

SUMMARY OF FTC'S PROPOSED
NEW BUSINESS OPPORTUNITY RULE

The FTC recently issued its Notice of Proposed Rulemaking (NPR) dealing with its expanded definition of "business opportunities." The FTC press release and the FTC's comments regarding the new rule can be reviewed in their entirety at <https://www.ftc.gov/opa/2006/03/newnewbizopprule.htm>. The Direct Selling Association ("DSA") and virtually every network marketing company currently operating, believes the proposed rule would be extremely detrimental to the direct selling community. The advisory commentary issued by the drafters of the proposed rules expressly rejects prior DSA comments provided to them and uses language that refers to all network marketing opportunities as "pyramid marketing schemes" reflecting a clear bias against legal network marketing companies. The following is a highlight of the key disclosure provisions in the proposed rule, which on their face would arguably apply to all direct sales companies and their independent sales representatives. Obviously the form and timing of their disclosures would be extremely burdensome on any existing companies. They are as follows:

1. Require a written "disclosure statement" to be given to any prospective applicant at least seven days before the applicant can sign a contract or make any payment;
2. The written disclosure statement must be given separately to each potential participant - i.e., it cannot be included with other material on the company or products;
3. The written disclosure statement would include: a) the Company's and individual seller's names, addresses and the date it was provided to the potential buyer; b) a description of any legal proceedings related to alleged deceptive practice or other matters of seller or its affiliates within the prior 10 years; c) set forth the seller's cancellation/refund policy and the number of cancellations/refunds over the prior two years¹; d) disclosure of the 10 most recent "purchases" of the opportunity nearest to the prospective purchasers or alternatively all purchases in the prior three years and would include public disclosure of the name, address and telephone number of each "purchaser;" and e) if any "earnings" claims are made by seller, interpreted to mean any claims of making money, disclosures of when the earnings were made, number and percentage of other "purchasers" (distributors) reaching that level of earning and special characteristics of those who made earnings claimed;
4. For a period of three years each seller must maintain a copy for review by the FTC of: a) all versions of documents required by the rule - i.e. - signed disclosure statements and earning disclosures; b) each written

¹ This includes all requests, regardless of whether the purchaser had a legal right to cancel, rescind or seek a refund.