Honorable April J. Tabor  
Acting Secretary  
Federal Trade Commission  
Office of the Secretary  
Constitution Center  
400 7th Street SW  
5th Floor  
Suite 5610 (Annex B)  
Washington, D.C. 20024

Re: Franchise Rule Regulatory Review  
16 CFR Part 436  
Matter No. R511003

Dear Acting Secretary Tabor:

On behalf of the International Franchise Association ("IFA") and its members, we submit these comments in response to the Federal Trade Commission's ("FTC") request for public comment on its Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising" (the "Rule"), published in the Federal Register on March 13, 2019 (84 Fed. Reg. 9051).

IFA is the world's oldest and largest organization representing franchising worldwide. Celebrating close to 60 years of excellence, education, and advocacy, IFA works through its government relations and public policy, media relations, and educational programs to protect, enhance, and promote franchising. Through its media awareness campaign highlighting the theme, “Franchising: Building Local Businesses, One Opportunity at a Time,” IFA promotes the economic impact of more than 733,000 franchise establishments, which support nearly 7.6 million jobs and $674.3 billion of economic output for the U.S. economy.\(^1\) Additionally, around 30% of franchise businesses are minority-owned, compared to less than 20% of non-franchised businesses.\(^2\) IFA members include over 1,300 member franchise companies in over 300 different business format categories, individual franchisees, and companies that support the industry in

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2 https://www.franchise.org/sites/default/files/Franchise%20Business%20Ownership%202018_0.pdf.
marketing, law, and business development.

IFA and its many members have, over the years, collaborated with public officials domestically and internationally to shape the laws and policies that govern franchising, with the goal of promoting franchise growth and protecting the critical interests of both franchisees and franchisors. As IFA’s nearly 60-year record of accomplishments amply demonstrates, IFA has consistently supported regulatory policies designed to ensure that prospective franchisees receive relevant and material information about their proposed franchise purchases sufficiently in advance of such purchases to enable them to make informed and unpressured purchase decisions. IFA also has supported a proper balance between the legitimate disclosure needs of prospective franchisees and the compliance burdens and costs—borne by both franchisors and franchisees—that such disclosure inevitably entails.

IFA actively participated in the deliberations leading to both promulgation of the Rule in 1978 and its modification in 2007, supporting the FTC’s early initiatives in the disclosure area and then applauding the FTC’s willingness to recalibrate the Rule’s specific disclosure requirements 30 years later—based on detailed comments submitted by various stakeholders in franchising, including the IFA—to reflect numerous advancements in technology, new and emerging trends in modern-day franchising, and a shift in the information deemed relevant and material to prospective franchisees.

IFA once again wishes to share with the FTC its insight into the experiences of franchisors and franchisees with the disclosure regimen now in effect. The bottom line is that, in light of the unity of support communicated by its franchisee, franchisor, and supplier members, IFA strongly endorses continuation of the Rule in substantially its current format. From IFA’s perspective, the Rule:
(1) accomplishes its principal objective of providing, through the Franchise Disclosure Document, relevant and material information to prospective franchisees throughout the United States about the particular franchise program and the cost and nature of the proposed investment in advance of their franchise-acquisition decisions;

(2) establishes predictable, transparent, and understandable processes with which both franchisors and franchisees have become familiar, which prospective franchisees have come to expect, and with which franchisors have become increasingly compliant;

(3) sets a minimum threshold that all franchisors must satisfy in order to bring their franchise programs to market, particularly when those franchisors are not based in or do not venture to the 15 states with franchise registration/disclosure laws;

(4) provides franchisees with benchmarks to analyze competing franchise opportunities; and

(5) minimizes the potential for franchisor misrepresentations at the expense of franchisees by compelling franchisors to establish a “record” of their franchise offering.

No matter the costs that franchisors incur to prepare a Rule-mandated Franchise Disclosure Document—which necessarily vary depending on the size, maturity, complexity, and sophistication of the particular franchise system—they are a small price to pay to ensure the flow of material information so essential for franchisees to make an informed business decision and, if desired, to compare different franchise opportunities available on the market. The absence or paucity of such information in the franchisee’s decision-making process would, IFA believes, only lead to increased, unacceptable levels of uninformed and unwise business decisions, distrust, disappointment, unhappiness, investment losses, litigation, and additional government regulation, all of which would
tarnish the reputation and integrity, and threaten the ever-growing economy- and life-enhancing benefits, of the franchise model itself. It is not hyperbole to suggest that a franchisor unable or unwilling to bear the costs of preparing and properly using a compliant Franchise Disclosure Document is probably not adequately prepared or sufficiently responsible to engage in franchising in the first place. And the reality is that franchisors wishing to offer and grant franchises in one of the 15 states with franchise registration/disclosure laws already must prepare a Franchise Disclosure Document. Therefore, retaining a disclosure requirement in the remaining 35 states does not meaningfully increase a franchisor’s costs for legal compliance.

Indeed, if the FTC started down the path toward abolishing the Rule, we fully anticipate that the trend in the 1970s before the FTC adopted the Rule would resume—with more states adopting franchise disclosure and registration laws, some imposing different standards, and franchisors’ compliance costs actually ballooning in order to meet those additional and disparate standards. Notably, former FTC Commissioner Terry Calvani memorably commented on the value of a consistent standard similar to the Rule when he observed that differing state laws might present a “crazy patchquilt” of regulation in the national economy. The impact of additional states adopting laws would be in addition to the likelihood that franchisors then would have to comply with existing state business opportunity laws that currently are not a compliance burden because they include built-in exemptions for franchisors that comply with the Rule.

The positive role played by the Rule and its success as a behavior-changing directive are apparent from the significant growth in franchising over the years and, most importantly, the high degree of franchisee satisfaction. Over the past 10-plus years since the Rule was last amended in
2007, the number of business-format franchised units has skyrocketed 16% from 381,890 outlets to 441,300 outlets. Most importantly, franchisee satisfaction is at an all-time high.

According to research conducted by Franchise Business Review, whose results were publically released on April 18, 2019, 88% of franchise owners surveyed indicated that they “enjoy operating their business,” and 87% said they “enjoy being part of their franchise organization.” With respect to the future outlook for their businesses, 67% rated their long-term growth opportunities as “very strong” or “strong.” Only 8% rated their long-term growth opportunity as “weak” or “very weak.” Franchise Business Review’s current data is based on surveys from October 2017 through March 2019 of over 29,300 franchisees representing 310 different franchise systems. Key drivers of franchisee satisfaction included training, marketing, technology, innovation, and franchisor-franchisee relations, all of which are addressed to varying degrees in the current Rule disclosure framework.

Market forces have driven franchisors to provide increasing transparency into their systems’ financial performance disclosures, with 66% of franchisors disclosing revenue information in their Item 19s in 2017 compared to only 52% in 2014. Furthermore, franchisors have improved the quality of their disclosures and the level of transparency into unit financial performance under the Rule’s current framework. Forty-seven percent (47%) of franchisors with an Item 19 disclose operating expenses, and 34% provide some measure of profitability, including operating income, net income, or earnings before income, taxes, depreciation, and amortization (EBITDA). Since 2014, almost half

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3 FRANdata 2019 franchise unit analysis. FRANdata is an independent research firm with the world’s largest information and analyst resources dedicated to the franchise business model.
4 Franchise Business Review is an independent market research firm that specializes in benchmarking franchisee satisfaction based exclusively on ratings and reviews from franchise owners.
6 Id.
of franchisors have increased the sample basis of their reporting to include a larger portion of their franchised system, on average, representing 77% of their franchised system.\textsuperscript{8}

These propitious statistics reflect, among other things, that the actual experiences of an overwhelming number of franchisees once they start operating their franchised businesses are consistent with their pre-investment expectations for those businesses—expectations created and nurtured in large measure by the Rule-based disclosures they received. Indeed, IFA’s recent survey of its membership revealed almost unanimous support for the Rule and substantial support (roughly two-thirds of respondents) for no Rule changes at all.

The Rule-mandated Franchise Disclosure Document has become the virtual maypole of the franchising process. It has leveled the informational playing field for franchisees while generating few meaningful complaints from franchisors. Any material deviation from the current process would, IFA fears, set franchising back significantly.

Of course, there always is room for improvement if the FTC were to decide to massage certain aspects of the Rule to account for continuing technological advances and other developments since 2007. However, even as now written, the Rule should be treated as inviolate and essential to the continued growth and success of the franchise model. In order to maintain the utmost flexibility, IFA encourages the FTC to consider some mechanism (short of an additional rulemaking) that would permit the FTC to implement evolutionary rather than revolutionary changes in the disclosure process. IFA would be interested in participating in any such further discussions that the FTC might propose.

\textsuperscript{7} \textit{Id.}

\textsuperscript{8} FRANdata 2017 Financial Performance Representation Study, April 2017.
We hope that the foregoing comments are helpful and express our appreciation for the FTC’s role in preserving a trade regulation rule that contributes to the well-being of an essential and vibrant segment of the United States economy.

Respectfully submitted,

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International Franchise Association