question forms an insubstantial part.

[58 FR 49121, Sept. 21, 1993, as amended at 60 FR 56950, Nov. 13, 1995]

§ 435.3 Limited applicability.

(a) This part shall not apply to:

(1) Subscriptions, such as magazine sales, ordered for serial delivery, after the initial shipment is made in compliance with this part.

(2) Orders of seeds and growing plants.

(3) Orders made on a collect-on-delivery (C.O.D.) basis.

(4) Transactions governed by the Federal Trade Commission's Trade Regulation Rule entitled "Use of Negative Option Plans by Sellers in Commerce," 16 CFR part 425.

(b) By taking action in this area:

(1) The Federal Trade Commission does not intend to preempt action in the same area, which is not inconsistent with this part, by any State, municipal, or other local government. This part does not annul or diminish any rights or remedies provided to consumers by any State law, municipal ordinance, or other local regulation, insofar as those rights or remedies are equal to or greater than those provided by this part. In addition, this part does not supersede those provisions of any State law, municipal ordinance, or other local regulation which impose obligations or liabilities upon sellers, when sellers subject to this part are not in compliance therewith.

(2) This part does supersede those provisions of any State law, municipal ordinance, or other local regulation which are inconsistent with this part to the extent that those provisions do not provide a buyer with rights which are equal to or greater than those rights granted a buyer by this part. This part also supersedes those provisions of any State law, municipal ordinance, or other local regulation requiring that a buyer be notified of a right which is the same as a right provided by this part but requiring that a buyer be given notice of this right in a language, form, or manner which is different in any way from that required by this part. In those instances where any State law, municipal ordinance, or other local regulation contains provisions, some but not all of which are partially or completely superseded by this part, the provisions or portions of those provisions which have not been superseded retain their full force and effect.

(c) If any provision of this part, or its application to any person, partnership, corporation, act or practice is held invalid, the remainder of this part or the application of the provision to any other person, partnership, corporation, act or practice shall not be affected thereby.

§ 435.4 Effective date of the rule.

The original rule, which became effective 100 days after its promulgation on October 22, 1975, remains in effect. The amended rule, as set forth in this part, becomes effective March 1, 1994.

PART 436—DISCLOSURE REQUIREMENTS AND PROHIBITIONS CONCERNING FRANCHISING

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AUTHORITY: 15 U.S.C. 41-58.

SOURCE: 72 FR 15544, Mar. 30, 2007, unless otherwise noted.

Subpart A—Definitions

§ 436.1 Definitions.

Unless stated otherwise, the following definitions apply throughout part 436:

(a) *Action* includes complaints, cross claims, counterclaims, and third-party complaints in a judicial action or proceeding, and their equivalents in an administrative action or arbitration.

(b) *Affiliate* means an entity controlled by, controlling, or under common control with, another entity.

(c) *Confidentiality clause* means any contract, order, or settlement provision that directly or indirectly restricts a current or former franchisee from discussing his or her personal experience as a franchisee in the franchisor's system with any prospective franchisee. It does not include clauses that protect franchisor's trademarks or other proprietary information.

(d) *Disclose, state, describe, and list* each mean to present all material facts accurately, clearly, concisely, and legibly in plain English.

(e) *Financial performance representation* means any representation, including any oral, written, or visual representation, to a prospective franchisee, including a representation in the general media, that states, expressly or by implication, a specific level or range of actual or potential sales, income, gross profits, or net profits. The term includes a chart, table, or mathematical calculation that shows possible results based on a combination of variables.

(f) *Fiscal year* refers to the franchisor's fiscal year.

(g) *Fractional franchise* means a franchise relationship that satisfies the following criteria when the relationship is created:

(1) The franchisee, any of the franchisee's current directors or officers, or any current directors or officers of a parent or affiliate, has more than two years of experience in the same type of business; and

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(2) The parties have a reasonable basis to anticipate that the sales arising from the relationship will not exceed 20% of the franchisee's total dollar volume in sales during the first year of operation.

(h) *Franchise* means any continuing commercial relationship or arrangement, whatever it may be called, in which the terms of the offer or contract specify, or the franchise seller promises or represents, orally or in writing, that:

(1) The franchisee will obtain the right to operate a business that is identified or associated with the franchisor's trademark, or to offer, sell, or distribute goods, services, or commodities that are identified or associated with the franchisor's trademark;

(2) The franchisor will exert or has authority to exert a significant degree of control over the franchisee's method of operation, or provide significant assistance in the franchisee's method of operation; and

(3) As a condition of obtaining or commencing operation of the franchise, the franchisee makes a required payment or commits to make a required payment to the franchisor or its affiliate.

(i) *Franchisee* means any person who is granted a franchise.

(j) *Franchise seller* means a person that offers for sale, sells, or arranges for the sale of a franchise. It includes the franchisor and the franchisor's employees, representatives, agents, subfranchisors, and third-party brokers who are involved in franchise sales activities. It does not include existing franchisees who sell only their own outlet and who are otherwise not engaged in franchise sales on behalf of the franchisor.

(k) *Franchisor* means any person who grants a franchise and participates in the franchise relationship. Unless otherwise stated, it includes subfranchisors. For purposes of this definition, a "subfranchisor" means a person who functions as a franchisor by engaging in both pre-sale activities and post-sale performance.

(l) *Leased department* means an arrangement whereby a retailer licenses or otherwise permits a seller to con-

duct business from the retailer's location where the seller purchases no goods, services, or commodities directly or indirectly from the retailer, a person the retailer requires the seller to do business with, or a retailer-affiliate if the retailer advises the seller to do business with the affiliate.

(m) *Parent* means an entity that controls another entity directly, or indirectly through one or more subsidiaries.

(n) *Person* means any individual, group, association, limited or general partnership, corporation, or any other entity.

(o) *Plain English* means the organization of information and language usage understandable by a person unfamiliar with the franchise business. It incorporates short sentences; definite, concrete, everyday language; active voice; and tabular presentation of information, where possible. It avoids legal jargon, highly technical business terms, and multiple negatives.

(p) *Predecessor* means a person from whom the franchisor acquired, directly or indirectly, the major portion of the franchisor's assets.

(q) *Principal business address* means the street address of a person's home office in the United States. A principal business address cannot be a post office box or private mail drop.

(r) *Prospective franchisee* means any person (including any agent, representative, or employee) who approaches or is approached by a franchise seller to discuss the possible establishment of a franchise relationship.

(s) *Required payment* means all consideration that the franchisee must pay to the franchisor or an affiliate, either by contract or by practical necessity, as a condition of obtaining or commencing operation of the franchise. A required payment does not include payments for the purchase of reasonable amounts of inventory at bona fide wholesale prices for resale or lease.

(t) *Sale of a franchise* includes an agreement whereby a person obtains a franchise from a franchise seller for value by purchase, license, or otherwise. It does not include extending or renewing an existing franchise agreement where there has been no interruption in the franchisee's operation of

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the business, unless the new agreement contains terms and conditions that differ materially from the original agreement. It also does not include the transfer of a franchise by an existing franchisee where the franchisor has had no significant involvement with the prospective transferee. A franchisor's approval or disapproval of a transfer alone is not deemed to be significant involvement.

(u) *Signature* means a person's affirmative step to authenticate his or her identity. It includes a person's handwritten signature, as well as a person's use of security codes, passwords, electronic signatures, and similar devices to authenticate his or her identity.

(v) *Trademark* includes trademarks, service marks, names, logos, and other commercial symbols.

(w) *Written or in writing* means any document or information in printed form or in any form capable of being preserved in tangible form and read. It includes: type-set, word processed, or handwritten document; information on computer disk or CD-ROM; information sent via email; or information posted on the Internet. It does not include mere oral statements.

Subpart B—Franchisors' Obligations

§ 436.2 Obligation to furnish documents.

In connection with the offer or sale of a franchise to be located in the United States of America or its territories, unless the transaction is exempted under subpart E of this part, it is an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act:

(a) For any franchisor to fail to furnish a prospective franchisee with a copy of the franchisor's current disclosure document, as described in subparts C and D of this part, at least 14 calendar-days before the prospective franchisee signs a binding agreement with, or makes any payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

(b) For any franchisor to alter unilaterally and materially the terms and conditions of the basic franchise agreement or any related agreements at-

tached to the disclosure document without furnishing the prospective franchisee with a copy of each revised agreement at least seven calendar-days before the prospective franchisee signs the revised agreement. Changes to an agreement that arise out of negotiations initiated by the prospective franchisee do not trigger this seven calendar-day period.

(c) For purposes of paragraphs (a) and (b) of this section, the franchisor has furnished the documents by the required date if:

(1) A copy of the document was hand-delivered, faxed, emailed, or otherwise delivered to the prospective franchisee by the required date;

(2) Directions for accessing the document on the Internet were provided to the prospective franchisee by the required date; or

(3) A paper or tangible electronic copy (for example, computer disk or CD-ROM) was sent to the address specified by the prospective franchisee by first-class United States mail at least three calendar days before the required date.

Subpart C—Contents of a Disclosure Document

§ 436.3 Cover page.

Begin the disclosure document with a cover page, in the order and form as follows:

(a) The title "FRANCHISE DISCLOSURE DOCUMENT" in capital letters and bold type.

(b) The franchisor's name, type of business organization, principal business address, telephone number, and, if applicable, email address and primary home page address.

(c) A sample of the primary business trademark that the franchisee will use in its business.

(d) A brief description of the franchised business.

(e) The following statements:

(1) The total investment necessary to begin operation of a [franchise system name] franchise is [the total amount of Item 7 (§436.5(g))]. This includes [the total amount in Item 5 (§436.5(e))] that must be paid to the franchisor or affiliate.

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(2) This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar-days before you sign a binding agreement with, or make any payment to, the franchisor or an affiliate in connection with the proposed franchise sale. [The following sentence in bold type] **NOTE, HOWEVER, THAT NO GOVERNMENTAL AGENCY HAS VERIFIED THE INFORMATION CONTAINED IN THIS DOCUMENT.**

(3) The terms of your contract will govern your franchise relationship. Don't rely on the disclosure document alone to understand your contract. Read all of your contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.

(4) Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as "*A Consumer's Guide to Buying a Franchise*," which can help you understand how to use this disclosure document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW., Washington, D.C. 20580. You can also visit the FTC's home page at www.ftc.gov for additional information. Call your state agency or visit your public library for other sources of information on franchising.

(5) There may also be laws on franchising in your state. Ask your state agencies about them.

(6) [The issuance date].

(f) A franchisor may include the following statement between the statements set out at paragraphs (e)(2) and (3) of this section: "You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact [name or office] at [address] and [telephone number]."

(g) Franchisors may include additional disclosures on the cover page, on a separate cover page, or addendum to

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comply with state pre-sale disclosure laws.

§ 436.4 Table of contents.

Include the following table of contents. State the page where each disclosure Item begins. List all exhibits by letter, as shown in the following example.

TABLE OF CONTENTS

1. The Franchisor and any Parents, Predecessors, and Affiliates
2. Business Experience
3. Litigation
4. Bankruptcy
5. Initial Fees
6. Other Fees
7. Estimated Initial Investment
8. Restrictions on Sources of Products and Services
9. Franchisee's Obligations
10. Financing
11. Franchisor's Assistance, Advertising, Computer Systems, and Training
12. Territory
13. Trademarks
14. Patents, Copyrights, and Proprietary Information
15. Obligation to Participate in the Actual Operation of the Franchise Business
16. Restrictions on What the Franchisee May Sell
17. Renewal, Termination, Transfer, and Dispute Resolution
18. Public Figures
19. Financial Performance Representations
20. Outlets and Franchisee Information
21. Financial Statements
22. Contracts
23. Receipts

EXHIBITS

- A. Franchise Agreement

§ 436.5 Disclosure items.

(a) *Item 1: The Franchisor, and any Parents, Predecessors, and Affiliates.* Disclose:

(1) The name and principal business address of the franchisor; any parents; and any affiliates that offer franchises in any line of business or provide products or services to the franchisees of the franchisor.

(2) The name and principal business address of any predecessors during the 10-year period immediately before the close of the franchisor's most recent fiscal year.

(3) The name that the franchisor uses and any names it intends to use to conduct business.

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(4) The identity and principal business address of the franchisor's agent for service of process.

(5) The type of business organization used by the franchisor (for example, corporation, partnership) and the state in which it was organized.

(6) The following information about the franchisor's business and the franchises offered:

(i) Whether the franchisor operates businesses of the type being franchised.

(ii) The franchisor's other business activities.

(iii) The business the franchisee will conduct.

(iv) The general market for the product or service the franchisee will offer. In describing the general market, consider factors such as whether the market is developed or developing, whether the goods will be sold primarily to a certain group, and whether sales are seasonal.

(v) In general terms, any laws or regulations specific to the industry in which the franchise business operates.

(vi) A general description of the competition.

(7) The prior business experience of the franchisor; any predecessors listed in § 436.5(a)(2) of this part; and any affiliates that offer franchises in any line of business or provide products or services to the franchisees of the franchisor, including:

(i) The length of time each has conducted the type of business the franchisee will operate.

(ii) The length of time each has offered franchises providing the type of business the franchisee will operate.

(iii) Whether each has offered franchises in other lines of business. If so, include:

(A) A description of each other line of business.

(B) The number of franchises sold in each other line of business.

(C) The length of time each has offered franchises in each other line of business.

(b) *Item 2: Business Experience.* Disclose by name and position the franchisor's directors, trustees, general partners, principal officers, and any other individuals who will have management responsibility relating to the sale or operation of franchises offered

by this document. For each person listed in this section, state his or her principal positions and employers during the past five years, including each position's starting date, ending date, and location.

(c) *Item 3: Litigation.* (1) Disclose whether the franchisor; a predecessor; a parent or affiliate who induces franchise sales by promising to back the franchisor financially or otherwise guarantees the franchisor's performance; an affiliate who offers franchises under the franchisor's principal trademark; and any person identified in § 436.5(b) of this part:

(i) Has pending against that person:

(A) An administrative, criminal, or material civil action alleging a violation of a franchise, antitrust, or securities law, or alleging fraud, unfair or deceptive practices, or comparable allegations.

(B) Civil actions, other than ordinary routine litigation incidental to the business, which are material in the context of the number of franchisees and the size, nature, or financial condition of the franchise system or its business operations.

(ii) Was a party to any material civil action involving the franchise relationship in the last fiscal year. For purposes of this section, "franchise relationship" means contractual obligations between the franchisor and franchisee directly relating to the operation of the franchised business (such as royalty payment and training obligations). It does not include actions involving suppliers or other third parties, or indemnification for tort liability.

(iii) Has in the 10-year period immediately before the disclosure document's issuance date:

(A) Been convicted of or pleaded nolo contendere to a felony charge.

(B) Been held liable in a civil action involving an alleged violation of a franchise, antitrust, or securities law, or involving allegations of fraud, unfair or deceptive practices, or comparable allegations. "Held liable" means that, as a result of claims or counterclaims, the person must pay money or other consideration, must reduce an indebtedness by the amount of an award, cannot enforce its rights, or must take action adverse to its interests.

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(2) Disclose whether the franchisor; a predecessor; a parent or affiliate who guarantees the franchisor's performance; an affiliate who has offered or sold franchises in any line of business within the last 10 years; or any other person identified in § 436.5(b) of this part is subject to a currently effective injunctive or restrictive order or decree resulting from a pending or concluded action brought by a public agency and relating to the franchise or to a Federal, State, or Canadian franchise, securities, antitrust, trade regulation, or trade practice law.

(3) For each action identified in paragraphs (c)(1) and (2) of this section, state the title, case number or citation, the initial filing date, the names of the parties, the forum, and the relationship of the opposing party to the franchisor (for example, competitor, supplier, lessor, franchisee, former franchisee, or class of franchisees). Except as provided in paragraph (c)(4) of this section, summarize the legal and factual nature of each claim in the action, the relief sought or obtained, and any conclusions of law or fact.¹ In addition, state:

- (i) For pending actions, the status of the action.
- (ii) For prior actions, the date when the judgment was entered and any damages or settlement terms.²
- (iii) For injunctive or restrictive orders, the nature, terms, and conditions of the order or decree.
- (iv) For convictions or pleas, the crime or violation, the date of conviction, and the sentence or penalty imposed.

¹Franchisors may include a summary opinion of counsel concerning any action if counsel consent to use the summary opinion and the full opinion is attached to the disclosure document.

²If a settlement agreement must be disclosed in this Item, all material settlement terms must be disclosed, whether or not the agreement is confidential. However, franchisors need not disclose the terms of confidential settlements entered into before commencing franchise sales. Further, any franchisor who has historically used only the Franchise Rule format, or who is new to franchising, need not disclose confidential settlements entered prior to the effective date of this Rule.

(4) For any other franchisor-initiated suit identified in paragraph (c)(1)(ii) of this section, the franchisor may comply with the requirements of paragraphs (c)(3)(i) through (iv) of this section by listing individual suits under one common heading that will serve as the case summary (for example, "royalty collection suits").

(d) *Item 4: Bankruptcy.* (1) Disclose whether the franchisor; any parent; predecessor; affiliate; officer, or general partner of the franchisor, or any other individual who will have management responsibility relating to the sale or operation of franchises offered by this document, has, during the 10-year period immediately before the date of this disclosure document:

- (i) Filed as debtor (or had filed against it) a petition under the United States Bankruptcy Code ("Bankruptcy Code").
- (ii) Obtained a discharge of its debts under the Bankruptcy Code.
- (iii) Been a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition under the Bankruptcy Code, or that obtained a discharge of its debts under the Bankruptcy Code while, or within one year after, the officer or general partner held the position in the company.

(2) For each bankruptcy, state:

- (i) The current name, address, and principal place of business of the debtor.
- (ii) Whether the debtor is the franchisor. If not, state the relationship of the debtor to the franchisor (for example, affiliate, officer).

(iii) The date of the original filing and the material facts, including the bankruptcy court, and the case name and number. If applicable, state the debtor's discharge date, including discharges under Chapter 7 and confirmation of any plans of reorganization under Chapters 11 and 13 of the Bankruptcy Code.

(3) Disclose cases, actions, and other proceedings under the laws of foreign nations relating to bankruptcy.

(e) *Item 5: Initial Fees.* Disclose the initial fees and any conditions under which these fees are refundable. If the initial fees are not uniform, disclose the range or formula used to calculate

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the initial fees paid in the fiscal year before the issuance date and the factors that determined the amount. For this section, “initial fees” means all fees and payments, or commitments to pay, for services or goods received from the franchisor or any affiliate before the franchisee’s business opens, whether payable in lump sum or installments. Disclose installment payment terms in this section or in § 436.5(j) of this part.

(f) *Item 6: Other Fees.* Disclose, in the following tabular form, all other fees that the franchisee must pay to the franchisor or its affiliates, or that the franchisor or its affiliates impose or collect in whole or in part for a third party. State the title “OTHER FEES” in capital letters using bold type. Include any formula used to compute the fees.³

**ITEM 6 TABLE
OTHER FEES**

| Column 1 Type of fee | Column 2 Amount | Column 3 Due Date | Column 4 Remarks |
|-------------------------|--------------------|----------------------|---------------------|
| | | | |

(1) In column 1, list the type of fee (for example, royalties, and fees for lease negotiations, construction, remodeling, additional training or assistance, advertising, advertising cooperatives, purchasing cooperatives, audits, accounting, inventory, transfers, and renewals).

(2) In column 2, state the amount of the fee.

(3) In column 3, state the due date for each fee.

(4) In column 4, include remarks, definitions, or caveats that elaborate on the information in the table. If remarks are long, franchisors may use footnotes instead of the remarks column. If applicable, include the following information in the remarks column or in a footnote:

(i) Whether the fees are payable only to the franchisor.

(ii) Whether the fees are imposed and collected by the franchisor.

(iii) Whether the fees are non-refundable or describe the circumstances when the fees are refundable.

(iv) Whether the fees are uniformly imposed.

(v) The voting power of franchisor-owned outlets on any fees imposed by cooperatives. If franchisor-owned outlets have controlling voting power, disclose the maximum and minimum fees that may be imposed.

(g) *Item 7: Estimated Initial Investment.* Disclose, in the following tabular form, the franchisee’s estimated initial investment. State the title “YOUR ESTIMATED INITIAL INVESTMENT” in capital letters using bold type. Franchisors may include additional expenditure tables to show expenditure variations caused by differences such as in site location and premises size.

**ITEM 7 TABLE:
YOUR ESTIMATED INITIAL INVESTMENT**

| Column 1 Type of expenditure | Column 2 Amount | Column 3 Method of payment | Column 4 When due | Column 4 To whom payment is to be made |
|---------------------------------|--------------------|-------------------------------|----------------------|---|
| | | | | |
| Total. | | | | |

³If fees may increase, disclose the formula that determines the increase or the maximum amount of the increase. For example,

a percentage of gross sales is acceptable if the franchisor defines the term “gross sales.”

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- (1) In column 1:
 - (i) List each type of expense, beginning with pre-opening expenses. Include the following expenses, if applicable. Use footnotes to include remarks, definitions, or caveats that elaborate on the information in the Table.
 - (A) The initial franchise fee.
 - (B) Training expenses.
 - (C) Real property, whether purchased or leased.
 - (D) Equipment, fixtures, other fixed assets, construction, remodeling, leasehold improvements, and decorating costs, whether purchased or leased.
 - (E) Inventory to begin operating.
 - (F) Security deposits, utility deposits, business licenses, and other prepaid expenses.
 - (ii) List separately and by name any other specific required payments (for example, additional training, travel, or advertising expenses) that the franchisee must make to begin operations.
 - (iii) Include a category titled “Additional funds— [initial period]” for any other required expenses the franchisee will incur before operations begin and during the initial period of operations. State the initial period. A reasonable initial period is at least three months or a reasonable period for the industry. Describe in general terms the factors, basis, and experience that the franchisor considered or relied upon in formulating the amount required for additional funds.
- (2) In column 2, state the amount of the payment. If the amount is unknown, use a low-high range based on the franchisor’s current experience. If real property costs cannot be estimated in a low-high range, describe the approximate size of the property and building and the probable location of the building (for example, strip shopping center, mall, downtown, rural, or highway).
- (3) In column 3, state the method of payment.
- (4) In column 4, state the due date.
- (5) In column 5, state to whom payment will be made.
- (6) Total the initial investment, incorporating ranges of fees, if used.
- (7) In a footnote, state:

- (i) Whether each payment is non-refundable, or describe the circumstances when each payment is refundable.
 - (ii) If the franchisor or an affiliate finances part of the initial investment, the amount that it will finance, the required down payment, the annual interest rate, rate factors, and the estimated loan repayments. Franchisors may refer to §436.5(j) of this part for additional details.
 - (h) *Item 8: Restrictions on Sources of Products and Services.* Disclose the franchisee’s obligations to purchase or lease goods, services, supplies, fixtures, equipment, inventory, computer hardware and software, real estate, or comparable items related to establishing or operating the franchised business either from the franchisor, its designee, or suppliers approved by the franchisor, or under the franchisor’s specifications. Include obligations to purchase imposed by the franchisor’s written agreement or by the franchisor’s practice.⁴ For each applicable obligation, state:
 - (1) The good or service required to be purchased or leased.
 - (2) Whether the franchisor or its affiliates are approved suppliers or the only approved suppliers of that good or service.
 - (3) Any supplier in which an officer of the franchisor owns an interest.
 - (4) How the franchisor grants and revokes approval of alternative suppliers, including:
 - (i) Whether the franchisor’s criteria for approving suppliers are available to franchisees.
 - (ii) Whether the franchisor permits franchisees to contract with alternative suppliers who meet the franchisor’s criteria.
 - (iii) Any fees and procedures to secure approval to purchase from alternative suppliers.
- ⁴Franchisors may include the reason for the requirement. Franchisors need not disclose in this Item the purchase or lease of goods or services provided as part of the franchise without a separate charge (such as initial training, if the cost is included in the franchise fee). Describe such fees in Item 5 of this section. Do not disclose fees already described in §436.5(f) of this part.

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(iv) The time period in which the franchisee will be notified of approval or disapproval.

(v) How approvals are revoked.

(5) Whether the franchisor issues specifications and standards to franchisees, subfranchisees, or approved suppliers. If so, describe how the franchisor issues and modifies specifications.

(6) Whether the franchisor or its affiliates will or may derive revenue or other material consideration from required purchases or leases by franchisees. If so, describe the precise basis by which the franchisor or its affiliates will or may derive that consideration by stating:

(i) The franchisor's total revenue.⁵

(ii) The franchisor's revenues from all required purchases and leases of products and services.

(iii) The percentage of the franchisor's total revenues that are from required purchases or leases.

(iv) If the franchisor's affiliates also sell or lease products or services to franchisees, the affiliates' revenues from those sales or leases.

(7) The estimated proportion of these required purchases and leases by the franchisee to all purchases and leases by the franchisee of goods and services in establishing and operating the franchised businesses.

(8) If a designated supplier will make payments to the franchisor from franchisee purchases, disclose the basis for the payment (for example, specify a percentage or a flat amount). For purposes of this disclosure, a "payment" includes the sale of similar goods or services to the franchisor at a lower price than to franchisees.

(9) The existence of purchasing or distribution cooperatives.

(10) Whether the franchisor negotiates purchase arrangements with suppliers, including price terms, for the benefit of franchisees.

(11) Whether the franchisor provides material benefits (for example, renewal or granting additional franchises) to a franchisee based on a franchisee's purchase of particular products or services or use of particular suppliers.

(i) *Item 9: Franchisee's Obligations.* Disclose, in the following tabular form, a list of the franchisee's principal obligations. State the title "FRANCHISEE'S OBLIGATIONS" in capital letters using bold type. Cross-reference each listed obligation with any applicable section of the franchise or other agreement and with the relevant disclosure document provision. If a particular obligation is not applicable, state "Not Applicable." Include additional obligations, as warranted.

ITEM 9 TABLE:

FRANCHISEE'S OBLIGATIONS

[In bold] This table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this disclosure document.

| Obligation | Section in agreement | Disclosure document item |
|--|----------------------|--------------------------|
| a. Site selection and acquisition/lease | | |
| b. Pre-opening purchase/leases | | |
| c. Site development and other pre-opening requirements | | |
| d. Initial and ongoing training | | |
| e. Opening | | |
| f. Fees | | |
| g. Compliance with standards and policies/operating manual | | |
| h. Trademarks and proprietary information | | |

⁵Take figures from the franchisor's most recent annual audited financial statement required in § 436.5(u) of this part. If audited statements are not yet required, or if the en-

tity deriving the income is an affiliate, disclose the sources of information used in computing revenues.

ITEM 9 TABLE:—Continued
FRANCHISEE’S OBLIGATIONS

[In bold] This table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this disclosure document.

| Obligation | Section in agreement | Disclosure document item |
|---|----------------------|--------------------------|
| i. Restrictions on products/services offered | | |
| j. Warranty and customer service requirements | | |
| k. Territorial development and sales quotas | | |
| l. Ongoing product/service purchases | | |
| m. Maintenance, appearance, and remodeling requirements | | |
| n. Insurance | | |
| o. Advertising | | |
| p. Indemnification | | |
| q. Owner’s participation/management/staffing | | |
| r. Records and reports | | |
| s. Inspections and audits | | |
| t. Transfer | | |
| u. Renewal | | |
| v. Post-termination obligations | | |
| w. Non-competition covenants | | |
| x. Dispute resolution | | |
| y. Other (describe) | | |

(j) *Item 10: Financing.* (1) Disclose the terms of each financing arrangement, including leases and installment contracts, that the franchisor, its agent, or affiliates offer directly or indirectly to the franchisee.⁶ The franchisor may summarize the terms of each financing arrangement in tabular form, using footnotes to provide additional information. For a sample Item 10 table, see appendix A of this part. For each financing arrangement, state:

(i) What the financing covers (for example, the initial franchise fee, site acquisition, construction or remodeling, initial or replacement equipment or

fixtures, opening or ongoing inventory or supplies, or other continuing expenses).⁷

(ii) The identity of each lender providing financing and their relationship to the franchisor (for example, affiliate).

(iii) The amount of financing offered or, if the amount depends on an actual cost that may vary, the percentage of the cost that will be financed.

(iv) The rate of interest, plus finance charges, expressed on an annual basis. If the rate of interest, plus finance charges, expressed on an annual basis, may differ depending on when the financing is issued, state what that rate was on a specified recent date.

⁶Indirect offers of financing include a written arrangement between a franchisor or its affiliate and a lender, for the lender to offer financing to a franchisee; an arrangement in which a franchisor or its affiliate receives a benefit from a lender in exchange for financing a franchise purchase; and a franchisor’s guarantee of a note, lease, or other obligation of the franchisee.

⁷Include sample copies of the financing documents as an exhibit to §436.5(v) of this part. Cite the section and name of the document containing the financing terms and conditions.

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(v) The number of payments or the period of repayment.

(vi) The nature of any security interest required by the lender.

(vii) Whether a person other than the franchisee must personally guarantee the debt.

(viii) Whether the debt can be prepaid and the nature of any prepayment penalty.

(ix) The franchisee's potential liabilities upon default, including any:

(A) Accelerated obligation to pay the entire amount due;

(B) Obligations to pay court costs and attorney's fees incurred in collecting the debt;

(C) Termination of the franchise; and

(D) Liabilities from cross defaults such as those resulting directly from non-payment, or indirectly from the loss of business property.

(x) Other material financing terms.

(2) Disclose whether the loan agreement requires franchisees to waive defenses or other legal rights (for example, confession of judgment), or bars franchisees from asserting a defense against the lender, the lender's assignee or the franchisor. If so, describe the relevant provisions.

(3) Disclose whether the franchisor's practice or intent is to sell, assign, or discount to a third party all or part of the financing arrangement. If so, state:

(i) The assignment terms, including whether the franchisor will remain primarily obligated to provide the financed goods or services; and

(ii) That the franchisee may lose all its defenses against the lender as a result of the sale or assignment.

(4) Disclose whether the franchisor or an affiliate receives any consideration for placing financing with the lender. If such payments exist:

(i) Disclose the amount or the method of determining the payment; and

(ii) Identify the source of the payment and the relationship of the source to the franchisor or its affiliates.

(k) *Item 11: Franchisor's Assistance, Advertising, Computer Systems, and Training.* Disclose the franchisor's principal assistance and related obligations of both the franchisor and franchisee as follows. For each obligation, cite the section number of the franchise agreement imposing the obligation. Begin by

stating the following sentence in bold type: "EXCEPT AS LISTED BELOW, [THE FRANCHISOR] IS NOT REQUIRED TO PROVIDE YOU WITH ANY ASSISTANCE."

(1) Disclose the franchisor's pre-opening obligations to the franchisee, including any assistance in:

(i) Locating a site and negotiating the purchase or lease of the site. If such assistance is provided, state:

(A) Whether the franchisor generally owns the premises and leases it to the franchisee.

(B) Whether the franchisor selects the site or approves an area in which the franchisee selects a site. If so, state further whether and how the franchisor must approve a franchisee-selected site.

(C) The factors that the franchisor considers in selecting or approving sites (for example, general location and neighborhood, traffic patterns, parking, size, physical characteristics of existing buildings, and lease terms).

(D) The time limit for the franchisor to locate or approve or disapprove the site and the consequences if the franchisor and franchisee cannot agree on a site.

(ii) Conforming the premises to local ordinances and building codes and obtaining any required permits.

(iii) Constructing, remodeling, or decorating the premises.

(iv) Hiring and training employees.

(v) Providing for necessary equipment, signs, fixtures, opening inventory, and supplies. If any such assistance is provided, state:

(A) Whether the franchisor provides these items directly or only provides the names of approved suppliers.

(B) Whether the franchisor provides written specifications for these items.

(C) Whether the franchisor delivers or installs these items.

(2) Disclose the typical length of time between the earlier of the signing of the franchise agreement or the first payment of consideration for the franchise and the opening of the franchisee's business. Describe the factors that may affect the time period, such as ability to obtain a lease, financing or building permits, zoning and local ordinances, weather conditions, shortages, or delayed installation of equipment, fixtures, and signs.

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(3) Disclose the franchisor's obligations to the franchisee during the operation of the franchise, including any assistance in:

(i) Developing products or services the franchisee will offer to its customers.

(ii) Hiring and training employees.

(iii) Improving and developing the franchised business.

(iv) Establishing prices.

(v) Establishing and using administrative, bookkeeping, accounting, and inventory control procedures.

(vi) Resolving operating problems encountered by the franchisee.

(4) Describe the advertising program for the franchise system, including the following:

(i) The franchisor's obligation to conduct advertising, including:

(A) The media the franchisor may use.

(B) Whether media coverage is local, regional, or national.

(C) The source of the advertising (for example, an in-house advertising department or a national or regional advertising agency).

(D) Whether the franchisor must spend any amount on advertising in the area or territory where the franchisee is located.

(ii) The circumstances when the franchisor will permit franchisees to use their own advertising material.

(iii) Whether there is an advertising council composed of franchisees that advises the franchisor on advertising policies. If so, disclose:

(A) How members of the council are selected.

(B) Whether the council serves in an advisory capacity only or has operational or decision-making power.

(C) Whether the franchisor has the power to form, change, or dissolve the advertising council.

(iv) Whether the franchisee must participate in a local or regional advertising cooperative. If so, state:

(A) How the area or membership of the cooperative is defined.

(B) How much the franchisee must contribute to the fund and whether other franchisees must contribute a different amount or at a different rate.

(C) Whether the franchisor-owned outlets must contribute to the fund

and, if so, whether those contributions are on the same basis as those for franchisees.

(D) Who is responsible for administering the cooperative (for example, franchisor, franchisees, or advertising agency).

(E) Whether cooperatives must operate from written governing documents and whether the documents are available for the franchisee to review.

(F) Whether cooperatives must prepare annual or periodic financial statements and whether the statements are available for review by the franchisee.

(G) Whether the franchisor has the power to require cooperatives to be formed, changed, dissolved, or merged.

(v) Whether the franchisee must participate in any other advertising fund. If so, state:

(A) Who contributes to the fund.

(B) How much the franchisee must contribute to the fund and whether other franchisees must contribute a different amount or at a different rate.

(C) Whether the franchisor-owned outlets must contribute to the fund and, if so, whether it is on the same basis as franchisees.

(D) Who administers the fund.

(E) Whether the fund is audited and when it is audited.

(F) Whether financial statements of the fund are available for review by the franchisee.

(G) How the funds were used in the most recently concluded fiscal year, including the percentages spent on production, media placement, administrative expenses, and a description of any other use.

(vi) If not all advertising funds are spent in the fiscal year in which they accrue, how the franchisor uses the remaining amount, including whether franchisees receive a periodic accounting of how advertising fees are spent.

(vii) The percentage of advertising funds, if any, that the franchisor uses principally to solicit new franchise sales.

(5) Disclose whether the franchisor requires the franchisee to buy or use electronic cash registers or computer systems. If so, describe the systems generally in non-technical language,

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including the types of data to be generated or stored in these systems, and state the following:

- (i) The cost of purchasing or leasing the systems.
- (ii) Any obligation of the franchisor, any affiliate, or third party to provide ongoing maintenance, repairs, upgrades, or updates.
- (iii) Any obligations of the franchisee to upgrade or update any system during the term of the franchise, and, if so, any contractual limitations on the frequency and cost of the obligation.
- (iv) The annual cost of any optional or required maintenance, updating, upgrading, or support contracts.
- (v) Whether the franchisor will have independent access to the information that will be generated or stored in any electronic cash register or computer system. If so, describe the information that the franchisor may access and

whether there are any contractual limitations on the franchisor's right to access the information.

(6) Disclose the table of contents of the franchisor's operating manual provided to franchisees as of the franchisor's last fiscal year-end or a more recent date. State the number of pages devoted to each subject and the total number of pages in the manual as of this date. This disclosure may be omitted if the franchisor offers the prospective franchisee the opportunity to view the manual before buying the franchise.

(7) Disclose the franchisor's training program as of the franchisor's last fiscal year-end or a more recent date.

(i) Describe the training program in the following tabular form. Title the table "TRAINING PROGRAM" in capital letters and bold type.

**ITEM 11 TABLE
TRAINING PROGRAM**

| Column 1 Subject | Column 2 Hours of Classroom Training | Column 3 Hours of On-The-Job Training | Column 4 Location |
|---------------------|---|--|----------------------|
| | | | |

(A) In column 1, state the subjects taught.

(B) In column 2, state the hours of classroom training for each subject.

(C) In column 3, state the hours of on-the-job training for each subject.

(D) In column 4, state the location of the training for each subject.

(i) State further:

(A) How often training classes are held and the nature of the location or facility where training is held (for example, company, home, office, franchisor-owned store).

(B) The nature of instructional materials and the instructor's experience, including the instructor's length of experience in the field and with the franchisor. State only experience relevant to the subject taught and the franchisor's operations.

(C) Any charges franchisees must pay for training and who must pay travel and living expenses of the training program enrollees.

(D) Who may and who must attend training. State whether the franchisee

or other persons must complete the program to the franchisor's satisfaction. If successful completion is required, state how long after signing the agreement or before opening the business the training must be completed. If training is not mandatory, state the percentage of new franchisees that enrolled in the training program during the preceding 12 months.

(E) Whether additional training programs or refresher courses are required.

(1) *Item 12: Territory.* Disclose:

(1) Whether the franchise is for a specific location or a location to be approved by the franchisor.

(2) Any minimum territory granted to the franchisee (for example, a specific radius, a distance sufficient to encompass a specified population, or another specific designation).

(3) The conditions under which the franchisor will approve the relocation of the franchised business or the franchisee's establishment of additional franchised outlets.

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(4) Franchisee options, rights of first refusal, or similar rights to acquire additional franchises.

(5) Whether the franchisor grants an exclusive territory.

(i) If the franchisor does not grant an exclusive territory, state: "You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control."

(ii) If the franchisor grants an exclusive territory, disclose:

(A) Whether continuation of territorial exclusivity depends on achieving a certain sales volume, market penetration, or other contingency, and the circumstances when the franchisee's territory may be altered. Describe any sales or other conditions. State the franchisor's rights if the franchisee fails to meet the requirements.

(B) Any other circumstances that permit the franchisor to modify the franchisee's territorial rights (for example, a population increase in the territory giving the franchisor the right to grant an additional franchise in the area) and the effect of such modifications on the franchisee's rights.

(6) For all territories (exclusive and non-exclusive):

(i) Any restrictions on the franchisor from soliciting or accepting orders from consumers inside the franchisee's territory, including:

(A) Whether the franchisor or an affiliate has used or reserves the right to use other channels of distribution, such as the Internet, catalog sales, telemarketing, or other direct marketing sales, to make sales within the franchisee's territory using the franchisor's principal trademarks.

(B) Whether the franchisor or an affiliate has used or reserves the right to use other channels of distribution, such as the Internet, catalog sales, telemarketing, or other direct marketing, to make sales within the franchisee's territory of products or services under trademarks different from the ones the franchisee will use under the franchise agreement.

(C) Any compensation that the franchisor must pay for soliciting or accepting orders from inside the franchisee's territory.

(ii) Any restrictions on the franchisee from soliciting or accepting orders from consumers outside of his or her territory, including whether the franchisee has the right to use other channels of distribution, such as the Internet, catalog sales, telemarketing, or other direct marketing, to make sales outside of his or her territory.

(iii) If the franchisor or an affiliate operates, franchises, or has plans to operate or franchise a business under a different trademark and that business sells or will sell goods or services similar to those the franchisee will offer, describe:

(A) The similar goods and services.

(B) The different trademark.

(C) Whether outlets will be franchisor owned or operated.

(D) Whether the franchisor or its franchisees who use the different trademark will solicit or accept orders within the franchisee's territory.

(E) The timetable for the plan.

(F) How the franchisor will resolve conflicts between the franchisor and franchisees and between the franchisees of each system regarding territory, customers, and franchisor support.

(G) The principal business address of the franchisor's similar operating business. If it is the same as the franchisor's principal business address stated in § 436.5(a) of this part, disclose whether the franchisor maintains (or plans to maintain) physically separate offices and training facilities for the similar competing business.

(m) *Item 13: Trademarks.* (1) Disclose each principal trademark to be licensed to the franchisee. For this Item, "principal trademark" means the primary trademarks, service marks, names, logos, and commercial symbols the franchisee will use to identify the franchised business. It may not include every trademark the franchisor owns.

(2) Disclose whether each principal trademark is registered with the United States Patent and Trademark Office. If so, state:

(i) The date and identification number of each trademark registration.

(ii) Whether the franchisor has filed all required affidavits.

(iii) Whether any registration has been renewed.

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(iv) Whether the principal trademarks are registered on the Principal or Supplemental Register of the United States Patent and Trademark Office.

(3) If the principal trademark is not registered with the United States Patent and Trademark Office, state whether the franchisor has filed any trademark application, including any “intent to use” application or an application based on actual use. If so, state the date and identification number of the application.

(4) If the trademark is not registered on the Principal Register of the United States Patent and Trademark Office, state: “We do not have a federal registration for our principal trademark. Therefore, our trademark does not have many legal benefits and rights as a federally registered trademark. If our right to use the trademark is challenged, you may have to change to an alternative trademark, which may increase your expenses.”

(5) Disclose any currently effective material determinations of the United States Patent and Trademark Office, the Trademark Trial and Appeal Board, or any state trademark administrator or court; and any pending infringement, opposition, or cancellation proceeding. Include infringement, opposition, or cancellation proceedings in which the franchisor unsuccessfully sought to prevent registration of a trademark in order to protect a trademark licensed by the franchisor. Describe how the determination affects the ownership, use, or licensing of the trademark.

(6) Disclose any pending material federal or state court litigation regarding the franchisor’s use or ownership rights in a trademark. For each pending action, disclose:⁸

(i) The forum and case number.

(ii) The nature of claims made opposing the franchisor’s use of the trademark or by the franchisor opposing another person’s use of the trademark.

(iii) Any effective court or administrative agency ruling in the matter.

(7) Disclose any currently effective agreements that significantly limit the franchisor’s rights to use or license the use of trademarks listed in this section in a manner material to the franchise. For each agreement, disclose:

(i) The manner and extent of the limitation or grant.

(ii) The extent to which the agreement may affect the franchisee.

(iii) The agreement’s duration.

(iv) The parties to the agreement.

(v) The circumstances when the agreement may be canceled or modified.

(vi) All other material terms.

(8) Disclose:

(i) Whether the franchisor must protect the franchisee’s right to use the principal trademarks listed in this section, and must protect the franchisee against claims of infringement or unfair competition arising out of the franchisee’s use of the trademarks.

(ii) The franchisee’s obligation to notify the franchisor of the use of, or claims of rights to, a trademark identical to or confusingly similar to a trademark licensed to the franchisee.

(iii) Whether the franchise agreement requires the franchisor to take affirmative action when notified of these uses or claims.

(iv) Whether the franchisor or franchisee has the right to control any administrative proceedings or litigation involving a trademark licensed by the franchisor to the franchisee.

(v) Whether the franchise agreement requires the franchisor to participate in the franchisee’s defense and/or indemnify the franchisee for expenses or damages if the franchisee is a party to an administrative or judicial proceeding involving a trademark licensed by the franchisor to the franchisee, or if the proceeding is resolved unfavorably to the franchisee.

(vi) The franchisee’s rights under the franchise agreement if the franchisor requires the franchisee to modify or discontinue using a trademark.

(9) Disclose whether the franchisor knows of either superior prior rights or infringing uses that could materially affect the franchisee’s use of the principal trademarks in the state where

⁸The franchisor may include an attorney’s opinion relative to the merits of litigation or of an action if the attorney issuing the opinion consents to its use. The text of the disclosure may include a summary of the opinion if the full opinion is attached and the attorney issuing the opinion consents to the use of the summary.

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the franchised business will be located. For each use of a principal trademark that the franchisor believes is an infringement that could materially affect the franchisee's use of a trademark, disclose:

- (i) The nature of the infringement.
- (ii) The locations where the infringement is occurring.
- (iii) The length of time of the infringement (to the extent known).
- (iv) Any action taken or anticipated by the franchisor.

(n) *Item 14: Patents, Copyrights, and Proprietary Information.* (1) Disclose whether the franchisor owns rights in, or licenses to, patents or copyrights that are material to the franchise. Also, disclose whether the franchisor has any pending patent applications that are material to the franchise. If so, state:

- (i) The nature of the patent, patent application, or copyright and its relationship to the franchise.
 - (ii) For each patent:
 - (A) The duration of the patent.
 - (B) The type of patent (for example, mechanical, process, or design).
 - (C) The patent number, issuance date, and title.
 - (iii) For each patent application:
 - (A) The type of patent application (for example, mechanical, process, or design).
 - (B) The serial number, filing date, and title.
 - (iv) For each copyright:
 - (A) The duration of the copyright.
 - (B) The registration number and date.
 - (C) Whether the franchisor can and intends to renew the copyright.

(2) Describe any current material determination of the United States Patent and Trademark Office, the United States Copyright Office, or a court regarding the patent or copyright. Include the forum and matter number. Describe how the determination affects the franchised business.

(3) State the forum, case number, claims asserted, issues involved, and effective determinations for any material proceeding pending in the United

States Patent and Trademark Office or any court.⁹

(4) If an agreement limits the use of the patent, patent application, or copyright, state the parties to and duration of the agreement, the extent to which the agreement may affect the franchisee, and other material terms of the agreement.

(5) Disclose the franchisor's obligation to protect the patent, patent application, or copyright; and to defend the franchisee against claims arising from the franchisee's use of patented or copyrighted items, including:

(i) Whether the franchisor's obligation is contingent upon the franchisee notifying the franchisor of any infringement claims or whether the franchisee's notification is discretionary.

(ii) Whether the franchise agreement requires the franchisor to take affirmative action when notified of infringement.

(iii) Who has the right to control any litigation.

(iv) Whether the franchisor must participate in the defense of a franchisee or indemnify the franchisee for expenses or damages in a proceeding involving a patent, patent application, or copyright licensed to the franchisee.

(v) Whether the franchisor's obligation is contingent upon the franchisee modifying or discontinuing the use of the subject matter covered by the patent or copyright.

(vi) The franchisee's rights under the franchise agreement if the franchisor requires the franchisee to modify or discontinue using the subject matter covered by the patent or copyright.

(6) If the franchisor knows of any patent or copyright infringement that could materially affect the franchisee, disclose:

- (i) The nature of the infringement.
- (ii) The locations where the infringement is occurring.
- (iii) The length of time of the infringement (to the extent known).
- (iv) Any action taken or anticipated by the franchisor.

⁹If counsel consents, the franchisor may include a counsel's opinion or a summary of the opinion if the full opinion is attached.

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(7) If the franchisor claims proprietary rights in other confidential information or trade secrets, describe in general terms the proprietary information communicated to the franchisee and the terms for use by the franchisee. The franchisor need only describe the general nature of the proprietary information, such as whether a formula or recipe is considered to be a trade secret.

(o) *Item 15: Obligation to Participate in the Actual Operation of the Franchise Business.* (1) Disclose the franchisee's obligation to participate personally in the direct operation of the franchisee's business and whether the franchisor recommends participation. Include obligations arising from any written agreement or from the franchisor's practice.

(2) If personal "on-premises" supervision is not required, disclose the following:

(i) If the franchisee is an individual, whether the franchisor recommends on-premises supervision by the franchisee.

(ii) Limits on whom the franchisee can hire as an on-premises supervisor.

(iii) Whether an on-premises supervisor must successfully complete the franchisor's training program.

(iv) If the franchisee is a business entity, the amount of equity interest, if any, that the on-premises supervisor must have in the franchisee's business.

(3) Disclose any restrictions that the franchisee must place on its manager (for example, maintain trade secrets, covenants not to compete).

(p) *Item 16: Restrictions on What the Franchisee May Sell.* Disclose any franchisor-imposed restrictions or conditions on the goods or services that

the franchisee may sell or that limit access to customers, including:

(1) Any obligation on the franchisee to sell only goods or services approved by

the franchisor.

(2) Any obligation on the franchisee to sell all goods or services authorized by

the franchisor.

(3) Whether the franchisor has the right to change the types of authorized goods or services and whether there are limits on the franchisor's right to make changes.

(q) *Item 17: Renewal, Termination, Transfer, and Dispute Resolution.* Disclose, in the following tabular form, a table that cross-references each enumerated franchise relationship item with the applicable provision in the franchise or related agreement. Title the table "THE FRANCHISE RELATIONSHIP" in capital letters and bold type.

(1) Describe briefly each contractual provision. If a particular item is not applicable, state "Not Applicable."

(2) If the agreement is silent about one of the listed provisions, but the franchisor unilaterally offers to provide certain benefits or protections to franchisees as a matter of policy, use a footnote to describe the policy and state whether the policy is subject to change.

(3) In the summary column for Item 17(c), state what the term "renewal" means for your franchise system, including, if applicable, a statement that franchisees may be asked to sign a contract with materially different terms and conditions than their original contract.

ITEM 17 TABLE:

THE FRANCHISE RELATIONSHIP

[In bold] This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this disclosure document.

| Provision | Section in franchise or other agreement | Summary |
|---|--|----------------|
| a. Length of the franchise term | | |
| b. Renewal or extension of the term | | |
| c. Requirements for franchisee to renew or extend | | |
| d. Termination by franchisee | | |
| e. Termination by franchisor without cause | | |

ITEM 17 TABLE:—Continued

THE FRANCHISE RELATIONSHIP

[In bold] This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this disclosure document.

| Provision | Section in franchise or other agreement | Summary |
|---|---|---------|
| f. Termination by franchisor with cause | | |
| g. “Cause” defined—curable defaults | | |
| h. “Cause” defined—non-curable defaults | | |
| i. Franchisee’s obligations on termination/non-renewal | | |
| j. Assignment of contract by franchisor | | |
| k. “Transfer” by franchisee—defined | | |
| l. Franchisor approval of transfer by franchisee | | |
| m. Conditions for franchisor approval of transfer | | |
| n. Franchisor’s right of first refusal to acquire franchisee’s business | | |
| o. Franchisor’s option to purchase franchisee’s business | | |
| p. Death or disability of franchisee | | |
| q. Non-competition covenants during the term of the franchise | | |
| r. Non-competition covenants after the franchise is terminated or expires | | |
| s. Modification of the agreement | | |
| t. Integration/merger clause | | |
| u. Dispute resolution by arbitration or mediation | | |
| v. Choice of forum | | |
| w. Choice of law | | |

(r) *Item 18: Public Figures.* Disclose:

(1) Any compensation or other benefit given or promised to a public figure arising from either the use of the public figure in the franchise name or symbol, or the public figure’s endorsement or recommendation of the franchise to prospective franchisees.

(2) The extent to which the public figure is involved in the management or control of the franchisor. Describe the public figure’s position and duties in the franchisor’s business structure.

(3) The public figure’s total investment in the franchisor, including the amount the public figure contributed in services performed or to be performed. State the type of investment (for example, common stock, promissory note).

(4) For purposes of this section, a public figure means a person whose

name or physical appearance is generally known to the public in the geographic area where the franchise will be located.

(s) *Item 19: Financial Performance Representations.* (1) Begin by stating the following:

The FTC’s Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the disclosure document. Financial performance information that differs from that included in Item 19 may be given only if: (1) a franchisor provides the actual records of an existing outlet you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance

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at a particular location or under particular circumstances.

(2) If a franchisor does not provide any financial performance representation in Item 19, also state:

We do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting [name, address, and telephone number], the Federal Trade Commission, and the appropriate state regulatory agencies.

(3) If the franchisor makes any financial performance representation to prospective franchisees, the franchisor must have a reasonable basis and written substantiation for the representation at the time the representation is made and must state the representation in the Item 19 disclosure. The franchisor must also disclose the following:

(i) Whether the representation is an historic financial performance representation about the franchise system's existing outlets, or a subset of those outlets, or is a forecast of the prospective franchisee's future financial performance.

(ii) If the representation relates to past performance of the franchise system's existing outlets, the material bases for the representation, including:

(A) Whether the representation relates to the performance of all of the franchise system's existing outlets or only to a subset of outlets that share a particular set of characteristics (for example, geographic location, type of location (such as free standing vs. shopping center), degree of competition, length of time the outlets have operated, services or goods sold, services supplied by the franchisor, and whether the outlets are franchised or franchisor-owned or operated).

(B) The dates when the reported level of financial performance was achieved.

(C) The total number of outlets that existed in the relevant period and, if different, the number of outlets that had the described characteristics.

(D) The number of outlets with the described characteristics whose actual financial performance data were used in arriving at the representation.

(E) Of those outlets whose data were used in arriving at the representation, the number and percent that actually attained or surpassed the stated results.

(F) Characteristics of the included outlets, such as those characteristics noted in paragraph (3)(ii)(A) of this section, that may differ materially from those of the outlet that may be offered to a prospective franchisee.

(iii) If the representation is a forecast of future financial performance, state the material bases and assumptions on which the projection is based. The material assumptions underlying a forecast include significant factors upon which a franchisee's future results are expected to depend. These factors include, for example, economic or market conditions that are basic to a franchisee's operation, and encompass matters affecting, among other things, a franchisee's sales, the cost of goods or services sold, and operating expenses.

(iv) A clear and conspicuous admonition that a new franchisee's individual financial results may differ from the result stated in the financial performance representation.

(v) A statement that written substantiation for the financial performance representation will be made available to the prospective franchisee upon reasonable request.

(4) If a franchisor wishes to disclose only the actual operating results for a specific outlet being offered for sale, it need not comply with this section, provided the information is given only to potential purchasers of that outlet.

(5) If a franchisor furnishes financial performance information according to this section, the franchisor may deliver to a prospective franchisee a supplemental financial performance representation about a particular location or variation, apart from the disclosure document. The supplemental representation must:

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- (i) Be in writing.
- (ii) Explain the departure from the financial performance representation in the disclosure document.
- (iii) Be prepared in accordance with the requirements of paragraph (s)(3)(i)-(iv) of this section.
- (iv) Be furnished to the prospective franchisee.
- (t) *Item 20: Outlets and Franchisee Information.* (1) Disclose, in the following

tabular form, the total number of franchised and company-owned outlets for each of the franchisor’s last three fiscal years. For purposes of this section, “outlet” includes outlets of a type substantially similar to that offered to the prospective franchisee. A sample Item 20(1) Table is attached as appendix B to this part.

ITEM 20 TABLE NO. 1
Systemwide Outlet Summary
For years [] to []

| Column 1 Outlet Type | Column 2 Year | Column 3 Outlets at the Start of the Year | Column 4 Outlets at the End of the Year | Column 5 Net Change |
|-------------------------|------------------|---|---|------------------------|
| Franchised | 2004 | | | |
| | 2005 | | | |
| | 2006 | | | |
| Company-Owned | 2004 | | | |
| | 2005 | | | |
| | 2006 | | | |
| Total Outlets | 2004 | | | |
| | 2005 | | | |
| | 2006 | | | |

- (i) In column 1, include three outlet categories titled “franchised,” “company-owned, and “total outlets.”
 - (ii) In column 2, state the last three fiscal years.
 - (iii) In column 3, state the total number of each type of outlet operating at the beginning of each fiscal year.
 - (iv) In column 4, state the total number of each type of outlet operating at the end of each fiscal year.
 - (v) In column 5, state the net change, and indicate whether the change is positive or negative, for each type of outlet during each fiscal year.
- (2) Disclose, in the following tabular form, the number of franchised and company-owned outlets and changes in the number and ownership of outlets located in each state during each of the last three fiscal years. Except as noted, each change in ownership shall be re-

ported only once in the following tables. If multiple events occurred in the process of transferring ownership of an outlet, report the event that occurred last in time. If a single outlet changed ownership two or more times during the same fiscal year, use footnotes to describe the types of changes involved and the order in which the changes occurred.

(i) Disclose, in the following tabular form, the total number of franchised outlets transferred in each state during each of the franchisor’s last three fiscal years. For purposes of this section, “transfer” means the acquisition of a controlling interest in a franchised outlet, during its term, by a person other than the franchisor or an affiliate. A sample Item 20(2) Table is attached as appendix C to this part.

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ITEM 20 TABLE NO. 2
Transfers of Outlets from Franchisees to New Owners
(other than the Franchisor)
For years [] to []

| Column 1 State | Column 2 Year | Column 3 Number of Transfers |
|-------------------|------------------|---------------------------------|
| | 2004 | |
| | 2005 | |
| | 2006 | |
| | 2004 | |
| | 2005 | |
| | 2006 | |
| Total | 2004 | |
| | 2005 | |
| | 2006 | |

(A) In column 1, list each state with one or more franchised outlets.

(B) In column 2, state the last three fiscal years.

(C) In column 3, state the total number of completed transfers in each state during each fiscal year.

(ii) Disclose, in the following tabular form, the status of franchisee-owned outlets located in each state for each of the franchisor's last three fiscal years. A sample Item 20(3) Table is attached as appendix D to this part.

ITEM 20 TABLE NO. 3
Status of Franchised Outlets
For years [] to []

| Column 1 State | Column 2 Year | Column 3 Outlets at Start of Year | Column 4 Outlets Opened | Column 5 Terminations | Column 6 Non-Renewals | Column 7 Reacquired by Franchisor | Column 8 Ceased Operations-Other Reasons | Column 9 Outlets at End of the Year |
|-------------------|------------------|--------------------------------------|----------------------------|--------------------------|--------------------------|--------------------------------------|---|--|
| | 2004 | | | | | | | |
| | 2005 | | | | | | | |
| | 2006 | | | | | | | |
| | 2004 | | | | | | | |
| | 2005 | | | | | | | |
| | 2006 | | | | | | | |
| Totals | 2004 | | | | | | | |
| | 2005 | | | | | | | |
| | 2006 | | | | | | | |

(A) In column 1, list each state with one or more franchised outlets.

(B) In column 2, state the last three fiscal years.

(C) In column 3, state the total number of franchised outlets in each state at the start of each fiscal year.

(D) In column 4, state the total number of franchised outlets opened in each state during each fiscal year. Include both new outlets and existing company-owned outlets that a franchisee purchased from the franchisor. (Also report the number of existing com-

pany-owned outlets that are sold to a franchisee in Column 7 of Table 4).

(E) In column 5, state the total number of franchised outlets that were terminated in each state during each fiscal year. For purposes of this section, "termination" means the franchisor's termination of a franchise agreement prior to the end of its term and without providing any consideration to the franchisee (whether by payment or forgiveness or assumption of debt).

(F) In column 6, state the total number of non-renewals in each state during each fiscal year. For purposes of

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this section, “non-renewal” occurs when the franchise agreement for a franchised outlet is not renewed at the end of its term.

(G) In column 7, state the total number of franchised outlets reacquired by the franchisor in each state during each fiscal year. For purposes of this section, a “reacquisition” means the franchisor’s acquisition for consideration (whether by payment or forgiveness or assumption of debt) of a franchised outlet during its term. (Also report franchised outlets reacquired by the franchisor in column 5 of Table 4).

(H) In column 8, state the total number of outlets in each state not operating as one of the franchisor’s outlets at the end of each fiscal year for reasons other than termination, non-renewal, or reacquisition by the franchisor.

(I) In column 9, state the total number of franchised outlets in each state at the end of the fiscal year.

(iii) Disclose, in the following tabular form, the status of company-owned outlets located in each state for each of the franchisor’s last three fiscal years. A sample Item 20(4) Table is attached as appendix E to this part.

ITEM 20 TABLE NO. 4
Status of Company-Owned Outlets
For years [] to []

| Column 1 State | Column 2 Year | Column 3 Outlets at Start of Year | Column 4 Outlets Opened | Column 5 Outlets Reac- quired From Franchisee | Column 6 Outlets Closed | Column 7 Outlets Sold to Franchisee | Column 8 Outlets at End of the Year |
|-------------------|------------------|---|-------------------------------|--|-------------------------------|---|--|
| | 2004 | | | | | | |
| | 2005 | | | | | | |
| | 2006 | | | | | | |
| | 2004 | | | | | | |
| | 2005 | | | | | | |
| | 2006 | | | | | | |
| Totals | 2004 | | | | | | |
| | 2005 | | | | | | |
| | 2006 | | | | | | |

(A) In column 1, list each state with one or more company-owned outlets.

(B) In column 2, state the last three fiscal years.

(C) In column 3, state the total number of company-owned outlets in each state at the start of the fiscal year.

(D) In column 4, state the total number of company-owned outlets opened in each state during each fiscal year.

(E) In column 5, state the total number of franchised outlets reacquired from franchisees in each state during each fiscal year.

(F) In column 6, state the total number of company-owned outlets closed in each state during each fiscal year. Include both actual closures and in-

stances when an outlet ceases to operate under the franchisor’s trademark.

(G) In column 7, state the total number of company-owned outlets sold to franchisees in each state during each fiscal year.

(H) In column 8, state the total number of company-owned outlets operating in each state at the end of each fiscal year.

(3) Disclose, in the following tabular form, projected new franchised and company-owned outlets. A sample Item 20(5) Table is attached as appendix F to this part.

ITEM 20 TABLE NO. 5
 Projected Openings As Of [Last Day of Last Fiscal Year]

| Column 1 State | Column 2 Franchise Agreements Signed But Outlet Not Opened | Column 3 Projected New Franchised Outlet In The Next Fiscal Year | Column 4 Projected New Company- Owned Outlet In The Next Fis- cal Year |
|-------------------|--|--|---|
| | | | |
| | | | |
| Total | | | |

(i) In column 1, list each state where one or more franchised or company-owned outlets are located or are projected to be located.

(ii) In column 2, state the total number of franchise agreements that had been signed for new outlets to be located in each state as of the end of the previous fiscal year where the outlet had not yet opened.

(iii) In column 3, state the total number of new franchised outlets in each state projected to be opened during the next fiscal year.

(iv) In column 4, state the total number of new company-owned outlets in each state that are projected to be opened during the next fiscal year.

(4) Disclose the names of all current franchisees and the address and telephone number of each of their outlets. Alternatively, disclose this information for all franchised outlets in the state, but if these franchised outlets total fewer than 100, disclose this information for franchised outlets from contiguous states and then the next closest states until at least 100 franchised outlets are listed.

(5) Disclose the name, city and state, and current business telephone number, or if unknown, the last known home telephone number of every franchisee who had an outlet terminated, canceled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during the most recently completed fiscal year or who has not communicated with the franchisor within 10 weeks of the disclosure document issuance date.¹⁰ State in imme-

mediate conjunction with this information: "If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system."

(6) If a franchisor is selling a previously-owned franchised outlet now under its control, disclose the following additional information for that outlet for the last five fiscal years. This information may be attached as an addendum to a disclosure document, or, if disclosure has already been made, then in a supplement to the previously furnished disclosure document.

(i) The name, city and state, current business telephone number, or if unknown, last known home telephone number of each previous owner of the outlet;

(ii) The time period when each previous owner controlled the outlet;

(iii) The reason for each previous change in ownership (for example, termination, non-renewal, voluntary transfer, ceased operations); and

(iv) The time period(s) when the franchisor retained control of the outlet (for example, after termination, non-renewal, or reacquisition).

(7) Disclose whether franchisees signed confidentiality clauses during the last three fiscal years. If so, state the following: "In some instances, current and former franchisees sign provisions restricting their ability to speak openly about their experience with [name of franchise system]. You may wish to speak with current and former franchisees, but be aware that not all such franchisees will be able to communicate with you." Franchisors may also disclose the number and percentage of current and former franchisees

¹⁰Franchisors may substitute alternative contact information at the request of the former franchisee, such as a home address,

post office address, or a personal or business email address.

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who during each of the last three fiscal years signed agreements that include confidentiality clauses and may disclose the circumstances under which such clauses were signed.

(8) Disclose, to the extent known, the name, address, telephone number, email address, and Web address (to the extent known) of each trademark-specific franchisee organization associated with the franchise system being offered, if such organization:

(i) Has been created, sponsored, or endorsed by the franchisor. If so, state the relationship between the organization and the franchisor (for example, the organization was created by the franchisor, sponsored by the franchisor, or endorsed by the franchisor).

(ii) Is incorporated or otherwise organized under state law and asks the franchisor to be included in the franchisor's disclosure document during the next fiscal year. Such organizations must renew their request on an annual basis by submitting a request no later than 60 days after the close of the franchisor's fiscal year. The franchisor has no obligation to verify the organization's continued existence at the end of each fiscal year. Franchisors may also include the following statement: "The following independent franchisee organizations have asked to be included in this disclosure document."

(u) *Item 21: Financial Statements.* (1) Include the following financial statements prepared according to United States generally accepted accounting principles, as revised by any future United States government mandated accounting principles, or as permitted by the Securities and Exchange Commission. Except as provided in paragraph (u)(2) of this section, these financial statements must be audited by an independent certified public account-

ant using generally accepted United States auditing standards. Present the required financial statements in a tabular form that compares at least two fiscal years.

(i) The franchisor's balance sheet for the previous two fiscal year-ends before the disclosure document issuance date.

(ii) Statements of operations, stockholders equity, and cash flows for each of the franchisor's previous three fiscal years.

(iii) Instead of the financial disclosures required by paragraphs (u)(1)(i) and (ii) of this section, the franchisor may include financial statements of any of its affiliates if the affiliate's financial statements satisfy paragraphs (u)(1)(i) and (ii) of this section and the affiliate absolutely and unconditionally guarantees to assume the duties and obligations of the franchisor under the franchise agreement. The affiliate's guarantee must cover all of the franchisor's obligations to the franchisee, but need not extend to third parties. If this alternative is used, attach a copy of the guarantee to the disclosure document.

(iv) When a franchisor owns a direct or beneficial controlling financial interest in a subsidiary, its financial statements should reflect the financial condition of the franchisor and its subsidiary.

(v) Include separate financial statements for the franchisor and any subfranchisor, as well as for any parent that commits to perform post-sale obligations for the franchisor or guarantees the franchisor's obligations. Attach a copy of any guarantee to the disclosure document.

(2) A start-up franchise system that does not yet have audited financial statements may phase-in the use of audited financial statements by providing, at a minimum, the following statements at the indicated times:

| | |
|---|---|
| (i) The franchisor' first partial or full fiscal year selling franchises. | An unaudited opening balance sheet. |
| (ii) The franchisor' second fiscal year selling franchises. | Audited balance sheet opinion as of the end of the first partial or full fiscal year selling franchises. |
| (iii) The franchisor' third and subsequent fiscal years selling franchises. | All required financial statements for the previous fiscal year, plus any previously disclosed audited statements that still must be disclosed according to paragraphs (u)(1)(i) and (ii) of this section. |

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(iv) Start-up franchisors may phase in the disclosure of audited financial statements, provided the franchisor:

(A) Prepares audited financial statements as soon as practicable.

(B) Prepares unaudited statements in a format that conforms as closely as possible to audited statements.

(C) Includes one or more years of unaudited financial statements or clearly and conspicuously discloses in this section that the franchisor has not been in business for three years or more, and cannot include all financial statements required in paragraphs (u)(1)(i) and (ii) of this section.

(v) *Item 22: Contracts.* Attach a copy of all proposed agreements regarding the franchise offering, including the franchise agreement and any lease, options, and purchase agreements.

(w) *Item 23: Receipts.* Include two copies of the following detachable acknowledgment of receipt in the following form as the last pages of the disclosure document:

(1) State the following:

RECEIPT

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If [name of franchisor] offers you a franchise, it must provide this disclosure document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

If [name of franchisor] does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and [state agency].

(2) Disclose the name, principal business address, and telephone number of each franchise seller offering the franchise.

(3) State the issuance date.

(4) If not disclosed in paragraph (a) of this section, state the name and address of the franchisor's registered agent authorized to receive service of process.

(5) State the following:

I received a disclosure document dated _____ that included the following Exhibits:

(6) List the title(s) of all attached Exhibits.

(7) Provide space for the prospective franchisee's signature and date.

(8) Franchisors may include any specific instructions for returning the receipt (for example, street address, email address, facsimile telephone number).

Subpart D—Instructions

§ 436.6 Instructions for preparing disclosure documents.

(a) It is an unfair or deceptive act or practice in violation of Section 5 of the FTC Act for any franchisor to fail to include the information and follow the instructions for preparing disclosure documents set forth in subpart C (basic disclosure requirements) and subpart D (updating requirements) of part 436. The Commission will enforce this provision according to the standards of liability under Sections 5, 13(b), and 19 of the FTC Act.

(b) Disclose all required information clearly, legibly, and concisely in a single document using plain English. The disclosures must be in a form that permits each prospective franchisee to store, download, print, or otherwise maintain the document for future reference.

(c) Respond fully to each disclosure Item. If a disclosure Item is not applicable, respond negatively, including a reference to the type of information required to be disclosed by the Item. Precede each disclosure Item with the appropriate heading.

(d) Do not include any materials or information other than those required or permitted by part 436 or by state law not preempted by part 436. For the sole purpose of enhancing the prospective franchisee's ability to maneuver through an electronic version of a disclosure document, the franchisor may include scroll bars, internal links, and search features. All other features (e.g., multimedia tools such as audio, video, animation, pop-up screens, or links to external information) are prohibited.

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(e) Franchisors may prepare multi-state disclosure documents by including non-preempted, state-specific information in the text of the disclosure document or in Exhibits attached to the disclosure document.

(f) Subfranchisors shall disclose the required information about the franchisor, and, to the extent applicable, the same information concerning the subfranchisor.

(g) Before furnishing a disclosure document, the franchisor shall advise the prospective franchisee of the formats in which the disclosure document is made available, any prerequisites for obtaining the disclosure document in a particular format, and any conditions necessary for reviewing the disclosure document in a particular format.

(h) Franchisors shall retain, and make available to the Commission upon request, a sample copy of each materially different version of their disclosure documents for three years after the close of the fiscal year when it was last used.

(i) For each completed franchise sale, franchisors shall retain a copy of the signed receipt for at least three years.

§ 436.7 Instructions for updating disclosures.

(a) All information in the disclosure document shall be current as of the close of the franchisor's most recent fiscal year. After the close of the fiscal year, the franchisor shall, within 120 days, prepare a revised disclosure document, after which a franchise seller may distribute only the revised document and no other disclosure document.

(b) The franchisor shall, within a reasonable time after the close of each quarter of the fiscal year, prepare revisions to be attached to the disclosure document to reflect any material change to the disclosures included, or required to be included, in the disclosure document. Each prospective franchisee shall receive the disclosure document and the quarterly revisions for the most recent period available at the time of disclosure.

(c) If applicable, the annual update shall include the franchisor's first quarterly update, either by incorporating the quarterly update informa-

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tion into the disclosure document itself, or through an addendum.

(d) When furnishing a disclosure document, the franchise seller shall notify the prospective franchisee of any material changes that the seller knows or should have known occurred in the information contained in any financial performance representation made in Item 19 (section 436.5(s)).

(e) Information that must be audited pursuant to § 436.5(u) of this part need not be audited for quarterly revisions; provided, however, that the franchisor states in immediate conjunction with the information that such information was not audited.

Subpart E—Exemptions

§ 436.8 Exemptions.

(a) The provisions of part 436 shall not apply if the franchisor can establish any of the following:

(1) The total of the required payments, or commitments to make a required payment, to the franchisor or an affiliate that are made any time from before to within six months after commencing operation of the franchisee's business is less than \$500.

(2) The franchise relationship is a fractional franchise.

(3) The franchise relationship is a leased department.

(4) The franchise relationship is covered by the Petroleum Marketing Practices Act, 15 U.S.C. 2801.

(5)(i) The franchisee's initial investment, excluding any financing received from the franchisor or an affiliate and excluding the cost of unimproved land, totals at least \$1 million and the prospective franchisee signs an acknowledgment verifying the grounds for the exemption. The acknowledgment shall state: "The franchise sale is for more than \$1 million—excluding the cost of unimproved land and any financing received from the franchisor or an affiliate— and thus is exempted from the Federal Trade Commission's Franchise Rule disclosure requirements, pursuant to 16 CFR 436.8(a)(5)(i)";¹¹ or

¹¹The large franchise exemption applies only if at least one individual prospective franchisee in an investor-group qualifies for

(ii) The franchisee (or its parent or any affiliates) is an entity that has been in business for at least five years and has a net worth of at least \$5 million.

(6) One or more purchasers of at least a 50% ownership interest in the franchise: within 60 days of the sale, has been, for at least two years, an officer, director, general partner, individual with management responsibility for the offer and sale of the franchisor's franchises or the administrator of the franchised network; or within 60 days of the sale, has been, for at least two years, an owner of at least a 25% interest in the franchisor.

(7) There is no written document that describes any material term or aspect of the relationship or arrangement.

(b) For purposes of the exemptions set forth in this section, the Commission shall adjust the size of the monetary thresholds every fourth year based upon the Consumer Price Index. For purposes of this section, "Consumer Price Index" means the Consumer Price Index for all urban consumers published by the Department of Labor.

Subpart F—Prohibitions

§ 436.9 Additional prohibitions.

It is an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act for any franchise seller covered by part 436 to:

(a) Make any claim or representation, orally, visually, or in writing, that contradicts the information required to be disclosed by this part.

(b) Misrepresent that any person:

(1) Purchased a franchise from the franchisor or operated a franchise of the type offered by the franchisor.

(2) Can provide an independent and reliable report about the franchise or the experiences of any current or former franchisees.

(c) Disseminate any financial performance representations to prospective franchisees unless the franchisor has a reasonable basis and written substantiation for the representation at the time the representation is made, and the representation is included in

the exemption by investing at the threshold level stated in this section.

Item 19 (§436.5(s)) of the franchisor's disclosure document. In conjunction with any such financial performance representation, the franchise seller shall also:

(1) Disclose the information required by §§436.5(s)(3)(ii)(B) and (E) of this part if the representation relates to the past performance of the franchisor's outlets.

(2) Include a clear and conspicuous admonition that a new franchisee's individual financial results may differ from the result stated in the financial performance representation.

(d) Fail to make available to prospective franchisees, and to the Commission upon reasonable request, written substantiation for any financial performance representations made in Item 19 (§436.5(s)).

(e) Fail to furnish a copy of the franchisor's disclosure document to a prospective franchisee earlier in the sales process than required under §436.2 of this part, upon reasonable request.

(f) Fail to furnish a copy of the franchisor's most recent disclosure document and any quarterly updates to a prospective franchisee, upon reasonable request, before the prospective franchisee signs a franchise agreement.

(g) Present for signing a franchise agreement in which the terms and conditions differ materially from those presented as an attachment to the disclosure document, unless the franchise seller informed the prospective franchisee of the differences at least seven days before execution of the franchise agreement.

(h) Disclaim or require a prospective franchisee to waive reliance on any representation made in the disclosure document or in its exhibits or amendments. Provided, however, that this provision is not intended to prevent a prospective franchisee from voluntarily waiving specific contract terms and conditions set forth in his or her disclosure document during the course of franchise sale negotiations.

(i) Fail to return any funds or deposits in accordance with any conditions disclosed in the franchisor's disclosure document, franchise agreement, or any related document.

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Subpart G—Other Provisions

§ 436.10 Other laws and rules.

(a) The Commission does not approve or express any opinion on the legality of any matter a franchisor may be required to disclose by part 436. Further, franchisors may have additional obligations to impart material information to prospective franchisees outside of the disclosure document under Section 5 of the Federal Trade Commission Act. The Commission intends to enforce all applicable statutes and rules.

(b) The FTC does not intend to pre-empt the franchise practices laws of

any state or local government, except to the extent of any inconsistency with part 436. A law is not inconsistent with part 436 if it affords prospective franchisees equal or greater protection, such as registration of disclosure documents or more extensive disclosures.

§ 436.11 Severability.

If any provision of this part is stayed or held invalid, the remainder will stay in force.

APPENDIX A TO PART 436—SAMPLE ITEM
10 TABLE—SUMMARY OF FINANCING OFFERED

SUMMARY OF FINANCING OFFERED

| Item Financed | Source of Financing | Down Payment | Amount Financed | Term (Yrs) | Interest Rate | Monthly Payment | Prepay Penalty | Security Required | Liability Upon Default | Loss of Legal Right on Default |
|-------------------|---------------------|--------------|-----------------|------------|---------------|-----------------|----------------|-------------------|------------------------|--------------------------------|
| Initial Fee | | | | | | | | | | |
| Land/Constr | | | | | | | | | | |
| Leased Space | | | | | | | | | | |
| Equip. Lease | | | | | | | | | | |
| Equip. Purchase | | | | | | | | | | |
| Opening Inventory | | | | | | | | | | |
| Other Financing | | | | | | | | | | |

APPENDIX B TO PART 436—SAMPLE ITEM
20(1) TABLE—SYSTEMWIDE OUTLET SUMMARY

**Systemwide Outlet Summary
For years 2004 to 2006**

| Column 1 Outlet Type | Column 2 Year | Column 3 Outlets at the Start of the Year | Column 4 Outlets at the End of the Year | Column 5 Net Change |
|-------------------------|------------------|---|---|------------------------|
| Franchised | 2004 | 859 | 1,062 | +203 |
| | 2005 | 1,062 | 1,296 | +234 |
| | 2006 | 1,296 | 2,720 | +1,424 |
| Company Owned | 2004 | 125 | 145 | +20 |
| | 2005 | 145 | 76 | -69 |
| | 2006 | 76 | 141 | +65 |
| Total Outlets | 2004 | 984 | 1,207 | +223 |
| | 2005 | 1,207 | 1,372 | +165 |

**Systemwide Outlet Summary
For years 2004 to 2006**

| Column 1 Outlet Type | Column 2 Year | Column 3 Outlets at the Start of the Year | Column 4 Outlets at the End of the Year | Column 5 Net Change |
|-------------------------|------------------|---|---|------------------------|
| | 2006 | 1,372 | 2,861 | +1,489 |

**APPENDIX C TO PART 436—SAMPLE ITEM
20(2) TABLE—TRANSFERS OF FRAN-
CHISED OUTLETS**

**Transfers of Franchised Outlets from Franchisees to New
Owners (other than the Franchisor)
For years 2004 to 2006**

| Column 1 State | Column 2 Year | Column 3 Number of Trans- fers |
|-------------------|------------------|--------------------------------------|
| NC | 2004 | 1 |
| | 2005 | 0 |
| | 2006 | 2 |
| SC | 2004 | 0 |
| | 2005 | 0 |

**Transfers of Franchised Outlets from Franchisees to New
Owners (other than the Franchisor)
For years 2004 to 2006**

| Column 1 State | Column 2 Year | Column 3 Number of Trans- fers |
|-------------------|------------------|--------------------------------------|
| Total | 2006 | 2 |
| | 2004 | 1 |
| | 2005 | 0 |
| | 2006 | 4 |

**APPENDIX D TO PART 436—SAMPLE ITEM
20(3) TABLE—STATUS OF FRANCHISE
OUTLETS**

**Status of Franchise Outlets
For years 2004 to 2006**

| Column 1 State | Column 2 Year | Column 3 Outlets at Start of Year | Column 4 Outlets Opened | Column 5 Termi- nations | Column 6 Non-Re- newals | Column 7 Reacquired by Franchisor | Column 8 Ceased Op- erations- Other Rea- sons | Column 9 Outlets at End of the Year |
|-------------------|------------------|--|-------------------------------|-------------------------------|-------------------------------|---|---|--|
| AL | 2004 | 10 | 2 | 1 | 0 | 0 | 1 | 10 |
| | 2005 | 11 | 5 | 0 | 1 | 0 | 0 | 15 |
| | 2006 | 15 | 4 | 1 | 0 | 1 | 2 | 15 |
| AZ | 2004 | 20 | 5 | 0 | 0 | 0 | 0 | 25 |
| | 2005 | 25 | 4 | 1 | 0 | 0 | 2 | 26 |
| | 2006 | 26 | 4 | 0 | 0 | 0 | 0 | 30 |
| Totals | 2004 | 30 | 7 | 1 | 0 | 0 | 1 | 35 |
| | 2005 | 36 | 9 | 1 | 1 | 0 | 2 | 41 |
| | 2006 | 41 | 8 | 1 | 0 | 1 | 2 | 45 |

**APPENDIX E TO PART 436—SAMPLE ITEM
20(4) TABLE—STATUS OF COMPANY-
OWNED OUTLETS**

**Status of Company-Owned Outlets
For years 2004 to 2006**

| Column 1 State | Column 2 Year | Column 3 Outlets at Start of Year | Column 4 Outlets Opened | Column 5 Outlets Reac- quired From Franchisees | Column 6 Outlets Closed | Column 7 Outlets Sold to Franchisees | Column 8 Outlets at End of the Year |
|-------------------|------------------|--|-------------------------------|---|-------------------------------|--|--|
| NY | 2004 | 1 | 0 | 1 | 0 | 0 | 2 |

**Status of Company-Owned Outlets
For years 2004 to 2006**

| Column 1 State | Column 2 Year | Column 3 Outlets at Start of Year | Column 4 Outlets Opened | Column 5 Outlets Reac- quired From Franchisees | Column 6 Outlets Closed | Column 7 Outlets Sold to Franchisees | Column 8 Outlets at End of the Year |
|-------------------|------------------|--|-------------------------------|---|-------------------------------|--|--|
| | 2005 | 2 | 2 | 0 | 1 | 0 | 3 |
| | 2006 | 3 | 0 | 0 | 3 | 0 | 0 |
| OR | 2004 | 4 | 0 | 1 | 0 | 0 | 5 |
| | 2005 | 5 | 0 | 0 | 2 | 0 | 3 |
| | 2006 | 3 | 0 | 0 | 0 | 1 | 2 |
| Totals | 2004 | 5 | 0 | 2 | 0 | 0 | 7 |
| | 2005 | 7 | 2 | 0 | 3 | 0 | 6 |
| | 2006 | 6 | 0 | 0 | 3 | 1 | 2 |

APPENDIX F TO PART 436—SAMPLE ITEM
20(5) TABLE—PROJECTED NEW FRAN-
CHISED OUTLETS

**Projected New Franchised Outlets
As of December 31, 2006**

| Column 1 State | Column 2 Franchise Agreements Signed But Outlet Not Opened | Column 3 Projected New Franchised Outlets in the Next Fiscal Year | Column 4 Projected New Company- Owned Outlets in the Current Fiscal Year |
|-------------------|--|--|---|
| CO | 2 | 3 | 1 |
| NM | 0 | 4 | 2 |
| Total | 2 | 7 | 3 |

PART 437—DISCLOSURE REQUIREMENTS AND PROHIBITIONS CONCERNING BUSINESS OPPORTUNITIES

Sec.

437.1 The Rule.

437.2 Definitions.

437.3 Severability.

AUTHORITY: 15 U.S.C. 41-58.

SOURCE: 72 FR 15563, Mar. 30, 2007, unless otherwise note.

§ 437.1 The Rule.

In connection with the advertising, offering, licensing, contracting, sale, or other promotion in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, of any business opportunity, or any relationship which is represented either orally or in writing to be a business oppor-

tunity, it is an unfair or deceptive act or practice within the meaning of Section 5 of that Act for any business opportunity seller or business opportunity broker:

(a) To fail to furnish any prospective business opportunity purchaser with the following information accurately, clearly, and concisely stated, in a legible, written document at the earlier of the “time for making of disclosures” or the first “personal meeting”:

(1)(i) The official name and address and principal place of business of the business opportunity seller, and of the parent firm or holding company of the business opportunity seller, if any;

(ii) The name under which the business opportunity seller is doing or intends to do business; and

(iii) The trademarks, trade names, service marks, advertising or other

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commercial symbols (hereinafter collectively referred to as "marks") which identify the goods, commodities, or services to be offered, sold, or distributed by the prospective business opportunity purchaser, or under which the prospective business opportunity purchaser will be operating.

(2) The business experience during the past 5 years, stated individually, of each of the business opportunity seller's current directors and executive officers (including, and hereinafter to include, the chief executive and chief operating officer, financial, business opportunity marketing, training and service officers). With regard to each person listed, those persons' principal occupations and employers must be included.

(3) The business experience of the business opportunity seller and the business opportunity seller's parent firm (if any), including the length of time each:

(i) Has conducted a business of the type to be operated by the business opportunity purchaser;

(ii) Has offered or sold a business opportunity for such business;

(iii) Has conducted a business or offered or sold a business opportunity for a business

(A) Operating under a name using any mark set forth under paragraph (a)(1)(iii) of this section, or

(B) Involving the sale, offering, or distribution of goods, commodities, or services which are identified by any mark set forth under paragraph (a)(1)(iii) of this section; and

(iv) Has offered for sale or sold business opportunities in other lines of business, together with a description of such other lines of business.

(4) A statement disclosing who, if any, of the persons listed in paragraphs (a)(2) and (3) of this section:

(i) Has, at any time during the previous seven fiscal years, been convicted of a felony or pleaded nolo contendere to a felony charge if the felony involved fraud (including violation of any business opportunity law, or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade;

(ii) Has, at any time during the previous seven fiscal years, been held liable in a civil action resulting in a final judgment or has settled out of court any civil action or is a party to any civil action

(A) Involving allegations of fraud (including violation of any business opportunity law, or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade, or

(B) Which was brought by a present or former business opportunity purchaser or business opportunity purchasers and which involves or involved the business opportunity relationship; *Provided, however,* That only material individual civil actions need be so listed pursuant to this paragraph (4)(ii) of this section, including any group of civil actions which, irrespective of the materiality of any single such action, in the aggregate is material;

(iii) Is subject to any currently effective State or Federal agency or court injunctive or restrictive order, or is a party to a proceeding currently pending in which such order is sought, relating to or affecting business opportunity activities or the business opportunity seller-purchaser relationship, or involving fraud (including violation of any business opportunity law, or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade.

Such statement shall set forth the identity and location of the court or agency; the date of conviction, judgment, or decision; the penalty imposed; the damages assessed; the terms of settlement or the terms of the order; and the date, nature, and issuer of each such order or ruling. A business opportunity seller may include a summary opinion of counsel as to any pending litigation, but only if counsel's consent to the use of such opinion is included in the disclosure statement.

(5) A statement disclosing who, if any, of the persons listed in paragraphs (a)(2) and (3) of this section at any time during the previous 7 fiscal years has:

(i) Filed in bankruptcy;

(ii) Been adjudged bankrupt;

(iii) Been reorganized due to insolvency; or

(iv) Been a principal, director, executive officer, or partner of any other person that has so filed or was so adjudged or reorganized, during or within 1 year after the period that such person held such position in such other person. If so, the name and location of the person having so filed, or having been so adjudged or reorganized, the date thereof, and any other material facts relating thereto, shall be set forth.

(6) A factual description of the business opportunity offered to be sold by the business opportunity seller.

(7) A statement of the total funds which must be paid by the business opportunity purchaser to the business opportunity seller or to a person affiliated with the business opportunity seller, or which the business opportunity seller or such affiliated person imposes or collects in whole or in part on behalf of a third party, in order to obtain or commence the business opportunity operation, such as initial business opportunity fees, deposits, down payments, prepaid rent, and equipment and inventory purchases. If all or part of these fees or deposits are returnable under certain conditions, these conditions shall be set forth; and if not returnable, such fact shall be disclosed.

(8) A statement describing any recurring funds required to be paid, in connection with carrying on the business opportunity business, by the business opportunity purchaser to the business opportunity seller or to a person affiliated with the business opportunity seller, or which the business opportunity seller or such affiliated person imposes or collects in whole or in part on behalf of a third party, including, but not limited to, royalty, lease, advertising, training, and sign rental fees, and equipment or inventory purchases.

(9) A statement setting forth the name of each person (including the business opportunity seller) the business opportunity purchaser is directly or indirectly required or advised to do business with by the business opportunity seller, where such persons are affiliated with the business opportunity seller.

(10) A statement describing any real estate, services, supplies, products, in-

ventories, signs, fixtures, or equipment relating to the establishment or the operation of the business opportunity business which the business opportunity purchaser is directly or indirectly required by the business opportunity seller to purchase, lease or rent; and if such purchases, leases or rentals must be made from specific persons (including the business opportunity seller), a list of the names and addresses of each such person. Such list may be made in a separate document delivered to the prospective business opportunity purchaser with the prospectus if the existence of such separate document is disclosed in the prospectus.

(11) A description of the basis for calculating, and, if such information is readily available, the actual amount of, any revenue or other consideration to be received by the business opportunity seller or persons affiliated with the business opportunity seller from suppliers to the prospective business opportunity purchaser in consideration for goods or services which the business opportunity seller requires or advises the business opportunity purchaser to obtain from such suppliers.

(12)(i) A statement of all the material terms and conditions of any financing arrangement offered directly or indirectly by the business opportunity seller, or any person affiliated with the business opportunity seller, to the prospective business opportunity purchaser; and

(ii) A description of the terms by which any payment is to be received by the business opportunity seller from

(A) Any person offering financing to a prospective business opportunity purchaser; and

(B) Any person arranging for financing for a prospective business opportunity purchaser.

(13) A statement describing the material facts of whether, by the terms of the business opportunity agreement or other device or practice, the business opportunity purchaser is:

(i) Limited in the goods or services he or she may offer for sale;

(ii) Limited in the customers to whom he or she may sell such goods or services;

(iii) Limited in the geographic area in which he or she may offer for sale or sell goods or services; or

(iv) Granted territorial protection by the business opportunity seller, by which, with respect to a territory or area,

(A) The business opportunity seller will not establish another, or more than any fixed number of, business opportunities or company-owned outlets, either operating under, or selling, offering, or distributing goods, commodities or services, identified by any mark set forth under paragraph (a)(1)(iii) of this section; or

(B) The business opportunity seller or its parent will not establish other business opportunities or company-owned outlets selling or leasing the same or similar products or services under a different trade name, trademark, service mark, advertising or other commercial symbol.

(14) A statement of the extent to which the business opportunity seller requires the business opportunity purchaser (or, if the business opportunity purchaser is a corporation, any person affiliated with the business opportunity purchaser) to participate personally in the direct operation of the business opportunity.

(15) A statement disclosing, with respect to the business opportunity agreement and any related agreements:

(i) The term (i.e., duration of arrangement), if any, of such agreement, and whether such term is or may be affected by any agreement (including leases or subleases) other than the one from which such term arises;

(ii) The conditions under which the business opportunity purchaser may renew or extend;

(iii) The conditions under which the business opportunity seller may refuse to renew or extend;

(iv) The conditions under which the business opportunity purchaser may terminate;

(v) The conditions under which the business opportunity seller may terminate;

(vi) the obligations (including lease or sublease obligations) of the business opportunity purchaser after termination of the business opportunity by the business opportunity seller, and

the obligations of the business opportunity purchaser (including lease or sublease obligations) after termination of the business opportunity by the business opportunity purchaser and after the expiration of the business opportunity;

(vii) The business opportunity purchaser's interest upon termination of the business opportunity, or upon refusal to renew or extend the business opportunity, whether by the business opportunity seller or by the business opportunity purchaser;

(viii) The conditions under which the business opportunity seller may repurchase, whether by right of first refusal or at the option of the business opportunity seller (and if the business opportunity seller has the option to repurchase the business opportunity, whether there will be an independent appraisal of the business opportunity, whether the repurchase price will be determined by a predetermined formula and whether there will be a recognition of goodwill or other intangibles associated therewith in the repurchase price to be given the business opportunity purchaser);

(ix) The conditions under which the business opportunity purchaser may sell or assign all or any interest in the ownership of the business opportunity, or of the assets of the business opportunity business;

(x) The conditions under which the business opportunity seller may sell or assign, in whole or in part, its interest under such agreements;

(xi) The conditions under which the business opportunity purchaser may modify;

(xii) The conditions under which the business opportunity seller may modify;

(xiii) The rights of the business opportunity purchaser's heirs or personal representative upon the death or incapacity of the business opportunity purchaser; and

(xiv) The provisions of any covenant not to compete.

(16) A statement disclosing, with respect to the business opportunity seller and as to the particular named business being offered:

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(i) The total number of business opportunity purchasers operating at the end of the preceding fiscal year;

(ii) The total number of company-owned outlets operating at the end of the preceding fiscal year;

(iii) The names, addresses, and telephone numbers of

(A) The 10 business opportunity outlets of the named business opportunity business nearest the prospective business opportunity purchaser's intended location; or

(B) All business opportunity purchasers of the business opportunity seller; or

(C) All business opportunity purchasers of the business opportunity seller in the State in which the prospective business opportunity purchaser lives or where the proposed business opportunity is to be located, *Provided, however*, That there are more than 10 such business opportunity purchasers. If the number of business opportunity purchasers to be disclosed pursuant to paragraph (a)(16)(iii)(B) or (C) of this section exceeds 50, such listing may be made in a separate document delivered to the prospective business opportunity purchaser with the prospectus if the existence of such separate document is disclosed in the prospectus;

(iv) The number of business opportunities voluntarily terminated or not renewed by business opportunity purchasers within, or at the conclusion of, the term of the business opportunity agreement, during the preceding fiscal year;

(v) The number of business opportunities reacquired by purchase by the business opportunity seller during the term of the business opportunity agreement, and upon the conclusion of the term of the business opportunity agreement, during the preceding fiscal year;

(vi) The number of business opportunities otherwise reacquired by the business opportunity seller during the term of the business opportunity agreement, and upon the conclusion of the term of the business opportunity agreement, during the preceding fiscal year;

(vii) The number of business opportunities for which the business opportunity seller refused renewal of the business opportunity agreement or

other agreements relating to the business opportunity during the preceding fiscal year; and

(viii) The number of business opportunities that were canceled or terminated by the business opportunity seller during the term of the business opportunity agreement, and upon conclusion of the term of the business opportunity agreement, during the preceding fiscal year.

With respect to the disclosures required by paragraphs (a)(16) (v), (vi), (vii), and (viii) of this section, the disclosure statement shall also include a general categorization of the reasons for such reacquisitions, refusals to renew or terminations, and the number falling within each such category, including but not limited to the following: failure to comply with quality control standards, failure to make sufficient sales, and other breaches of contract.

(17)(i) If site selection or approval thereof by the business opportunity seller is involved in the business opportunity relationship, a statement disclosing the range of time that has elapsed between signing of business opportunity agreements or other agreements relating to the business opportunity and site selection, for agreements entered into during the preceding fiscal year; and

(ii) If operating business opportunity outlets are to be provided by the business opportunity seller, a statement disclosing the range of time that has elapsed between the signing of business opportunity agreements or other agreements relating to the business opportunity and the commencement of the business opportunity purchaser's business, for agreements entered into during the preceding fiscal year.

With respect to the disclosures required by paragraphs (a)(17) (i) and (ii) of this section, a business opportunity seller may at its option also provide a distribution chart using meaningful classifications with respect to such ranges of time.

(18) If the business opportunity seller offers an initial training program or informs the prospective business opportunity purchaser that it intends to provide such person with initial training, a statement disclosing:

(i) The type and nature of such training;

(ii) The minimum amount, if any, of training that will be provided to a business opportunity purchaser; and

(iii) The cost, if any, to be borne by the business opportunity purchaser for the training to be provided, or for obtaining such training.

(19) If the name of a public figure is used in connection with a recommendation to purchase a business opportunity, or as a part of the name of the business opportunity operation, or if the public figure is stated to be involved with the management of the business opportunity seller, a statement disclosing:

(i) The nature and extent of the public figure's involvement and obligations to the business opportunity seller, including but not limited to the promotional assistance the public figure will provide to the business opportunity seller and to the business opportunity purchaser;

(ii) The total investment of the public figure in the business opportunity operation; and

(iii) The amount of any fee or fees the business opportunity purchaser will be obligated to pay for such involvement or assistance provided by the public figure.

(20)(i) A balance sheet (statement of financial position) for the business opportunity seller for the most recent fiscal year, and an income statement (statement of results of operations) and statement of changes in financial position for the franchisor for the most recent three fiscal years. Such statements are required to have been examined in accordance with generally accepted auditing standards by an independent certified or licensed public accountant.

Provided, however, That where a business opportunity seller is a subsidiary of another corporation which is permitted under generally accepted accounting principles to prepare financial statements on a consolidated or combined statement basis, the above information may be submitted for the parent if (A) the corresponding unaudited financial statements of the business opportunity seller are also provided, and (B) the parent absolutely

and irrevocably has agreed to guarantee all obligations of the subsidiary;

(ii) Unaudited statements shall be used only to the extent that audited statements have not been made, and provided that such statements are accompanied by a clear and conspicuous disclosure that they are unaudited. Statements shall be prepared on an audited basis as soon as practicable, but, at a minimum, financial statements for the first full fiscal year following the date on which the business opportunity seller must first comply with this part shall contain a balance sheet opinion prepared by an independent certified or licensed public accountant, and financial statements for the following fiscal year shall be fully audited.

(21) All of the foregoing information in paragraphs (a)(1) through (20) of this section shall be contained in a single disclosure statement or prospectus, which shall not contain any materials or information other than that required by this part or by State law not preempted by this part. This does not preclude business opportunity sellers or brokers from giving other nondeceptive information orally, visually, or in separate literature so long as such information is not contradictory to the information in the disclosure statement required by paragraph (a) of this section. This disclosure statement shall carry a cover sheet distinctively and conspicuously showing the name of the business opportunity seller, the date of issuance of the disclosure statement, and the following notice imprinted thereon in upper and lower case bold-face type of not less than 12 point size:

INFORMATION FOR PROSPECTIVE BUSINESS OPPORTUNITY PURCHASERS REQUIRED BY FEDERAL TRADE COMMISSION

* * * * *

To protect you, we've required your business opportunity seller to give you this information. We haven't checked it, and don't know if it's correct. It should help you make up your mind. Study it carefully. While it includes some information about your contract, don't rely on it alone to understand your contract. Read all of your contract carefully. Buying a business opportunity is a complicated investment. Take your time to

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decide. If possible, show your contract and this information to an advisor, like a lawyer or an accountant. If you find anything you think may be wrong or anything important that's been left out, you should let us know about it. It may be against the law.

There may also be laws on business opportunities in your state. Ask your state agencies about them.

Federal Trade Commission,
Washington, D.C.

Provided, That the obligations to furnish such disclosure statement shall be deemed to have been met for both the business opportunity seller and the business opportunity broker if either such party furnishes the prospective business opportunity purchaser with such disclosure statement.

(22) All information contained in the disclosure statement shall be current as of the close of the business opportunity seller's most recent fiscal year. After the close of each fiscal year, the business opportunity seller shall be given a period not exceeding 90 days to prepare a revised disclosure statement and, following such 90 days, may distribute only the revised prospectus and no other. The business opportunity seller shall, within a reasonable time after the close of each quarter of the fiscal year, prepare revisions to be attached to the disclosure statement to reflect any material change in the business opportunity seller or relating to the business opportunity business of the business opportunity seller, about which the business opportunity seller or broker, or any agent, representative, or employee thereof, knows or should know. Each prospective business opportunity purchaser shall have in his or her possession at the "time for making of disclosures," the disclosure statement and quarterly revision for the period most recent to the "time for making of disclosures" and available at that time. Information which is required to be audited pursuant to paragraph (a)(20) of this section is not required to be audited for quarterly revisions. *Provided, however*, That the unaudited information is accompanied by a statement in immediate conjunction therewith that clearly and conspicuously discloses that such information has not been audited.

(23) A table of contents shall be included within the disclosure statement.

(24) The disclosure statement shall include a comment which either positively or negatively responds to each disclosure item required to be in the disclosure statement, by use of a statement which fully incorporates the information required by the item. Each disclosure item therein must be preceded by the appropriate heading, as set forth in Note 3 of this part.

(b) To make any oral, written, or visual representation to a prospective business opportunity purchaser which states a specific level of potential sales, income, gross or net profit for that prospective business opportunity purchaser, or which states other facts which suggest such a specific level, unless:

(1) At the time such representation is made, such representation is relevant to the geographic market in which the business opportunity is to be located;

(2) At the time such representation is made, a reasonable basis exists for such representation and the business opportunity seller has in its possession material which constitutes a reasonable basis for such representation, and such material is made available to any prospective business opportunity purchaser and to the Commission or its staff upon reasonable demand.

Provided, further, That in immediate conjunction with such representation, the business opportunity seller shall disclose in a clear and conspicuous manner that such material is available to the prospective business opportunity purchaser; and *Provided, however*, That no provision within paragraph (b) of this section shall be construed as requiring the disclosure to any prospective business opportunity purchaser of the identity of any specific business opportunity purchaser or of information reasonably likely to lead to the disclosure of such person's identity; and *Provided, further*, That no additional representation as to a prospective business opportunity purchaser's potential sales, income, or profits may be made later than the "time for making of disclosures";

(3) Such representation is set forth in detail along with the material bases and assumptions therefor in a single

legible written document whose text accurately, clearly and concisely discloses such information, and none other than that provided for by this part or by State law not preempted by this part. Each prospective business opportunity purchaser to whom the representation is made shall be furnished with such document no later than the "time for making of disclosure"; *Provided, however*, That if the representation is made at or prior to a "personal meeting" and such meeting occurs before the "time for making of disclosures", the document shall be furnished to the prospective business opportunity purchaser to whom the representation is made at that "personal meeting";

(4) The following statement is clearly and conspicuously disclosed in the document described by paragraph (b)(3) of this section in immediate conjunction with such representation and in not less than twelve point upper and lowercase boldface type:

CAUTION

These figures are only estimates of what we think you may earn. There is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

(5) The following information is clearly and conspicuously disclosed in the document described by paragraph (b)(3) of this section in immediate conjunction with such representation:

(i) The number and percentage of outlets of the named business opportunity business which are located in the geographic markets that form the basis for any such representation and which are known to the business opportunity seller or broker to have earned or made at least the same sales, income, or profits during a period of corresponding length in the immediate past as those potential sales, income, or profits represented; and

(ii) The beginning and ending dates for the corresponding time period referred to by paragraph (b)(5)(i) of this section, *Provided, however*, That any business opportunity seller without prior business opportunity experience as to the named business opportunity business so indicate such lack of experience in the document described in paragraph (b)(3) of this section.

Except, That representations of the sales, income or profits of existing business opportunity outlets need not comply with paragraph (b) of this section.

(c) To make any oral, written, or visual representation to a prospective business opportunity purchaser which states a specific level of sales, income, gross or net profits of existing outlets (whether business opportunity purchaser-owned or company-owned) of the named business opportunity business, or which states other facts which suggest such a specific level, unless:

(1) At the time such representation is made, such representation is relevant to the geographic market in which the business opportunity is to be located;

(2) At the time such representation is made, a reasonable basis exists for such representation and the business opportunity seller has in its possession material which constitutes a reasonable basis for such representation, and such material is made available to any prospective business opportunity purchaser and to the Commission or its staff upon reasonable demand, *Provided, however*, That in immediate conjunction with such representation, the business opportunity purchaser discloses in a clear and conspicuous manner that such material is available to the prospective franchisee; and *Provided, further*, That no provision within paragraph (c) of this section shall be construed as requiring the disclosure to any prospective business opportunity purchaser of the identity of any specific business opportunity purchaser or of information reasonably likely to lead to the disclosure of such person's identity; and *Provided, further*, That no additional representation as to the sales, income, or gross or net profits of existing outlets (whether business opportunity purchaser-owned or company-owned) of the named business opportunity business may be made later than the "time for making of disclosures";

(3) Such representation is set forth in detail along with the material bases and assumptions therefor in a single legible written document which accurately, clearly and concisely discloses such information, and none other than that provided for by this part or by

State law not preempted by this part. Each prospective business opportunity purchaser to whom the representation is made shall be furnished with such document no later than the “time for making of disclosures,” *Provided, however*, That if the representation is made at or prior to a “personal meeting” and such meeting occurs before the “time for making of disclosures,” the document shall be furnished to the prospective business opportunity purchaser to whom the representation is made at that “personal meeting”;

(4) The underlying data on which the representation is based have been prepared in accordance with generally accepted accounting principles;

(5) The following statement is clearly and conspicuously disclosed in the document described by paragraph (c)(3) of this section in immediate conjunction with such representation, and in not less than twelve point upper and lower case boldface type:

CAUTION

Some outlets have [sold] [earned] this amount. There is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

(6) The following information is clearly and conspicuously disclosed in the document described by paragraph (c)(3) of this section in immediate conjunction with such representation:

(i) the number and percentage of outlets of the named business opportunity business which are located in the geographic markets that form the basis for any such representation and which are known to the business opportunity seller or broker to have earned or made at least the same sales, income, or profits during a period of corresponding length in the immediate past as those potential sales, income, or profits represented; and

(ii) The beginning and ending dates for the corresponding time period referred to by paragraph (c)(6)(i) of this section, *Provided, however*, That any business opportunity seller without prior business opportunity experience as to the named business opportunity business so indicate such lack of experience in the document described in paragraph (c)(3) of this section.

(d) To fail to provide the following information within the document(s) required by paragraphs (b)(3) and (c)(3) of this section whenever any representation is made to a prospective business opportunity purchaser regarding its potential sales, income, or profits, or the sales, income, gross or net profits of existing outlets (whether business opportunity purchaser-owned or company-owned) of the named business opportunity business:

(1) A cover sheet distinctively and conspicuously showing the name of the business opportunity seller, the date of issuance of the document and the following notice imprinted thereon in upper and lower case boldface type of not less than twelve point size:

INFORMATION FOR PROSPECTIVE BUSINESS OPPORTUNITY PURCHASERS ABOUT BUSINESS OPPORTUNITY [SALES] [INCOME] [PROFIT] REQUIRED BY THE FEDERAL TRADE COMMISSION.

To protect you, we're required the business opportunity seller to give you this information. We haven't checked it and don't know if it's correct. Study these facts and figures carefully. If possible, show them to someone who can advise you, like a lawyer or an accountant. Then take your time and think it over.

If you find anything you think may be wrong or anything important that's been left out, let us know about it. It may be against the law.

There may also be laws on business opportunities in your State. Ask your State agencies about them.

Federal Trade Commission,
Washington, D.C.

(2) A table of contents. *Provided, however*, That each prospective business opportunity purchaser to whom the representation is made shall be notified at the “time for making of disclosures” of any material change (about which the business opportunity seller, broker, or any of the agents, representations, or employees thereof, knows or should know) in the information contained in the document(s) described by paragraphs (b)(3) and (c)(3) of this section.

(e) To make any oral, written, or visual representation for general dissemination (not otherwise covered by paragraph (b) or (c) of this section) which states a specific level of sales, income,

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gross or net profits, either actual or potential, of existing or prospective outlets (whether business opportunity purchaser-owned or company-owned) of the named business opportunity business or which states other facts which suggest such a specific level, unless:

(1) At the time such representation is made, a reasonable basis exists for such representation and the business opportunity seller has in its possession material which constitutes a reasonable basis for such representation and which is made available to the Commission or its staff upon reasonable demand;

(2) The underlying data on which each representation of sales, income or profit for existing outlets is based have been prepared in accordance with generally accepted accounting principles;

(3) In immediate conjunction with such representation, there shall be clearly and conspicuously disclosed the number and percentage of outlets of the named business opportunity business which the business opportunity seller or broker knows to have earned or made at least the same sales, income, or profits during a period of corresponding length in the immediate past as those sales, income, or profits represented, and the beginning and ending dates for said time period;

(4) In immediate conjunction with each such representation of potential sales, income or profits, the following statement shall be clearly and conspicuously disclosed:

CAUTION

These figures are only estimates; there is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

Provided, however, That if such representation is not based on actual experience of existing outlets of the named business opportunity business, that fact also should be disclosed;

(5) No later than the earlier of the first "personal meeting" or the "time for making of disclosures," each prospective business opportunity purchaser shall be given a single, legible written document which accurately, clearly and concisely sets forth the following information and materials (and none other than that provided for by

this part or by State law not preempted by this part):

(i) The representation, set forth in detail along with the material bases and assumptions therefor;

(ii) the number and percentage of outlets of the named business opportunity business which the business opportunity seller or broker knows to have earned or made at least the same sales, income or profits during a period of corresponding length in the immediate past as those sales, income, or profits represented, and the beginning and ending dates for said time period;

(iii) With respect to each such representation of sales, income, or profits of existing outlets, the following statement shall be clearly and conspicuously disclosed in immediate conjunction therewith, printed in not less than 12 point upper and lower case boldface type:

CAUTION

Some outlets have [sold] [earned] this amount. There is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

(iv) With respect to each such representation of potential sales, income, or profits, the following statement shall be clearly and conspicuously disclosed in immediate conjunction therewith, printed in not less than 12 point upper and lower case boldface type:

CAUTION

These figures are only estimates. There is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

(v) If applicable, a statement clearly and conspicuously disclosing that the business opportunity seller lacks prior business opportunity experience as to the named business opportunity business;

(vi) If applicable, a statement clearly and conspicuously disclosing that the business opportunity seller has not been in business long enough to have actual business data;

(vii) A cover sheet, distinctively and conspicuously showing the name of the business opportunity seller, the date of issuance of the document, and the following notice printed thereon in not

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less than 12 point upper and lower case boldface type:

INFORMATION FOR PROSPECTIVE BUSINESS OPPORTUNITY PURCHASERS ABOUT BUSINESS OPPORTUNITY [SALES] [INCOME] [PROFIT] REQUIRED BY THE FEDERAL TRADE COMMISSION

To protect you, we've required the business opportunity seller to give you this information. We haven't checked it and don't know if it's correct. Study these facts and figures carefully. If possible, show them to someone who can advise you, like a lawyer or an accountant. If you find anything you think may be wrong or anything important that's been left out, let us know about it. It may be against the law. There may also be laws about business opportunities in your State. Ask your State agencies about them.

Federal Trade Commission,
Washington, D.C.

(viii) A table of contents;

(6) Each prospective business opportunity purchaser shall be notified at the "time for making of disclosures" of any material changes that have occurred in the information contained in this document.

(f) To make any claim or representation which is contradictory to the information required to be disclosed by this part.

(g) To fail to furnish the prospective business opportunity purchaser with a copy of the business opportunity seller's business opportunity agreement and related agreements with the document, and a copy of the completed business opportunity and related agreements intended to be executed by the parties at least 5 business days prior to the date the agreements are to be executed.

Provided, however, That the obligations defined in paragraphs (b) through (g) of this section shall be deemed to have been met for both the business opportunity seller and the broker if either such person furnishes the prospective business opportunity purchaser with the written disclosures required thereby.

(h) To fail to return any funds or deposits in accordance with any conditions disclosed pursuant to paragraph (a)(7) of this section.

§ 437.2 Definitions.

As used in this part, the following definitions shall apply:

(a) The term *business opportunity* means any continuing commercial relationship created by any arrangement or arrangements whereby:

(1) A person (hereinafter "business opportunity purchaser") offers, sells, or distributes to any person other than a "business opportunity seller" (as hereinafter defined), goods, commodities, or services which are:

(i)(A) Supplied by another person (hereinafter "business opportunity seller"); or

(B) Supplied by a third person (e.g., a supplier) with whom the business opportunity purchaser is directly or indirectly required to do business by another person (hereinafter "business opportunity seller"); or

(C) Supplied by a third person (e.g., a supplier) with whom the business opportunity purchaser is directly or indirectly advised to do business by another person (hereinafter "business opportunity seller") where such third person is affiliated with the business opportunity seller; and

(ii) The business opportunity seller:

(A) Secures for the business opportunity purchaser retail outlets or accounts for said goods, commodities, or services; or

(B) Secures for the business opportunity purchaser locations or sites for vending machines, rack displays, or any other product sales displays used by the business opportunity purchaser in the offering, sale, or distribution of said goods, commodities, or services; or

(C) Provides to the business opportunity purchaser the services of a person able to secure the retail outlets, accounts, sites or locations referred to in paragraphs (a)(ii)(A) and (B) of this section; and

(2) The business opportunity purchaser is required as a condition of obtaining or commencing the business opportunity operation to make a payment or a commitment to pay to the business opportunity seller, or to a person affiliated with the business opportunity seller.

(3) Exemptions. The provisions of this part shall not apply to a business opportunity:

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(i) Which is a “fractional business opportunity”; or

(ii) Where pursuant to a lease, license, or similar agreement, a person offers, sells, or distributes goods, commodities, or services on or about premises occupied by a retailer-grantor primarily for the retailer-grantor’s own merchandising activities, which goods, commodities, or services are not purchased from the retailer-grantor or persons whom the lessee is directly or indirectly

(A) Required to do business with by the retailer-grantor or

(B) Advised to do business with by the retailer-grantor where such person is affiliated with the retailer-grantor; or

(iii) Where the total of the payments referred to in paragraph (a)(2) of this section made during a period from any time before to within 6 months after commencing operation of the business opportunity purchaser’s business, is less than \$500; or

(iv) Where there is no writing which evidences any material term or aspect of the relationship or arrangement; or

(v) Which complies with the franchise disclosure requirements set forth at part 436 or falls under one or more of the exemptions set forth at § 436.8 of part 436.

(4) Exclusions. The term “business opportunity” shall not be deemed to include any continuing commercial relationship created solely by:

(i) The relationship between an employer and an employee, or among general business partners; or

(ii) Membership in a bona fide “cooperative association”; or

(iii) An agreement for the use of a trademark, service mark, trade name, seal, advertising, or other commercial symbol designating a person who offers on a general basis, for a fee or otherwise, a bona fide service for the evaluation, testing, or certification of goods, commodities, or services; or

(iv) An agreement between a licensor and a single licensee to license a trademark, trade name, service mark, advertising or other commercial symbol where such license is the only one of its general nature and type to be granted by the licensor with respect to that trademark, trade name, service mark,

advertising, or other commercial symbol.

(4) Any relationship which is represented either orally or in writing to be a business opportunity (as defined in paragraph (a) of this section) is subject to the requirements of this part.

(b) The term *person* means any individual, group, association, limited or general partnership, corporation, or any other business entity.

(c) The term *business opportunity seller* means any person who participates in a business opportunity relationship as a business opportunity seller, as denoted in paragraph (a) of this section.

(d) The term *business opportunity purchaser* means any person

(1) Who participates in a business opportunity relationship as a business opportunity purchaser, as denoted in paragraph (a) of this section, or

(2) To whom an interest in a business opportunity is sold.

(e) The term *prospective business opportunity purchaser* includes any person, including any representative, agent, or employee of that person, who approaches or is approached by a business opportunity seller or broker, or any representative, agent, or employee thereof, for the purpose of discussing the establishment, or possible establishment, of a business opportunity relationship involving such a person.

(f) The term *business day* means any day other than Saturday, Sunday, or the following national holidays: New Year’s Day, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving, and Christmas.

(g) The term *time for making of disclosures* means ten (10) business days prior to the earlier of

(1) The execution by a prospective business opportunity purchaser of any business opportunity agreement or any other agreement imposing a binding legal obligation on such prospective business opportunity purchaser, about which the business opportunity seller, broker, or any agent, representative, or employee thereof, knows or should know, in connection with the sale or proposed sale of a business opportunity, or

(2) The payment by a prospective business opportunity purchaser, about

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which the business opportunity seller, broker, or any agent, representative, or employee thereof, knows or should know, of any consideration in connection with the sale or proposed sale of a business opportunity.

(h) The term *fractional business opportunity* means any relationship, as denoted by paragraph (a) of this section, in which the person described therein as a business opportunity purchaser, or any of the current directors or executive officers thereof, has been in the type of business represented by the business opportunity relationship for more than 2 years and the parties anticipated, or should have anticipated, at the time the agreement establishing the business opportunity relationship was reached, that the sales arising from the relationship would represent no more than 20 percent of the sales in dollar volume of the business opportunity purchaser.

(i) The term *affiliated person* means a person (as defined in paragraph (b) of this section):

(1) Which directly or indirectly controls, is controlled by, or is under common control with, a business opportunity seller; or

(2) Which directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of a business opportunity seller; or

(3) Which has, in common with a business opportunity seller, one or more partners, officers, directors, trustees, branch managers, or other persons occupying similar status or performing similar functions.

(j) The term *business opportunity broker* means any person other than a business opportunity seller or a business opportunity purchaser who sells, offers for sale, or arranges for the sale of a business opportunity.

(k) The term *sale of a business opportunity* includes a contract or agreement whereby a person obtains a business opportunity or an interest in a business opportunity for value by purchase, license, or otherwise. This term shall not be deemed to include the renewal or extension of an existing business opportunity where there is no interruption in the operation of the business opportunity business by the business

opportunity purchaser, unless the new contracts or agreements contain material changes from those in effect between the business opportunity seller and business opportunity purchaser prior thereto.

(1) A *cooperative association* is either

(1) An association of producers of agricultural products authorized by section 1 of the Capper-Volstead Act, 7 U.S.C. 291; or

(2) An organization operated on a cooperative basis by and for independent retailers which wholesales goods or furnishes services primarily to its member-retailers.

(m) The term *fiscal year* means the business opportunity seller's fiscal year.

(n) The term *material, material fact, and material change* shall include any fact, circumstance, or set of conditions that has a substantial likelihood of influencing a reasonable business opportunity purchaser in the making of a significant decision relating to a named business opportunity business or that has any significant financial impact on a business opportunity purchaser or prospective business opportunity purchaser.

(o) The term *personal meeting* means a face-to-face meeting between a business opportunity seller or broker (or any agent, representative, or employee thereof) and a prospective business opportunity purchaser which is held for the purposes of discussing the sale or possible sale of a business opportunity.

§ 437.3 Severability.

If any provision of this part or its application to any person, act, or practice is held invalid, the remainder of the part or the application of its provisions to any person, act, or practice shall not be affected thereby.

NOTE 1: The Commission expresses no opinion as to the legality of any practice mentioned in this part. A provision for disclosure should not be construed as condonation or approval with respect to the matter required to be disclosed, nor as an indication of the Commission's intention not to enforce any applicable statute.

NOTE 2: By taking action in this area, the Federal Trade Commission does not intend to annul, alter, affect, or exempt any person subject to the provisions of this part from complying with the laws or regulations of

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any State, municipality, or other local government with respect to business opportunity practices, except to the extent that those laws or regulations are inconsistent with any provision of this part, and then only to the extent of the inconsistency. For the purposes of this part, a law or regulation of any State, municipality, or other local government is not inconsistent with this part if the protection such law or regulation affords any prospective business opportunity purchaser is equal to or greater than that provided by this part. Examples of provisions that provide protection equal to or greater than that provided by this part include laws or regulations which require more complete record keeping by the business opportunity seller or the disclosure of more complete information to the business opportunity purchaser.

NOTE 3: [As per § 437.1(a)(24) of this part]:

DISCLOSURE STATEMENT

Pursuant to 16 CFR 437.1 et seq., a Trade Regulation Rule of the Federal Trade Commission regarding Disclosure Requirements and Prohibitions Concerning Business Opportunities, the following information is set forth on [name of business opportunity seller] for your examination:

1. Identifying information as to the business opportunity seller;
2. Business experience of the business opportunity seller's directors and executive officers.
3. Business experience of the business opportunity seller.
4. Litigation history.
5. Bankruptcy history.
6. Description of business opportunity.
7. Initial funds required to be paid by a business opportunity purchaser.
8. Recurring funds required to be paid by a business opportunity purchaser.
9. Affiliated persons the business opportunity purchaser is required or advised to do business with by the business opportunity seller.
10. Obligations to purchase.
11. Revenues received by the business opportunity seller in consideration of purchases by a business opportunity purchaser.
12. Financing arrangements.
13. Restriction on sales.
14. Person participation required of the business opportunity purchaser in the operation of the business opportunity.
15. Termination, cancellation, and renewal of the business opportunity.
16. Statistical information concerning the number of business opportunity purchasers (and company-owned outlets).
17. Site selection.
18. Training programs.
19. Public figure involvement in the business opportunity.

20. Financial information concerning the business opportunity seller.

PART 444—CREDIT PRACTICES

Sec.

- 444.1 Definitions.
- 444.2 Unfair credit practices.
- 444.3 Unfair or deceptive cosigner practices.
- 444.4 Late charges.
- 444.5 State exemptions.

AUTHORITY: Sec. 18(a), 88 Stat. 2193, as amended 93 Stat. 95 (15 U.S.C. 57a); 80 Stat. 383, as amended, 81 Stat. 54 (5 U.S.C. 552).

SOURCE: 49 FR 7789, Mar. 1, 1984, unless otherwise noted.

§ 444.1 Definitions.

(a) *Lender*. A person who engages in the business of lending money to consumers within the jurisdiction of the Federal Trade Commission.

(b) *Retail installment seller*. A person who sells goods or services to consumers on a deferred payment basis or pursuant to a lease-purchase arrangement within the jurisdiction of the Federal Trade Commission.

(c) *Person*. An individual, corporation, or other business organization.

(d) *Consumer*. A natural person who seeks or acquires goods, services, or money for personal, family, or household use.

(e) *Obligation*. An agreement between a consumer and a lender or retail installment seller.

(f) *Creditor*. A lender or a retail installment seller.

(g) *Debt*. Money that is due or alleged to be due from one to another.

(h) *Earnings*. Compensation paid or payable to an individual or for his or her account for personal services rendered or to be rendered by him or her, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

(i) *Household goods*. Clothing, furniture, appliances, one radio and one television, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the consumer and his or her dependents, provided that the following are not included within the scope of the term *household goods*:

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(1) Works of art;
(2) Electronic entertainment equipment (except one television and one radio);

(3) Items acquired as antiques; and
(4) Jewelry (except wedding rings).

(j) *Antique*. Any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character.

(k) *Cosigner*. A natural person who renders himself or herself liable for the obligation of another person without compensation. The term shall include any person whose signature is requested as a condition to granting credit to another person, or as a condition for forbearance on collection of another person's obligation that is in default. The term shall not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to State law. A person who does not receive goods, services, or money in return for a credit obligation does not receive compensation within the meaning of this definition. A person is a cosigner within the meaning of this definition whether or not he or she is designated as such on a credit obligation.

§ 444.2 Unfair credit practices.

(a) In connection with the extension of credit to consumers in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, it is an unfair act or practice within the meaning of Section 5 of that Act for a lender or retail installment seller directly or indirectly to take or receive from a consumer an obligation that:

(1) Constitutes or contains a cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

(2) Constitutes or contains an executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

(3) Constitutes or contains an assignment of wages or other earnings unless:

(i) The assignment by its terms is revocable at the will of the debtor, or

(ii) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment, or

(iii) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(4) Constitutes or contains a nonpossessory security interest in household goods other than a purchase money security interest.

(b) [Reserved]

§ 444.3 Unfair or deceptive cosigner practices.

(a) In connection with the extension of credit to consumers in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, it is:

(1) A deceptive act or practice within the meaning of section 5 of that Act for a lender or retail installment seller, directly or indirectly, to misrepresent the nature or extent of cosigner liability to any person.

(2) An unfair act or practice within the meaning of section 5 of that Act for a lender or retail installment seller, directly or indirectly, to obligate a cosigner unless the cosigner is informed prior to becoming obligated, which in the case of open end credit shall mean prior to the time that the agreement creating the cosigner's liability for future charges is executed, of the nature of his or her liability as cosigner.

(b) Any lender or retail installment seller who complies with the preventive requirements in paragraph (c) of this section does not violate paragraph (a) of this section.

(c) To prevent these unfair or deceptive acts or practices, a disclosure, consisting of a separate document that shall contain the following statement and no other, shall be given to the cosigner prior to becoming obligated, which in the case of open end credit shall mean prior to the time that the agreement creating the cosigner's liability for future charges is executed:

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NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of *your* credit record.

This notice is not the contract that makes you liable for the debt.

§ 444.4 Late charges.

(a) In connection with collecting a debt arising out of an extension of credit to a consumer in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, it is an unfair act or practice within the meaning of section 5 of that Act for a creditor, directly or indirectly, to levy or collect any delinquency charge on a payment, which payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fee(s) or delinquency charge(s) assessed on earlier installment(s).

(b) For purposes of this section, *collecting a debt* means any activity other than the use of judicial process that is intended to bring about or does bring about repayment of all or part of a consumer debt.

§ 444.5 State exemptions.

(a) If, upon application to the Federal Trade Commission by an appropriate State agency, the Federal Trade Commission determines that:

(1) There is a State requirement or prohibition in effect that applies to any transaction to which a provision of this rule applies; and

(2) The State requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by this rule;

Then that provision of the rule will not be in effect in that State to the extent specified by the Federal Trade Commission in its determination, for as long as the State administers and enforces the State requirement or prohibition effectively.

(b) [Reserved]

PART 453—FUNERAL INDUSTRY PRACTICES

Sec.

453.1 Definitions.

453.2 Price disclosures.

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AUTHORITY: 15 U.S.C. 57a(a); 15 U.S.C. 46(g); 5 U.S.C. 552.

SOURCE: 59 FR 1611, Jan. 11, 1994, unless otherwise noted.

§ 453.1 Definitions.

(a) *Alternative container*. An "alternative container" is an unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

(b) *Cash advance item*. A "cash advance item" is any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

(c) *Casket*. A "casket" is a rigid container which is designed for the encasement of human remains and which is

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usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

(d) *Commission*. “Commission” refers to the Federal Trade Commission.

(e) *Cremation*. “Cremation” is a heating process which incinerates human remains.

(f) *Crematory*. A “crematory” is any person, partnership or corporation that performs cremation and sells funeral goods.

(g) *Direct cremation*. A “direct cremation” is a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

(h) *Funeral goods*. “Funeral goods” are the goods which are sold or offered for sale directly to the public for use in connection with funeral services.

(i) *Funeral provider*. A “funeral provider” is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

(j) *Funeral services*. “Funeral services” are any services which may be used to:

(1) Care for and prepare deceased human bodies for burial, cremation or other final disposition; and

(2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

(k) *Immediate burial*. An “immediate burial” is a disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

(l) *Memorial service*. A “memorial service” is a ceremony commemorating the deceased without the body present.

(m) *Funeral ceremony*. A “funeral ceremony” is a service commemorating the deceased with the body present.

(n) *Outer burial container*. An “outer burial container” is any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

(o) *Person*. A “person” is any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(p) *Services of funeral director and staff*. The “services of funeral director

and staff” are the basic services, not to be included in prices of other categories in § 453.2(b)(4), that are furnished by a funeral provider in arranging any funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits, and placing obituary notices.

§ 453.2 Price disclosures.

(a) *Unfair or deceptive acts or practices*. In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in paragraph (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

(b) *Preventive requirements*. To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:

(1) *Telephone price disclosure*. Tell persons who ask by telephone about the funeral provider’s offerings or prices any accurate information from the price lists described in paragraphs (b)(2) through (4) of this section and any other readily available information that reasonably answers the question.

(2) *Casket price list*. (i) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. The list must contain at least the retail prices of all caskets and alternative containers offered which do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu of a written list, other formats, such as

notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

(3) *Outer burial container price list.* (i) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as an "outer burial container price list."

(4) *General price list.* (i)(A) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following:

(1) The prices of funeral goods or funeral services;

(2) The overall type of funeral service or disposition; or

(3) Specific funeral goods or funeral services offered by the funeral provider.

(B) The requirement in paragraph (b)(4)(i)(A) of this section applies whether the discussion takes place in the funeral home or elsewhere. Provided, however, that when the deceased is removed for transportation to the funeral home, an in-person request at that time for authorization to embalm, required by § 453.5(a)(2), does not, by itself, trigger the requirement to offer the general price list if the provider in seeking prior embalming approval discloses that embalming is not required by law except in certain special cases, if any. Any other discussion during that time about prices or the selection of funeral goods or services triggers the requirement under paragraph (b)(4)(i)(A) of this section to give consumers a general price list.

(C) The list required in paragraph (b)(4)(i)(A) of this section must contain at least the following information:

(1) The name, address, and telephone number of the funeral provider's place of business;

(2) A caption describing the list as a "general price list"; and

(3) The effective date for the price list;

(ii) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

(A) Forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;

(B) Receiving remains from another funeral home, together with a list of the services provided for any quoted price;

(C) The price range for the direct cremations offered by the funeral provider, together with:

(1) A separate price for a direct cremation where the purchaser provides the container;

(2) Separate prices for each direct cremation offered including an alternative container; and

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(3) A description of the services and container (where applicable), included in each price;

(D) The price range for the immediate burials offered by the funeral provider, together with:

(1) A separate price for an immediate burial where the purchaser provides the casket;

(2) Separate prices for each immediate burial offered including a casket or alternative container; and

(3) A description of the services and container (where applicable) included in that price;

(E) Transfer of remains to funeral home;

(F) Embalming;

(G) Other preparation of the body;

(H) Use of facilities and staff for viewing;

(I) Use of facilities and staff for funeral ceremony;

(J) Use of facilities and staff for memorial service;

(K) Use of equipment and staff for graveside service;

(L) Hearse; and

(M) Limousine.

(iii) Include on the price list, in any order, the following information:

(A) Either of the following:

(1) The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual caskets, disclosed in the manner specified by paragraph (b)(2)(i) of this section; and

(B) Either of the following:

(1) The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (b)(3)(i) of this section; and

(C) Either of the following:

(1) The price for the basic services of funeral director and staff, together with a list of the principal basic services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our basic services will be added to the total cost of the funeral arrangements

you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)". If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services"; or

(2) The following statement: "Please note that a fee of (*specify dollar amount*) for the use of our basic services is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (*specify*)." The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services." The statement must be placed on the general price list together with the casket price range, required by paragraph (b)(4)(iii)(A)(1) of this section, or together with the prices of individual caskets, required by (b)(4)(iii)(A)(2) of this section.

(iv) The services fee permitted by § 453.2(b)(4)(iii)(C)(1) or (C)(2) is the only funeral provider fee for services, facilities or unallocated overhead permitted by this part to be non-declinable, unless otherwise required by law.

(5) *Statement of funeral goods and services selected.* (i) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:

(A) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;

(B) Specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.); and

(C) The total cost of the goods and services selected.

(ii) The information required by this paragraph (b)(5) may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.

(6) *Other pricing methods.* Funeral providers may give persons any other price information, in any other format, in addition to that required by § 453.2(b)(2), (3), and (4) so long as the statement required by § 453.2(b)(5) is given when required by the rule.

§ 453.3 Misrepresentations.

(a) *Embalming provisions—(1) Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires that a deceased person be embalmed when such is not the case;

(ii) Fail to disclose that embalming is not required by law except in certain special cases, if any.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §§ 453.4(b)(1) and 453.5(2), funeral providers must:

(i) Not represent that a deceased person is required to be embalmed for:

(A) Direct cremation;

(B) Immediate burial; or

(C) A closed casket funeral without viewing or visitation when refrigeration is available and when state or local law does not require embalming; and

(ii) Place the following disclosure on the general price list, required by § 453.2(b)(4), in immediate conjunction with the price shown for embalming: “Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial.” The phrase “except in certain special cases” need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances.

(b) *Casket for cremation provisions—(1) Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires a casket for direct cremations;

(ii) Represent that a casket is required for direct cremations.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(a)(1), funeral providers must place the following disclosure in immediate conjunction with the price range shown for direct cremations: “If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are (specify containers).” This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

(c) *Outer burial container provisions—(1) Deceptive acts or practices.* In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case;

(ii) Fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(2) *Preventive requirement.* To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, required by § 453.2(b)(3)(i), or, if the prices of outer burial containers are listed on the general price list, required by § 453.2(b)(4), in immediate conjunction with those prices: “In most areas of the country, state or local law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements.”

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The phrase “in most areas of the country” need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require a container to surround the casket in the grave.

(d) *General provisions on legal and cemetery requirements*—(1) *Deceptive acts or practices*. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(2) *Preventive requirements*. To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in §§ 453.3(a)(1), 453.3(b)(1), and 453.3(c)(1), funeral providers must identify and briefly describe in writing on the statement of funeral goods and services selected (required by § 453.2(b)(5)) any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) *Provisions on preservative and protective value claims*. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(1) Represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time;

(2) Represent that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case.

(f) *Cash advance provisions*—(1) *Deceptive acts or practices*. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case;

(ii) Fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral pro-

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vider for the item when such is the case.

(2) *Preventive requirements*. To prevent these deceptive acts or practices, funeral providers must place the following sentence in the itemized statement of funeral goods and services selected, in immediate conjunction with the list of itemized cash advance items required by § 453.2(b)(5)(i)(B): “We charge you for our services in obtaining: (specify cash advance items),” if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item.

§ 453.4 Required purchase of funeral goods or funeral services.

(a) *Casket for cremation provisions*—(1) *Unfair or deceptive acts or practices*. In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a casket be purchased for direct cremation.

(2) *Preventive requirement*. To prevent this unfair or deceptive act or practice, funeral providers must make an alternative container available for direct cremations, if they arrange direct cremations.

(b) *Other required purchases of funeral goods or funeral services*—(1) *Unfair or deceptive acts or practices*. In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to:

(i) Condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part;

(ii) Charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for: (1) Services of funeral director and staff, permitted by § 453.2(b)(4)(iii)(C); (2) other funeral services and funeral goods selected by the purchaser; and (3) other funeral goods or services required to be purchased, as explained on the itemized statement in accordance with § 453.3(d)(2).

(2) *Preventive requirements.* (i) To prevent these unfair or deceptive acts or practices, funeral providers must:

(A) Place the following disclosure in the general price list, immediately above the prices required by § 453.2(b)(4) (ii) and (iii): “The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected.” Provided, however, that if the charge for “services of funeral director and staff” cannot be declined by the purchaser, the statement shall include the sentence: “However, any funeral arrangements you select will include a charge for our basic services” between the second and third sentences of the statement specified above herein. The statement may include the phrase “and overhead” after the word “services” if the fee includes a charge for the recovery of unallocated funeral provider overhead;

(B) Place the following disclosure in the statement of funeral goods and services selected, required by § 453.2(b)(5)(i): “Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below.”

(ii) A funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

§ 453.5 Services provided without prior approval.

(a) *Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

(1) State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or

(2) Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

(3) The funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) *Preventive requirement.* To prevent these unfair or deceptive acts or practices, funeral providers must include on the itemized statement of funeral goods and services selected, required by § 453.2(b)(5), the statement: “If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below.”

§ 453.6 Retention of documents.

To prevent the unfair or deceptive acts or practices specified in §§ 453.2 and 453.3 of this rule, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in §§ 453.2(b) (2) through (4), as applicable, for at least one year after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by § 453.2(b)(5), for at least one year from the date of the arrangements conference.

§ 453.7 Comprehension of disclosures.

To prevent the unfair or deceptive acts or practices specified in §§ 453.2 through 453.5, funeral providers must make all disclosures required by those sections in a clear and conspicuous

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manner. Providers shall not include in the casket, outer burial container, and general price lists, required by §§ 453.2(b)(2)–(4), any statement or information that alters or contradicts the information required by this part to be included in those lists.

§ 453.8 Declaration of intent.

(a) Except as otherwise provided in § 453.2(a), it is a violation of this rule to engage in any unfair or deceptive acts or practices specified in this rule, or to fail to comply with any of the preventive requirements specified in this rule;

(b) The provisions of this rule are separate and severable from one another. If any provision is determined to be invalid, it is the Commission’s intention that the remaining provisions shall continue in effect.

(c) This rule shall not apply to the business of insurance or to acts in the conduct thereof.

§ 453.9 State exemptions.

If, upon application to the Commission by an appropriate state agency, the Commission determines that:

(a) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule; then the Commission’s rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.

PART 455—USED MOTOR VEHICLE TRADE REGULATION RULE

Sec.

455.1 General duties of a used vehicle dealer; definitions.

455.2 Consumer sales—window form.

455.3 Window form.

455.4 Contrary statements.

455.5 Spanish language sales.

455.6 State exemptions.

455.7 Severability.

AUTHORITY: 88 Stat. 2189, 15 U.S.C. 2309; 38 Stat. 717, as amended 15 U.S.C. 41 et seq.

SOURCE: 49 FR 45725, Nov. 19, 1984, unless otherwise noted.

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§ 455.1 General duties of a used vehicle dealer; definitions.

(a) It is a deceptive act or practice for any used vehicle dealer, when that dealer sells or offers for sale a used vehicle in or affecting commerce as *commerce* is defined in the Federal Trade Commission Act:

(1) To misrepresent the mechanical condition of a used vehicle;

(2) To misrepresent the terms of any warranty offered in connection with the sale of a used vehicle; and

(3) To represent that a used vehicle is sold with a warranty when the vehicle is sold without any warranty.

(b) It is an unfair act or practice for any used vehicle dealer, when that dealer sells or offers for sale a used vehicle in or affecting commerce as *commerce* is defined in the Federal Trade Commission Act:

(1) To fail to disclose, prior to sale, that a used vehicle is sold without any warranty; and

(2) To fail to make available, prior to sale, the terms of any written warranty offered in connection with the sale of a used vehicle.

(c) The Commission has adopted this Rule in order to prevent the unfair and deceptive acts or practices defined in paragraphs (a) and (b). It is a violation of this Rule for any used vehicle dealer to fail to comply with the requirements set forth in §§ 455.2 through 455.5 of this part. If a used vehicle dealer complies with the requirements of §§ 455.2 through 455.5 of this part, the dealer does not violate this Rule.

(d) The following definitions shall apply for purposes of this part:

(1) *Vehicle* means any motorized vehicle, other than a motorcycle, with a gross vehicle weight rating (GVWR) of less than 8500 lbs., a curb weight of less than 6,000 lbs., and a frontal area of less than 46 sq. ft.

(2) *Used vehicle* means any vehicle driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer, but does not include any vehicle sold only for scrap or parts (title documents surrendered to the State and a salvage certificate issued).

(3) *Dealer* means any person or business which sells or offers for sale a used vehicle after selling or offering for sale

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five (5) or more used vehicles in the previous twelve months, but does not include a bank or financial institution, a business selling a used vehicle to an employee of that business, or a lessor selling a leased vehicle by or to that vehicle's lessee or to an employee of the lessee.

(4) *Consumer* means any person who is not a used vehicle dealer.

(5) *Warranty* means any undertaking in writing, in connection with the sale by a dealer of a used vehicle, to refund, repair, replace, maintain or take other action with respect to such used vehicle and provided at no extra charge beyond the price of the used vehicle.

(6) *Implied warranty* means an implied warranty arising under State law (as modified by the Magnuson-Moss Act) in connection with the sale by a dealer of a used vehicle.

(7) *Service contract* means a contract in writing for any period of time or any specific mileage to refund, repair, replace, or maintain a used vehicle and provided at an extra charge beyond the price of the used vehicle, provided that

such contract is not regulated in your State as the business of insurance.

(8) *You* means any dealer, or any agent or employee of a dealer, except where the term appears on the window form required by § 455.2(a).

§ 455.2 Consumer sales—window form.

(a) *General duty.* Before you offer a used vehicle for sale to a consumer, you must prepare, fill in as applicable and display on that vehicle a "Buyers Guide" as required by this Rule.

(1) The Buyers Guide shall be displayed prominently and conspicuously in any location on a vehicle and in such a fashion that both sides are readily readable. You may remove the form temporarily from the vehicle during any test drive, but you must return it as soon as the test drive is over.

(2) The capitalization, punctuation and wording of all items, headings, and text on the form must be exactly as required by this Rule. The entire form must be printed in 100% black ink on a white stock no smaller than 11 inches high by 7¼ inches wide in the type styles, sizes and format indicated.

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

 VEHICLE MAKE MODEL YEAR VIN NUMBER

 DEALER STOCK NUMBER (Optional)

WARRANTIES FOR THIS VEHICLE:

AS IS - NO WARRANTY

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

WARRANTY

FULL **LIMITED WARRANTY.** The dealer will pay _____% of the labor and _____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

| | |
|-------------------------|------------------|
| SYSTEMS COVERED: | DURATION: |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

28 pt Trumvirate Bold caps
 2 pt Rule
 10/12 Trumvirate Bold c & ic
 flush left ragged right
 maximum line 42 picas
 10 pt Baseline Rule
 6 pt Trumvirate Bold caps
 10 pt Baseline Rule
 6 pt Trumvirate Bold caps
 10 pt Trumvirate Bold caps
 2 pt Rule
 54 pt Box
 42 pt Trumvirate Bold caps
 10/10 Trumvirate Bold c & ic
 flush left ragged right
 maximum line 42 picas
 1 pt Rule
 54 pt Box
 42 pt Trumvirate Bold caps
 10/10 Trumvirate Bold c & ic
 4½ picas indent on 2nd
 line
 10 pt Trumvirate Bold caps
 10 pt Baseline Rule
 10/10 Trumvirate Bold c & ic
 maximum line 42 picas
 10/10 Trumvirate Bold caps
 flush left ragged right
 maximum line 42 picas
 10/10 Trumvirate Bold c & ic
 flush left ragged right
 maximum line 42 picas

Below is a list of some major defects that may occur in used motor vehicles.

- Frame & Body**
 - Frame-cracks, corrective welds, or rusted through
 - Dogtracks—bent or twisted frame
- Engine**
 - Oil leakage, excluding normal seepage
 - Cracked block or head
 - Belts missing or inoperable
 - Knocks or misses related to camshaft lifters and push rods
 - Abnormal exhaust discharge
- Transmission & Drive Shaft**
 - Improper fluid level or leakage, excluding normal seepage
 - Cracked or damaged case which is visible
 - Abnormal noise or vibration caused by faulty transmission or drive shaft
 - Improper shifting or functioning in any gear
 - Manual clutch slips or chatters
- Differential**
 - Improper fluid level or leakage excluding normal seepage
 - Cracked or damaged housing which is visible
 - Abnormal noise or vibration caused by faulty differential
- Cooling System**
 - Leakage including radiator
 - Improperly functioning water pump
- Electrical System**
 - Battery leakage
 - Improperly functioning alternator, generator, battery, or starter
- Fuel System**
 - Visible leakage
- Inoperable Accessories**
 - Gauges or warning devices
 - Air conditioner
 - Heater & Defroster

- Brake System**
 - Failure warning light broken
 - Pedal not firm under pressure (DOT spec)
 - Not enough pedal reserve (DOT spec)
 - Does not stop vehicle in straight (DOT spec)
 - Hoses damaged
 - Drum or rotor too thin (Migr. Specs)
 - Lining or pad thickness less than 1/32 inch
 - Power unit not operating or leaking
 - Structural or mechanical parts damaged
- Steering System**
 - Too much free play at steering wheel (DOT specs)
 - Free play in linkage more than 1/4 inch
 - Steering gear binds or jams
 - Front wheels aligned improperly (DOT specs)
 - Power unit belts cracked or slipping
 - Power unit fluid level improper
- Suspension System**
 - Ball joint seals damaged
 - Structural parts bent or damaged
 - Stabilizer bar disconnected
 - Spring broken
 - Shock absorber mounting loose
 - Flubber bushings damaged or missing
 - Radius rod damaged or missing
 - Shock absorber leaking or functioning improperly
- Tires**
 - Tread depth less than 2/32 inch
 - Sizes mismatched
 - Visible damage
- Wheels**
 - Visible cracks, damage or repairs
 - Mounting bolts loose or missing
- Exhaust System**
 - Leakage

12 pt Triumvirate Bold lc
flush left ragged right
maximum line 42 picas

2 pt Rule

8/9 Triumvirate Bold c & lc
flush left ragged right
maximum line 20 picas
1 em indent on 2nd line

2 pt Rule

DEALER

ADDRESS

SEE FOR COMPLAINTS

10 pt Baseline Rule
6 pt Triumvirate Bold caps

2 pt Rule

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

10/12 Triumvirate Bold c & lc
maximum line 42 picas

When filling out the form, follow the directions in (b) through (e) of this section and § 455.4 of this part.

(b) *Warranties—(1) No Implied Warranty—“As Is”/No Warranty.* (i) If you offer the vehicle without any implied warranty, i.e., “as is,” mark the box provided. If you offer the vehicle with implied warranties only, substitute the disclosure specified below, and mark the box provided. If you first offer the vehicle “as is” or with implied warranties only but then sell it with a warranty, cross out the “As Is—No War-

ranty” or “Implied Warranties Only” disclosure, and fill in the warranty terms in accordance with paragraph (b)(2) of this section.

(ii) If your State law limits or prohibits “as is” sales of vehicles, that State law overrides this part and this rule does not give you the right to sell “as is.” In such States, the heading “As Is—No Warranty” and the paragraph immediately accompanying that phrase must be deleted from the form, and the following heading and paragraph must be substituted. If you sell

§ 455.2

16 CFR Ch. I (1-1-11 Edition)

vehicles in States that permit “as is” sales, but you choose to offer implied warranties only, you must also use the following disclosure instead of “As Is—No Warranty”:¹

IMPLIED WARRANTIES ONLY

This means that the dealer does not make any specific promises to fix things that need repair when you buy the vehicle or after the time of sale. But, State law “implied warranties” may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

(2) *Full/Limited Warranty.* If you offer the vehicle with a warranty, briefly describe the warranty terms in the space provided. This description must include the following warranty information:

(i) Whether the warranty offered is “Full” or “Limited.”² Mark the box next to the appropriate designation.

(ii) Which of the specific systems are covered (for example, “engine, transmission, differential”). You cannot use shorthand, such as “drive train” or “power train” for covered systems.

(iii) The duration (for example, “30 days or 1,000 miles, whichever occurs first”).

(iv) The percentage of the repair cost paid by you (for example, “The dealer will pay 100% of the labor and 100% of the parts.”)

(v) If the vehicle is still under the manufacturer’s original warranty, you may add the following paragraph below the “Full/Limited Warranty” disclosure: MANUFACTURER’S WARRANTY STILL APPLIES. The manufacturer’s original warranty has not expired on the vehicle. Consult the manufacturer’s warranty booklet for details as to warranty coverage, service location, etc.

If, following negotiations, you and the buyer agree to changes in the warranty coverage, mark the changes on the

form, as appropriate. If you first offer the vehicle with a warranty, but then sell it without one, cross out the offered warranty and mark either the “As Is—No Warranty” box or the “Implied Warranties Only” box, as appropriate.

(3) *Service contracts.* If you make a service contract (other than a contract that is regulated in your State as the business of insurance) available on the vehicle, you must add the following heading and paragraph below the “Full/Limited Warranty” disclosure and mark the box provided.³

Service Contract

A service contract is available at an extra charge on this vehicle. If you buy a service contract within 90 days of the time of sale, State law “implied warranties” may give you additional rights.

(c) *Name and Address.* Put the name and address of your dealership in the space provided. If you do not have a dealership, use the name and address of your place of business (for example, your service station) or your own name and home address.

(d) *Make, Model, Model Year, VIN.* Put the vehicle’s name (for example, “Chevrolet”), model (for example, “Vega”), model year, and Vehicle Identification Number (VIN) in the spaces provided. You may write the dealer stock number in the space provided or you may leave this space blank.

(e) *Complaints.* In the space provided, put the name and telephone number of the person who should be contacted if any complaints arise after sale.

(f) *Optional Signature Line.* In the space provided for the name of the individual to be contacted in the event of complaints after sale, you may include a signature line for a buyer’s signature. If you opt to include a signature line, you must include a disclosure in immediate proximity to the signature line stating: “I hereby acknowledge receipt of the Buyers Guide at the closing of this sale.” You may pre-print this language on the form if you choose.

[49 FR 45725, Nov. 19, 1984, as amended at 60 FR 62205, Dec. 5, 1995]

¹See § 455.5 n. 4 for the Spanish version of this disclosure.

²A “Full” warranty is defined by the Federal Minimum Standards for Warranty set forth in 104 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2304 (1975). The Magnuson-Moss Warranty Act does not apply to vehicles manufactured before July 4, 1975. Therefore, if you choose not to designate “Full” or “Limited” for such cars, cross out both designations, leaving only “Warranty”.

³See § 455.5 n. 4 for the Spanish version of this disclosure.

Federal Trade Commission

§ 455.5

§ 455.3 Window form.

(a) *Form given to buyer.* Give the buyer of a used vehicle sold by you the window form displayed under §455.2 containing all of the disclosures required by the Rule and reflecting the warranty coverage agreed upon. If you prefer, you may give the buyer a copy of the original, so long as that copy accurately reflects all of the disclosures required by the Rule and the warranty coverage agreed upon.

(b) *Incorporated into contract.* The information on the final version of the window form is incorporated into the contract of sale for each used vehicle you sell to a consumer. Information on the window form overrides any contrary provisions in the contract of sale. To inform the consumer of these facts, include the following language conspicuously in each consumer contract of sale:

The information you see on the window form for this vehicle is part of this contract.

Information on the window form overrides any contrary provisions in the contract of sale.

§ 455.4 Contrary statements.

You may not make any statements, oral or written, or take other actions which alter or contradict the disclosures required by §§ 455.2 and 455.3. You may negotiate over warranty coverage, as provided in §455.2(b) of this part, as long as the final warranty terms are identified in the contract of sale and summarized on the copy of the window form you give to the buyer.

§ 455.5 Spanish language sales.

If you conduct a sale in Spanish, the window form required by §455.2 and the contract disclosures required by §455.3 must be in that language. You may display on a vehicle both an English language window form and a Spanish language translation of that form. Use the following translation and layout for Spanish language sales:⁴

⁴Use the following language for the “Implied Warranties Only” disclosure when required by §455.2(b)(1):

Garantías implícitas solamente

Este término significa que el vendedor no hace promesas específicas de arreglar lo que requiera reparación cuando usted compra el vehículo o después del momento de la venta. Pero, las “garantías implícitas” de la ley estatal pueden darle a usted algunos derechos y hacer que el vendedor resuelva problemas graves que no fueron evidentes cuando usted compró el vehículo.

Use the following language for the “Service Contract” disclosure required by §455.2(b)(3):

CONTRATO DE SERVICIO. Este vehículo tiene disponible un contrato de servicio a un precio adicional. Pida los detalles en cuanto a cobertura, deducible, precio y exclusiones. Si adquiere usted un contrato de servicio dentro de los 90 días del momento de la venta, las “garantías implícitas” de acuerdo a la ley del estado pueden concederle derechos adicionales.

GUÍA DEL COMPRADOR

IMPORTANTE: Las promesas verbales son difíciles de hacer cumplir. Solicite al vendedor que ponga todas las promesas por escrito. Conserve este formulario.

| MARCA DEL VEHICULO | MODELO | AÑO | NUMERO DE IDENTIFICACION |
|--------------------|--------|-----|--------------------------|
| | | | |

NUMERO DEL ABASTO DEL DISTRIBUIDOR (Opcional)

GARANTÍAS PARA ESTE VEHICULO:

COMO ESTÁ—SIN GARANTÍA

USTED PAGARA TODOS LOS GASTOS DE CUALQUIER REPARACION QUE SEA NECESARIA. El vendedor no asume ninguna responsabilidad por cualquier reparacion, sean cuales sean las declaraciones verbales que haya hecho acerca del vehiculo.

GARANTÍA

COMPLETA LIMITADA. El vendedor pagara el ____% de la mano de obra y el ____% de los repuestos de los sistemas cubiertos que dejen de funcionar durante el periodo de garantía. Pida al vendedor una copia del documento de garantía donde se explican detalladamente la cobertura de la garantía, exclusiones y las obligaciones que tiene el vendedor de realizar reparaciones. Conforme a la ley estatal, las "garantías implícitas" pueden darle a usted incluso más derechos.

SISTEMAS CUBIERTOS POR LA GARANTÍA:

DURACION:

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CONTRATO DE SERVICIO. Este vehiculo tiene disponible un contrato de servicio a un precio adicional. Pida los detalles en cuanto a cobertura, deducible, precio y exclusiones. Si adquiere usted un contrato de servicio dentro de los 90 dias del momento de la venta, las 'garantías implícitas' de acuerdo a la ley del estado pueden concederle derechos adicionales.

INSPECCION PREVIA A LA COMPRA: PREGUNTE AL VENDEDOR SI PUEDE USTED TRAER UN MECANICO PARA QUE INSPECCIONE EL AUTOMOVIL O LLEVAR EL AUTOMOVIL PARA QUE ESTE LO INSPECCIONE EN SU TALLER.

VEASE EL DORSO DE ESTE FORMULARIO donde se proporciona informacion adicional importante, incluyendo una lista de algunos de los principales defectos que pueden ocurrir en vehiculos usados.

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2 pt Rule

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maximum line 38 picas

Harline Rule
6/8 pt Trumvirate Bold caps

Harline Rule
6/8 pt Trumvirate Bold caps

10 pt Trumvirate Bold caps
2 pt Rule

28 pt Box
24 pt Trumvirate Bold c & ic

10/10 Trumvirate Bold c & ic
maximum line 38 picas

1 pt Rule

28 pt Box
24 pt Trumvirate Bold c & ic

10/10 Trumvirate Bold c & ic
7 1/2 picas indent
on runovers

10/10 Trumvirate Bold caps

10/12 Harline Rule

10/10 Trumvirate Bold c & ic
maximum line 38 picas

10/10 Trumvirate Bold caps
maximum line 38 picas

10/10 Trumvirate Bold c & ic
maximum line 38 picas

A continuación presentamos una lista de algunos de los principales defectos que pueden ocurrir en vehículos usados.

| | |
|---|---|
| <p>Chasis y carrocería Chasis-grietas, soldaduras correctivas u oxidado Chasis doblado o torcido</p> <p>Motor Fuga de aceite, excluyendo el escape normal Bloqueo o tapa de recámara agrietados Correas que faltan o no funcionan Fallo o pistoneo Emisión excesiva de humo por el sistema de escape</p> <p>Transmisión y eje de cardan Nivel de líquido inadecuado o fuga, excluyendo filtración normal Cubiertas agrietada o dañada visible Vibración o ruido anormal ocasionado por una transmisión o eje de cardan defectuoso Cambio de marchas o funcionamiento inadecuado en cualquier marcha Embrague manual patina o vibra</p> <p>Diferencial Nivel de líquido inadecuado o fuga, excluyendo filtración normal Cubierta agrietada o dañada visible Ruido o vibración anormal ocasionado por diferencial defectuoso</p> <p>Sistema de refrigeración Fuga, incluido el radiador Bomba de agua defectuosa</p> <p>Sistema eléctrico Fuga en las baterías Alternador, generador, batería, o motor de arranque defectuosos</p> <p>Sistema de combustible Escape visible de combustible</p> <p>Accesorios averiados Indicadores o medidores del cuadro de instrumentos Acondicionador de aire Calefactor y descarchador</p> | <p>Sistema de frenos Luz de advertencia de falla dañada Pedal no firma bajo presión (Especif. del Dpto de Transp.) Juego insuficiente en el pedal (Especif. del Dpto de Transp.) No detiene el vehículo en línea recta (Especif. del Dpto de Transp.) Conductos dañados Tambor o disco muy delgados (Especif. del fabricante) Grosor de las bandas de los frenos menor de 1/32 de pulgada Sistema de servofreno dañado o con escape Partes estructurales o mecánicas dañadas</p> <p>Sistema de dirección Juego excesivo en el volante (Especif. Dpto de Transp.) Juego en el varillaje en exceso de 1/4 pulgada Engranaje del volante de dirección se agarra Ruedas delanteras mal alineadas (Especif. del Dpto de Transp.) Correas del sistema de servodirección agrietadas o flojas Nivel del líquido del sistema de servodirección inadecuado</p> <p>Sistema de suspensión Sellos de conexión de rodamientos defectuosos Piezas estructurales dobladas o dañadas Barra de estabilización desconectada Resorte roto Montura del amortiguador floja Bujes de goma dañados o ausentes Estabilizador para curvas dañadas o ausente Amortiguador tiene fuga o funciona defectuosamente</p> <p>Llantas Profundidad de la banda de rodamiento menor de 2/32 de pulgada Diferentes tamaños de llanta Daños visibles</p> <p>Ruedas Grietas visibles, daños o reparaciones Pernos de montaje sueltos o ausentes</p> <p>Sistema de Escape Fuga</p> |
|---|---|

12 pt Trumvirate Bold It
 flush left ragged right
 maximum line 42 picas

2 pt Rule

89 Trumvirate Bold c & It
 flush left ragged right
 maximum line 20 picas
 1 em indent on 2nd line

2 pt Rule

VENDEDOR _____

DIRECCION _____

VEASE PARA RECLAMACIONES _____

10 pt Baseline Rule

6 pt Trumvirate Bold caps

IMPORTANTE: La información contenida en este formulario forma parte de todo contrato de compra de este vehículo. Constituye una contravención de la ley federal (16 C.F.R. 455) quitar este rotulo antes de la compra del vehículo por el consumidor (salvo para conducir el automovil en calidad de prueba).

2 pt Rule

10 1/2 Trumvirate Bold c & It
 maximum line 42 picas

[49 FR 45725, Nov. 19, 1984, as amended at 60 FR 62205, Dec. 5, 1995]

§ 455.6 State exemptions.

(a) If, upon application to the Commission by an appropriate State agency, the Commission determines, that—

(1) There is a State requirement in effect which applies to any transaction to which this rule applies; and

(2) That State requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this Rule; then the Commission's Rule will not be in effect in that State to the extent specified by the Commission in its determination, for as long as the State

administers and enforces effectively the State requirement.

(b) Applications for exemption under subsection (a) should be directed to the Secretary of the Commission. When appropriate, proceedings will be commenced in order to make a determination described in paragraph (a) of this section, and will be conducted in accordance with subpart C of part 1 of the Commission's Rules of Practice.

§ 455.7 Severability.

The provisions of this part are separate and severable from one another. If

any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

PART 456—OPHTHALMIC PRACTICE RULES (EYEGLOSS RULE)

Sec.

456.1 Definitions.

456.2 Separation of examination and dispensing.

456.3 Federal or State employees.

456.4 Declaration of Commission Intent.

456.5 Rules applicable to prescriptions for contact lenses and related issues.

AUTHORITY: 15 U.S.C. 57a; 5 U.S.C. 552.

SOURCE: 57 FR 18822, May 1, 1992, unless otherwise noted.

§ 456.1 Definitions.

(a) A *patient* is any person who has had an eye examination.

(b) An *eye examination* is the process of determining the refractive condition of a person's eyes or the presence of any visual anomaly by the use of objective or subjective tests.

(c) *Ophthalmic goods* are eyeglasses, or any component of eyeglasses, and contact lenses.

(d) *Ophthalmic services* are the measuring, fitting, and adjusting of ophthalmic goods subsequent to an eye examination.

(e) An *ophthalmologist* is any Doctor of Medicine or Osteopathy who performs eye examinations.

(f) An *optometrist* is any Doctor of Optometry.

(g) A *prescription* is the written specifications for lenses for eyeglasses which are derived from an eye examination, including all of the information specified by state law, if any, necessary to obtain lenses for eyeglasses.

§ 456.2 Separation of examination and dispensing.

It is an unfair act or practice for an ophthalmologist or optometrist to:

(a) Fail to provide to the patient one copy of the patient's prescription immediately after the eye examination is completed. Provided: An ophthalmologist or optometrist may refuse to give the patient a copy of the patient's prescription until the patient has paid for the eye examination, but only if that

ophthalmologist or optometrist would have required immediate payment from that patient had the examination revealed that no ophthalmic goods were required;

(b) Condition the availability of an eye examination to any person on a requirement that the patient agree to purchase any ophthalmic goods from the ophthalmologist or optometrist;

(c) Charge the patient any fee in addition to the ophthalmologist's or optometrist's examination fee as a condition to releasing the prescription to the patient. Provided: An ophthalmologist or optometrist may charge an additional fee for verifying ophthalmic goods dispensed by another seller when the additional fee is imposed at the time the verification is performed; or

(d) Place on the prescription, or require the patient to sign, or deliver to the patient a form or notice waiving or disclaiming the liability or responsibility of the ophthalmologist or optometrist for the accuracy of the eye examination or the accuracy of the ophthalmic goods and services dispensed by another seller.

§ 456.3 Federal or State employees.

This rule does not apply to ophthalmologists or optometrists employed by any Federal, State or local government entity.

§ 456.4 Declaration of Commission Intent.

In prohibiting the use of waivers and disclaimers of liability in § 456.2(d), it is not the Commission's intent to impose liability on an ophthalmologist or optometrist for the ophthalmic goods and services dispensed by another seller pursuant to the ophthalmologist's or optometrist's prescription.

§ 456.5 Rules applicable to prescriptions for contact lenses and related issues.

Rules applicable to prescriptions for contact lenses and related issues may be found at 16 CFR part 315 (Contact Lens Rule).

[69 FR 40511, July 2, 2004]

PART 460—LABELING AND ADVERTISING OF HOME INSULATION

Sec.

- 460.1 What this regulation does.
- 460.2 What is home insulation.
- 460.3 Who is covered.
- 460.4 When the rules apply.
- 460.5 R-value tests.
- 460.6 “Representative thickness” testing.
- 460.7 Which test version to use.
- 460.8 R-value tolerances.
- 460.9 What test records you must keep.
- 460.10 How statements must be made.
- 460.11 Rounding off R-values.
- 460.12 Labels.
- 460.13 Fact sheets.
- 460.14 How retailers must handle fact sheets.
- 460.15 How installers must handle fact sheets.
- 460.16 What new home sellers must tell new home buyers.
- 460.17 What installers must tell their customers.
- 460.18 Insulation ads.
- 460.19 Savings claims.
- 460.20 R-value per inch claims.
- 460.21 Government claims.
- 460.22 Tax claims.
- 460.23 Other laws, rules, and orders.
- 460.24 Stayed or invalid parts.

APPENDIX TO PART 460—EXEMPTIONS

AUTHORITY: 38 Stat. 717, as amended (15 U.S.C. 41 et seq.).

SOURCE: 44 FR 50242, Aug. 27, 1979, unless otherwise noted.

§ 460.1 What this regulation does.

This regulation deals with home insulation labels, fact sheets, ads, and other promotional materials in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act. If you are covered by this regulation, breaking any of its rules is an unfair and deceptive act or practice or an unfair method of competition under section 5 of that Act. You can be fined heavily (up to \$11,000 plus an adjustment for inflation, under §1.98 of this chapter) each time you break a rule.

[70 FR 31274, May 31, 2005]

§ 460.2 What is home insulation.

Insulation is any material mainly used to slow down heat flow. It may be mineral or organic, fibrous, cellular, or reflective (aluminum foil). It may be in rigid, semirigid, flexible, or loose-fill form. Home insulation is for use in old

or new homes, condominiums, cooperatives, apartments, modular homes, or mobile homes. It does not include pipe insulation. It does not include any kind of duct insulation except for duct wrap.

§ 460.3 Who is covered.

You are covered by this regulation if you are a member of the home insulation industry. This includes individuals, firms, partnerships, and corporations. It includes manufacturers, distributors, franchisors, installers, retailers, utility companies, and trade associations. Advertisers and advertising agencies are also covered. So are labs doing tests for industry members. If you sell new homes to consumers, you are covered.

§ 460.4 When the rules apply.

You must follow these rules each time you import, manufacture, distribute, sell, install, promote, or label home insulation. You must follow them each time you prepare, approve, place, or pay for home insulation labels, fact sheets, ads, or other promotional materials for consumer use. You must also follow them each time you supply anyone covered by this regulation with written information that is to be used in labels, fact sheets, ads, or other promotional materials for consumer use. Testing labs must follow the rules unless the industry members tells them, in writing, that labels, fact sheets, ads, or other promotional materials for home insulation will not be based on the test results.

460.5 R-value tests.

R-value measures resistance to heat flow. R-values given in labels, fact sheets, ads, or other promotional materials must be based on tests done under the methods listed below. They were designed by the American Society of Testing and Materials (ASTM). The test methods are:

(a) All types of insulation except aluminum foil must be tested with ASTM C 177-04, “Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus;” ASTM C 518-04, “Standard Test Method for Steady-State Thermal Transmission Properties by Means of

the Heat Flow Meter Apparatus,” ASTM C 1363–97, “Standard Test Method for the Thermal Performance of Building Assemblies by Means of a Hot Box Apparatus” or ASTM C 1114–00, “Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Thin-Heater Apparatus.” The tests must be done at a mean temperature of 75 [degrees] Fahrenheit and with a temperature differential of 50 [degrees] Fahrenheit plus or minus 10 degrees Fahrenheit. The tests must be done on the insulation material alone (excluding any airspace). R-values (“thermal resistance”) based upon heat flux measurements according to ASTM C 177–04 or ASTM C 518–04 must be reported only in accordance with the requirements and restrictions of ASTM C 1045–01, “Standard Practice for Calculating Thermal Transmission Properties from Steady-State Conditions.”

(1) For polyurethane, polyisocyanurate, and extruded polystyrene, the tests must be done on samples that fully reflect the effect of aging on the product’s R-value. To age the sample, follow the procedure in paragraph 4.6.4 of GSA Specification HH-I-530A, or another reliable procedure.

(2) For loose-fill cellulose, the tests must be done at the settled density determined under paragraph 8 of ASTM C 739–03, “Standard Specification for Cellulosic Fiber Loose-Fill Thermal Insulation.”

(3) For loose-fill mineral wool, self-supported, spray-applied cellulose, and stabilized cellulose, the tests must be done on samples that fully reflect the effect of settling on the product’s R-value.

(4) For self-supported spray-applied cellulose, the tests must be done at the density determined pursuant to ASTM C 1149–02, “Standard Specification for Self-Supported Spray Applied Cellulosic Thermal Insulation.”

(5) For loose-fill insulations, the initial installed thickness for the product must be determined pursuant to ASTM C 1374–03, “Standard Test Method for Determination of Installed Thickness of Pneumatically Applied Loose-Fill Building Insulation,” for R-values of 13, 19, 22, 30, 38, 49 and any other R-values

provided on the product’s label pursuant to §460.12.

(b) Single sheet systems of aluminum foil must be tested with ASTM E 408–71 (Reapproved 2002), “Standard Test Methods for Total Normal Emittance of Surfaces Using Inspection-Meter Techniques,” or ASTM C 1371–04a, “Standard Test Method for Determination of Emittance of Materials Near Room Temperature Using Portable Emisometers.” This tests the emissivity of the foil—its power to radiate heat. To get the R-value for a specific emissivity level, air space, and direction of heat flow, use the tables in the most recent edition of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers’ (ASHRAE) Fundamentals Handbook, if the product is intended for applications that meet the conditions specified in the tables. You must use the R-value shown for 50[degrees] Fahrenheit, with a temperature differential of 30[degrees] Fahrenheit.

(c) Aluminum foil systems with more than one sheet, and single sheet systems of aluminum foil that are intended for applications that do not meet the conditions specified in the tables in the most recent edition of the ASHRAE Fundamentals Handbook, must be tested with ASTM C 1363–97, “Standard Test Method for the Thermal Performance of Building Assemblies by Means of a Hot Box Apparatus,” in a test panel constructed according to ASTM C 1224–03, “Standard Specification for Reflective Insulation for Building Applications,” and under the test conditions specified in ASTM C 1224–03. To get the R-value from the results of those tests, use the formula specified in ASTM C 1224–03.

(d) For insulation materials with foil facings, you must test the R-value of the material alone (excluding any air spaces) under the methods listed in paragraph (a) of this section. You can also determine the R-value of the material in conjunction with an air space. You can use one of two methods to do this:

(1) You can test the system, with its air space, under ASTM C 1363–97, “Standard Test Method for the Thermal Performance of Building Assemblies by Means of a Hot Box Apparatus,” which

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is incorporated by reference in paragraph (a) of this section. If you do this, you must follow the rules in paragraph (a) of this section on temperature, aging and settled density.

(2) You can add up the tested R-value of the material and the R-value of the air space. To get the R-value for the air space, you must follow the rules in paragraph (b) of this section.

(e) The standards listed above are incorporated by reference into this section. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Federal Trade Commission, Consumer Response Center, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Copies of materials and standards incorporated by reference may be obtained from the issuing organizations listed in this section.

(1) The American Society of Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959.

(i) ASTM C 177-04, "Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus."

(ii) ASTM C 518-04, "Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus."

(iii) ASTM C 739-03, "Standard Specification for Cellulosic Fiber Loose-Fill Thermal Insulation."

(iv) ASTM C 1045-01, "Standard Practice for Calculating Thermal Transmission Properties from Steady-State Conditions."

(v) ASTM C 1114-00, "Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Thin-Heater Apparatus."

(vi) ASTM C 1149-02, "Standard Specification for Self-Supported Spray Applied Cellulosic Thermal Insulation."

(vii) ASTM C 1224-03, "Standard Specification for Reflective Insulation for Building Applications."

(viii) ASTM C 1363-97, "Standard Test Method for the Thermal Performance of Building Assemblies by Means of a Hot Box Apparatus."

(ix) ASTM C 1371-04a, "Standard Test Method for Determination of Emittance of Materials Near Room Temperature Using Portable Emissometers."

(x) ASTM C 1374-03, "Standard Test Method for Determination of Installed Thickness of Pneumatically Applied Loose-Fill Building Insulation."

(xi) ASTM E 408-71 (Reapproved 2002), "Standard Test Methods for Total Normal Emittance of Surfaces Using Inspection-Meter Techniques."

(2) U.S. General Services Administration (GSA), 1800 F Street, NW., Washington, DC 20405.

(i) GSA Specification HH-I-530A, Federal Specification, Insulation Board, Thermal (Urethane), November 22, 1971.

(ii) [Reserved]

[70 FR 31274, May 31, 2005]

§ 460.6 "Representative thickness" testing.

All tests except aluminum foil tests must be done at a representative thickness for every thickness shown in a label, fact sheet, ad, or other promotional material. "Representative thickness" means a thickness at which the R-value per unit will vary no more than plus or minus 2% with increases in thickness. However, if the thickness shown in your label, fact sheet, ad, or promotional material is less than the representative thickness, then you can test the insulation at the thickness shown.

§ 460.7 Which test version to use.

Use the version of the ASTM test method that was in effect when this regulation was promulgated. If ASTM changes a test method, the new version will automatically replace the old one in these rules 90 days after ASTM first publishes the change. However, the Commission's staff or a person affected by the change can petition the Commission during the 90-day period not to

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adopt the change or to reopen the proceeding to consider it further.

§ 460.8 R-value tolerances.

If you are a manufacturer of home insulation, no individual specimen of the insulation you sell can have an R-value more than 10% below the R-value shown in a label, fact sheet, ad, or other promotional material for that insulation. If you are not a manufacturer, you can rely on the R-value data given to you by the manufacturer, unless you know or should know that the data is false or not based on the proper tests.

[70 FR 31275, May 31, 2005]

§ 460.9 What test records you must keep.

Manufacturers and testing labs must keep records of each item of information in the "Report" section of the ASTM test method that is used for a test. They must also keep the following records:

- (a) The name and address of the testing lab that did each test.
- (b) The date of each test.
- (c) For manufacturers, the date each test report was received from a lab. For labs, the date each test report was sent to a manufacturer.
- (d) For extruded polystyrene, polyurethane, and polyisocyanurate, the age (in days) of the specimen that was tested.
- (e) For aluminum foil, the emissivity level that was found in the test.

Manufacturers who own their own testing labs need not keep records of the information in paragraph (c) of this section.

Keep these records for at least three years. If the documents show proof for your claims, the three years will begin again each time you make the claim. Federal Trade Commission staff members can check these records at any time, but they must give you reasonable notice first.

§ 460.10 How statements must be made.

All statements called for by this regulation must be made clearly and conspicuously. Among other things, you must follow the Commission's enforce-

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ment policy statement for clear and conspicuous disclosures in foreign language advertising and sales materials, 16 CFR 14.9.

[61 FR 13666, Mar. 28, 1996]

§ 460.11 Rounding off R-values.

R-values shown in labels, fact sheets, ads, or other promotional materials must be rounded to the nearest tenth. However, R-values of 10 or more may be rounded to the nearest whole number.

§ 460.12 Labels.

If you are a manufacturer, you must label all packages of your insulation. The labels must contain:

- (a) The type of insulation.
- (b) A chart showing these items:
 - (1) For batts and blankets of any type: the R-value, length, width, thickness, and square feet of insulation in the package.
 - (2) For all loose-fill insulation: the minimum settled thickness, initial installed thickness, maximum net coverage area, number of bags per 1,000 square feet, and minimum weight per square foot at R-values of 13, 19, 22, 30, 38, and 49. You must also give this information for any additional R-values you list on the chart. Labels for these products must state the minimum net weight of the insulation in the package. You must also provide information about the blowing machine and machine settings used to derive the initial installed thickness information.
 - (3) For boardstock: the R-value, length, width, and thickness of the boards in the package, and the square feet of insulation in the package.
 - (4) For aluminum foil: the number of foil sheets; the number and thickness of the air spaces; and the R-value provided by that system when the direction of heat flow is up, down, and horizontal. You can show the R-value for only one direction of heat flow if you clearly and conspicuously state that the foil can only be used in that application.
 - (5) For insulation materials with foil facings, you must follow the rule that applies to the material itself. For example, if you manufacture boardstock with a foil facing, follow paragraph (b)(3) of this section. You can also show

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the R-value of the insulation when it is installed in conjunction with an air space. This is its “system R-value.” If you do this, you must clearly and conspicuously state the conditions under which the system R-value can be attained.

(6) For air duct insulation: the R-value, length, width, thickness, and square feet of insulation in the package.

(c) The following statement: “R means resistance to heat flow. The higher the R-value, the greater the insulating power.”

(d) If installation instructions are included on the label or with the package, add this statement: “To get the marked R-value, it is essential that this insulation be installed properly. If you do it yourself, follow the instructions carefully.”

(e) If no instructions are included, add this statement: “To get the marked R-value, it is essential that this insulation be installed properly. If you do it yourself, get instructions and follow them carefully. Instructions do not come with this package.”

[70 FR 31276, May 31, 2005]

§ 460.13 Fact sheets.

If you are a manufacturer, you must give retailers and installers fact sheets for the insulation products you sell to them. Each sheet must contain what is listed here. You can add any disclosures that are required by federal laws, regulations, rules, or orders. You can add any disclosures that are required by State or local laws, rules, and orders, unless they are inconsistent with the provisions of this regulation. Do not add anything else.

Each fact sheet must contain these items:

(a) The name and address of the manufacturer. It can also include a logo or other symbol that the manufacturer uses.

(b) A heading: “This is _____ insulation.” Fill in the blank with the type and form of your insulation.

(c) The heading must be followed by a chart:

(1) If § 460.12(b) requires a chart for your product’s label, you must use that chart. For foamed-in-place insulations,

you must show the R-value of your product at 3½ inches. You can also show R-values at other thicknesses.

(2) You can put the charts for similar products on the same fact sheet. For example, if you sell insulation boards or batts in three different thicknesses, you can put the label charts for all three products on one fact sheet. If you sell loose-fill insulation in two different bag sizes, you can put both coverage charts on one fact sheet, as long as you state which coverage chart applies to each bag size.

(d) For air duct insulation, the chart must be followed by this statement:

“The R-value of this insulation varies depending on how much it is compressed during installation.”

(e) After the chart and any statement dealing with the specific type of insulation, ALL fact sheets must carry this statement, boxed, in 12-point type:

READ THIS BEFORE YOU BUY

What You Should Know About R-values

The chart shows the R-value of this insulation. R means resistance to heat flow. The higher the R-value, the greater the insulating power. Compare insulation R-values before you buy.

There are other factors to consider. The amount of insulation you need depends mainly on the climate you live in. Also, your fuel savings from insulation will depend upon the climate, the type and size of your house, the amount of insulation already in your house, and your fuel use patterns and family size. If you buy too much insulation, it will cost you more than what you’ll save on fuel.

To get the marked R-value, it is essential that this insulation be installed properly.

[44 FR 50242, Aug. 27, 1979, as amended at 45 FR 68928, Oct. 17, 1980; 70 FR 31276, May 31, 2005]

§ 460.14 How retailers must handle fact sheets.

If you sell insulation to do-it-yourself customers, you must have fact sheets for the insulation products you sell. You must make the fact sheets available to your customers. You can decide how to do this, as long as your insulation customers are likely to notice them. For example, you can put them in a display, and let customers take copies of them. You can keep

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them in a binder at a counter or service desk, and have a sign telling customers where the fact sheets are. You need not make the fact sheets available to customers if you display insulation packages on the sales floor where your insulation customers are likely to notice them and each individual insulation package offered for sale contains all package label and fact sheet disclosures required by §§ 460.12 and 460.13.

[70 FR 31276, May 31, 2005]

§ 460.15 How installers must handle fact sheets.

If you are an installer, you must have fact sheets for the insulation products you sell. Before customers agree to buy insulation from you, you must show them the fact sheet(s) for the type(s) of insulation they want. You can decide how to do this. For example, you can give each customer a copy of the fact sheet(s). You can keep the fact sheets in a binder, and show customers the binder before they agree to buy.

§ 460.16 What new home sellers must tell new home buyers.

If you are a new home seller, you must put the following information in every sales contract: The type, thickness, and R-value of the insulation that will be installed in each part of the house. There is an exception to this rule. If the buyer signs a sales contract before you know what type of insulation will be put in the house, or if there is a change in the contract, you can give the buyer a receipt stating this information as soon as you find out.

§ 460.17 What installers must tell their customers.

If you are an installer, you must give your customers a contract or receipt for the insulation you install. For all insulation except loose-fill and aluminum foil, the receipt must show the coverage area, thickness, and R-value of the insulation you installed. The receipt must be dated and signed by the installer. To figure out the R-value of the insulation, use the data that the manufacturer gives you. If you put insulation in more than one part of the house, put the data for each part on the receipt. You can do this on one receipt,

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as long as you do not add up the coverage areas or R-values for different parts of the house. Do not multiply the R-value for one inch by the number of inches you installed. For loose-fill, the receipt must show the coverage area, initial installed thickness, minimum settled thickness, R-value, and the number of bags used. For aluminum foil, the receipt must show the number and thickness of the air spaces, the direction of heat flow, and the R-value.

[70 FR 31276, May 31, 2005]

§ 460.18 Insulation ads.

(a) If your ad gives an R-value, you must give the type of insulation and the thickness needed to get that R-value. Also, add this statement explaining R-values: “The higher the R-value, the greater the insulating power. Ask your seller for the fact sheet on R-values.”

(b) If your ad gives a price, you must give the type of insulation, the R-value at a specific thickness, the statement explaining R-values in paragraph (a) of this section, and the coverage area for that thickness. If you give the price per square foot, you do not have to give the coverage area.

(c) If your ad gives the thickness of your insulation, you must give its R-value at that thickness and the statement explaining R-values in paragraph (a) of this section.

(d) If your ad compares one type of insulation to another, the comparison must be based on the same coverage areas. You must give the R-value at a specific thickness for each insulation, and the statement explaining R-values in paragraph (a) of this section. If you give the price of each insulation, you must also give the coverage area for the price and thickness shown. However, if you give the price per square foot, you do not have to give the coverage area.

(e) The affirmative disclosure requirements in § 460.18 do not apply to ads on television or radio.

[44 FR 50242, Aug. 27, 1979, as amended at 51 FR 39651, Oct. 30, 1986; 70 FR 31276, May 31, 2005]

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§ 460.19 Savings claims.

(a) If you say or imply in your ads, labels, or other promotional materials that insulation can cut fuel bills or fuel use, you must have a reasonable basis for the claim. For example, if you say that insulation can “slash” or “lower” fuel bills, or that insulation “saves money,” you must have a reasonable basis for the claim. Also, if you say that insulation can “cut fuel use in half” or “lower fuel bills by 30%,” you must have a reasonable basis for the claim.

(b) If you say or imply in your ads, labels, or other promotional materials that insulation can cut fuel bills or fuel use, you must make this statement about savings: “Savings vary. Find out why in the seller’s fact sheet on R-values. Higher R-values mean greater insulating power.”

(c) If you say or imply that a combination of products can cut fuel bills or use, you must have a reasonable basis for the claim. You must make the statement about savings in paragraph (b) of this section. Also, you must list the combination of products used. They may be two or more types of insulation; one or more types of insulation and one or more other insulating products, like storm windows or siding; or insulation for two or more parts of the house, like the attic and walls. You must say how much of the savings came from each product or location. If you cannot give exact or approximate figures, you must give a ranking. For instance, if your ad says that insulation and storm doors combined to cut fuel use by 50%, you must say which one saved more.

(d) If your ad or other promotional material is covered by § 460.18 (a), (b), (c), or (d), and also makes a savings claim, you must follow the rules in §§ 460.18 and 460.19. However, you need not make the statement explaining R-value in § 460.18(a).

(e) Manufacturers are liable if they do not have a reasonable basis for their savings claims before the claim is made. If you are not a manufacturer, you are liable only if you know or should know that the manufacturer does not have a reasonable basis for the claim.

(f) Keep records of all data on savings claims for at least three years. For the records showing proof for claims, the three years will begin again each time you make the claim. Federal Trade Commission staff members can check these records at any time, but they must give you reasonable notice first.

(g) The affirmative disclosure requirements in § 460.19 do not apply to ads on television or radio.

[44 FR 50242, Aug. 27, 1979, as amended at 51 FR 39651, Oct. 30, 1986; 70 FR 31276, May 31, 2005]

§ 460.20 R-value per inch claims.

In labels, fact sheets, ads, or other promotional materials, do not give the R-value for one inch or the “R-value per inch” of your product. There are two exceptions:

(a) If an outstanding FTC Cease and Desist Order applies to you but differs from the rules given here, you can petition to amend the order.

(b) You can do this if actual test results prove that the R-values per inch of your product does not drop as it gets thicker.

You can list a range of R-value per inch. If you do, you must say exactly how much the R-value drops with greater thickness. You must also add this statement: “The R-value per inch of this insulation varies with thickness. The thicker the insulation, the lower the R-value per inch.”

[44 FR 50242, Aug. 27, 1979, as amended at 70 FR 31276, May 31, 2005]

§ 460.21 Government claims.

Do not say or imply that a government agency uses, certifies, recommends, or otherwise favors your product unless it is true. Do not say or imply that your insulation complies with a governmental standard or specification unless it is true.

§ 460.22 Tax claims.

Do not say or imply that your product qualifies for a tax benefit unless it is true.

§ 460.23 Other laws, rules, and orders.

(a) If an outstanding FTC Cease and Desist Order applies to you but differs

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from the rules given here, you can petition to amend to order.

(b) State and local laws and regulations that are inconsistent with, or frustrate the purposes of, the provisions of this regulation are preempted. However, a State or local government may petition the Commission, for good cause, to permit the enforcement of any part of a State or local law or regulation that would be preempted by this section.

(c) The Commission's three-day cooling-off rule stays in force.

[44 FR 50242, Aug. 27, 1979, as amended at 70 FR 31276, May 31, 2005]

§ 460.24 Stayed or invalid parts.

If any part of this regulation is stayed or held invalid, the rest of it will stay in force.

APPENDIX TO PART 460—EXEMPTIONS

Section 18(g)(2) of the Federal Trade Commission Act, 15 U.S.C. 57a(g)(2), authorizes the Commission to exempt a person or class of persons from all or part of a trade regulation rule if the Commission finds that application of the rule is not necessary to prevent the unfair or deceptive acts or practices to which the rule relates. In response to petitions from industry representatives, the Commission has granted exemptions from specific requirements of 16 CFR part 460 to certain classes of sellers. Some of these exemptions are conditioned upon the performance of alternative actions. The exemptions are limited to specific sections of part 460. All other requirements of part 460 apply to these sellers. The exemptions are summarized below. For an explanation of the scope and application of the exemptions, see the formal Commission decisions in the FEDERAL REGISTER cited at the end of each exemption.

(a) Manufacturers of perlite insulation products that have an inverse relationship between R-value and density or weight per

square foot are exempted from the requirements in §§ 460.12(b)(2) and 460.13(c)(1) that they disclose minimum weight per square foot for R-values listed on labels and fact sheets. This exemption is conditioned upon the alternative disclosure in labels and fact sheets of the maximum weight per square foot for each R-value required to be listed. 46 FR 22179 (1981).

(b) Manufacturers of rigid, flat-roof insulation products used in flat, built-up roofs are exempted from the requirements in § 460.12 that they label these home insulation products. 46 FR 22180 (1981).

(c) New home sellers are exempted from:

(1) the requirement in § 460.18(a) that they disclose the type and thickness of the insulation when they make a representation in an advertisement or other promotional material about the R-value of the insulation in a new home;

(2) the requirement that they disclose in an advertisement or other promotional material the R-value explanatory statement specified in § 460.18(a) or the savings explanatory statement specified in § 460.19(b), conditioned upon the new home sellers alternatively disclosing the appropriate explanatory statement in the sales contract along with the disclosures required by § 460.16;

(3) the requirement that they make the disclosures specified in § 460.19(c) if they claim that insulation, along with other products in a new home, will cut fuel bills or fuel use; and

(4) the requirement that they include the reference to fact sheets when they must disclose the R-value explanatory statement or the savings claim explanatory statement under § 460.18(a) or § 460.19(b), respectively.

The exemptions for new home sellers also apply to home insulation sellers other than new home sellers when they participate with a new home seller to advertise and promote the sale of new homes, provided that the primary thrust of the advertisement or other promotional material is the promotion of new homes, and not the promotion of the insulation product. 48 FR 31192 (1983).

[61 FR 13666, Mar. 28, 1996]