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Business Opportunities

FTC Seeks Comments on Proposed Business Opportunity Rule

On March 18, 2008, the Federal Trade Commission announced the publication in the Federal Register of a revised notice of public rulemaking (RNPR), seeking comments on a modified version of the Commission's proposed Business Opportunity Rule.

The NPR is a follow-up to the business opportunity rule portion of the FTC's April 2006 notice of public rulemaking (NPR). The April 2006 NPR addressed long-awaited revisions to the 1978 Franchise Rule and also proposed adoption of a new and separate rule relating specifically to business opportunities. The definition of the term "business opportunity" in the proposed rule is designed to cover such business arrangements as vending machine routes, rack display operations, and envelope-stuffing opportunities. Unlike franchises, "business opportunities" are not necessarily characterized by the right to use a trademark. Under the Commission's proposed rule, the sale of business opportunities would be subject to certain disclosure requirements that are different from, but not entirely unlike, the disclosures required for the sale of franchises. However, the sale of a "franchise" offered in compliance with the revised Franchise Rule is exempt from the requirements of the proposed Business Opportunity Rule.

The revisions to the proposed rule come as a result of the Commission's review of comments submitted in response to the April 2006 NPR. According to the Commission's announcement, the revised Business Opportunity Rule "would not reach multi-level marketing companies or certain companies that may have been swept inadvertently into scope of the April 2006 proposal" and also "streamlines the requirement to disclose material information by eliminating requirements to disclose the number of cancellations and refund requests that a business opportunity seller receives or the litigation history of sales personnel."

The deadline for submission of comments to the revised Business Opportunity Rule proposal is May 27, 2008. The FTC's notice can be found at <http://www.ftc.gov/opa/2008/03/busrule.shtm>. The text of the RNPR itself can be viewed at <http://www.ftc.gov/os/2008/03/R511993business.pdf>.