

PUBLICATION

FTC Modifies Franchise Rule

Authors: Joel Buckberg
August 6, 2012

On June 14, 2012, the Federal Trade Commission (FTC) amended its Franchise Rule to reset for inflation three exemption thresholds first set in 2007. These changes are likely to have little meaningful impact but do recognize that even low rates of inflation should push indexed thresholds to higher levels.

These changes were published in the Federal Register on June 18, 2012,¹ were effective July 1, 2012, and follow the Rule's original promise of inflation adjustments every four years.²

The first change affected the required payment limit to be paid by a franchisee during the first six months after the franchisee and the franchisor sign a franchise agreement. The FTC raised the amount from \$500 to \$540.³ If the required payment is less than \$540, then the transaction is exempt from the Franchise Rule disclosure requirements.

In the large investment exemption, a franchise that calls for a franchisee to invest more than a specified minimum amount will be exempt from disclosure requirements. The minimum investment amount was raised from \$1 million to \$1,084,900, excluding the value of undeveloped land and any portion of the investment that is financed by the franchisor or an affiliate.⁴

The other exemption affected is the large franchisee exemption, which exempts from disclosure a franchise transaction with a franchisee that has at least five years of business history and a net worth under GAAP of at least a specified amount. That amount was increased from \$5 million to \$5,424,500.⁵

The adjustments were made to match the inflation level in the Consumer Price Index, which the FTC measured at 8.49 percent. The \$40 increase in the required payment level is a simple 8 percent, justified by the FTC on the basis of simplicity, since a precise increase would push the threshold to \$542.45; close enough for government work.

¹ 77 Fed. Reg. 361459-50.

² 16 C.F.R. §436.8(b).

³ 16 C.F.R. §436.1(s); 16 C.F.R. §436.8(a)(1).

⁴ 16 C.F.R. §436.8(a)(5)(i).

⁵ 16 C.F.R. §436.8(a)(5)(ii).