



Changes are coming. As of July 1, 2008, franchisors will be required to comply with new disclosure rules. The Federal Trade Commission recently amended the rules, replacing the Uniform Franchise Offering Circular Guidelines and the old FTC rule format with a new Franchise Disclosure Document (FDD). It's not too soon to start preparing. Here's what you should know.

Timing

Franchisors must deliver the new FDD to prospective franchisees at least 14 days prior to the franchisee signing a binding agreement or making any payment. Some states (Michigan included) still have the old "10 business day or first personal meeting" requirement—and it's unclear whether they'll adopt the new rule.

Expanded Parent Company Disclosure

A franchisor controlled by a parent corporation now must provide audited financial statements of any parent that "commits to perform post-sale obligations for the franchisor or guarantees the franchisor's obligations."

Brokers

Under the new rule, brokers no longer need to be disclosed in Item 2. However, they do fall under the new term "franchise seller," and must be disclosed on the receipt page.

Litigation

All material litigation initiated by the franchisor against its franchisees during the last fiscal year must now be disclosed in Item 3—including collection actions for unpaid royalties. In addition, the reporting period for all other litigation matters has been extended from seven years to ten.

Financial Performance Representations

A Financial Performance Representation (FPR) replaces the former Earnings Claim. It does not include cost in its definition, so franchisors will now be permitted to provide cost-only data to prospective franchisees. However, caution should be exercised. Any cost information that refers to sales, revenue, or profit goes beyond "cost only" and will trigger an Item 19 disclosure.

Electronic Disclosure

The FDD may be delivered to a franchisee by email or other electronic means. However, the 14-day clock won't start until the receipt is signed. It too may be sent electronically. Franchisors may begin using electronic disclosure immediately, prior to updating the disclosure document.

Words of Advice

Amending your documentation now will help you avoid the scramble this coming summer—and may prove to be cost-effective, too, by saving you the expense of double document preparation. You should be aware that you cannot adopt only portions of the new rule (except electronic disclosure). Once you decide to make the switch, you'll need to comply with all requirements. As in the past, individual states may impose additional requirements as long as they're consistent with the FTC rule.

Disclosure documents that don't conform to the new FTC rule by July 1, 2008, will be in violation of federal law. If you want to get a head start on the process, our Franchise & Distribution Team is ready to help. Call the author or Lindsey Stetson at 734/ 668-7754.

Are you a franchisor?

Get ready for new disclosure rules