

NEW SECTION

WAC 460-80-050 Document filed with the director when received. A document is filed with the director when it is received by the director or by a person as the director designates by rule or order.

NEW SECTION

WAC 460-80-060 Interpretive opinions and no-action letters. The director, in his or her discretion, may honor requests from interested persons for no-action letters and interpretive opinions pursuant to RCW 19.100.250. The following procedures must be followed in requesting a no-action letter or interpretive opinion from the director:

(1) The request must be submitted to the director in writing. The letter should be captioned with the name of the party who will be relying upon the director's response and should indicate that a no-action letter or interpretive opinion is sought.

(2) The requesting letter should cite the particular statutes or rules for which interpretation or no-action is sought.

(3) The names of all involved companies and parties should be disclosed. The director does not issue interpretive or no-action letters relating to unnamed companies or individuals or hypothetical situations, nor on matters of pending, or in preparation for, litigation.

(4) The request should be tailored to resolving the immediate issues and should not attempt to discuss every possible situation that may arise in the future.

(5) The letter should be concise and contain all material facts necessary to resolve the issues at hand. Relevant supporting documents may be included, but are not a substitute for subsection (6) of this section.

(6) It is important that the letter identify the issues at hand, the proposed resolution, and the precedents or other legal authority supporting that position.

The director may decline to respond to letters that are not prepared in accordance with the above listed procedures.

AMENDATORY SECTION (Amending Order 11, filed 3/3/72)

WAC 460-80-100 Notice of claim for exemption. Any franchisor or subfranchisor who claims an exemption under RCW 19.100.030 (4) (a) and (b) (i) shall file with the ~~((administrator of the state securities division a statement giving notice of such claim for exemption, the name and address of the franchisor or subfranchisor, the name under which the franchisor or subfranchisor is doing business, and a statement setting forth the information upon which the exemption under RCW 19.100.030 (4) (b) (i) is claimed, including the most recent audited financial statement showing compliance with the requirements of RCW 19.100.030 (4) (b) (i) (A))~~) director a completed Annual Notice of Claim of Exemption form along with the fee prescribed in RCW 19.100.240 made payable to the treasurer of the state of Washington.

AMENDATORY SECTION (Amending WSR 92-02-054, filed 12/30/91, effective 1/30/92)

WAC 460-80-108 Exemption for offer and sale to accredited investors pursuant to RCW 19.100.030(5). For the purpose of the exemption of RCW 19.100.030(5), an "accredited investor" shall mean any person who comes within any of the following categories, or who the franchisor reasonably believes comes within any of the following categories, at the time of the sale of the franchise to that person:

(1) Any bank as defined in section 3(a)(2) of the Securities Act of 1933, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(13) of the Securities Act of 1933; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that act; any small business investment company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of ~~((Title I of))~~ the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment

decisions made solely by persons that are accredited investors;

(2) Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

(3) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the franchise offered, with total assets in excess of \$5,000,000;

(4) Any director, executive officer, or general partner of the franchisor of the franchises being offered or sold, or any director, executive officer, or general partner of a general partner of that franchisor;

(5) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1,000,000;

(6) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(7) Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the franchise offered, whose purchase is directed by a sophisticated person as described in 17 CFR Sec. 230.506(b)(2)(ii); and

(8) Any entity in which all of the equity owners are accredited investors.

AMENDATORY SECTION (Amending Order SDO-38-80, filed 3/19/80)

WAC 460-80-110 Franchise registration application. All applications for registration, renewal or amendment of a franchise shall ~~((have as the first page thereof a facing page))~~ be in the form as provided by the ~~((department of licensing))~~ director and ~~((containing))~~ contain the information specified therein. The application for registration, renewal or amendment must be accompanied by the fee prescribed in RCW 19.100.240 made payable ~~((by check))~~ to the treasurer of the state of Washington.

AMENDATORY SECTION (Amending WSR 92-02-054, filed 12/30/91, effective 1/30/92)

WAC 460-80-125 Franchise registration application instructions. The following must be adhered to with respect to all applications for registration, registration renewal or registration

amendment:

(1) Completion of application. An application for registration of the offer or sale of franchises shall include the following, all of which shall be verified by means of the prescribed signature page:

- (a) ~~((Facing page))~~ Application;
- (b) Supplemental information page(s);
- (c) ~~((Salesmen))~~ Seller disclosure form;

(d) A copy of the ~~((proposed offering circular))~~ Franchise Disclosure Document.

(2) The following shall be attached to the application:

~~((A second copy of the proposed offering circular;~~

~~(b) A cross-reference sheet showing the location in the franchise agreement of the information required to be included in the application and in the offering circular. If any item calling for information is inapplicable or the answer thereto is in the negative and is omitted, a statement to that effect shall be made in the cross-reference sheet;~~

~~(c)) A consent to service of process; and~~

~~((d) Two copies))~~ (b) One copy of any advertising to be used in connection with the offer or sale in this state of franchises.

(3) ~~((Definitions:~~

~~(a) "Predecessor," for the purposes of the disclosure required by item 1 in the body of the offering circular, is defined as follows: A "predecessor" of a franchisor is (i) a person the major portion of whose assets have been acquired directly or indirectly by the franchisor, or (ii) a person from whom the franchisor acquired directly or indirectly the major portion of its assets;~~

~~(b) "Franchise broker," for the purposes of the disclosure required by the cover page and item 2 in the body of the offering circular, is defined as follows: A "franchise broker" is any person engaged in the business of representing a franchisor or subfranchisor in offering for sale or selling a franchise, except anyone whose identity and business experience is otherwise required to be disclosed at item 2 in the body of the offering circular.~~

~~(4)) Disclosure: ((Each disclosure item should be either positively or negatively commented upon by use of a statement which fully incorporates the information required by the item.)) The offering circular shall be prepared in accordance with the Instructions for Preparation of the Franchise Disclosure Document contained in section IV. of the 2008 Franchise Registration and Disclosure Guidelines promulgated by the North American Securities Administrators Association, Inc. (NASAA).~~

~~((5))~~ (4) Subfranchisors: When the person filing the application for registration is a subfranchisor, the application shall also include the same information concerning the subfranchisor as is required from the franchisor; the franchisor, as well as the subfranchisor, shall execute a signature page.

~~((6))~~ (5) Signing of application: The application shall be signed by an officer or general partner of the applicant; however, it may be signed by another person holding a power of attorney for such purposes from the applicant. If signed on behalf of the

applicant pursuant to such power of attorney, the application shall include as an additional exhibit a copy of said power of attorney or a copy of the corporate resolution authorizing the attorney to act.

~~((7))~~ (6) Manually or digitally signed consent of accountant: All applications shall be accompanied by a manually or digitally signed consent of the independent public accountants for the use of their audited financial statements as such statements appear in the offering circular.

~~((8) Application to amend the registration: An amendment to an application filed either before or after the effective date of registration shall contain only the information being amended identified by item number and shall be verified by means of the prescribed signature page. Each amendment shall be accompanied by a facing page in the form prescribed on which the applicant shall indicate the filing is an amendment and the number of the amendment, if more than one.~~

~~(9) Underscoring of changes: If the registration renewal statement or any amendment to an application for registration alters the text of the offering circular, or of any item, or other document previously filed as a part of the application for registration, the changes in such text shall be indicated by means of underscoring or in some other appropriate manner.)~~

NEW SECTION

WAC 460-80-135 Franchise registration amendment and renewal instructions. An application to renew or amend a franchise registration must comply with the following requirements:

(1) An application for renewal of a franchise registration must be filed with the director no later than fifteen business days prior to the expiration of registration in order to avoid a lapse in registration and the need to file an initial application for registration. If the registration has already expired, the applicant must mark the application as an initial registration and pay the fee required for filing an initial application for registration in RCW 19.100.240.

(2) An amendment to a franchise application is required to be filed as soon as reasonably possible and in any case, before the further sale of any franchise, if a material adverse change in the condition of the franchisor or any of its subfranchisors or any material change in the information contained in its Franchise Disclosure Document should occur.

(3) The following documents must be filed for each amendment or application for renewal of a franchise registration:

(a) A completed application marked amendment or renewal, as applicable. If the application is for renewal, do not mark the amendment boxes on the application even if the documents have been

revised since the last filing.

(b) All documents set forth in WAC 460-80-125 required for an initial application with all additions, deletions and other changes to the previously filed documents black-lined. Changes must be clearly marked so that each change is noticed easily. Do NOT use margin balloons or color highlights to show changes. Do not use less than 11 point type for changed text. Use a black-lining system that underlines changes and shows deletions by a strike through.

(c) A clean copy of the updated Franchise Disclosure Document.

(4) If the director requires changes to any documents submitted, the franchisor must file a complete clean copy of the revised Franchise Disclosure Document and any other revised documents, and a black-lined copy of all the revised pages, unless directed otherwise.

AMENDATORY SECTION (Amending Order SDO-38-80, filed 3/19/80)

WAC 460-80-140 Financial statements. (~~((a) Financial statements required to be filed in connection with an application for registration or renewal of an offer or sale of a franchise shall be prepared in accordance with generally accepted accounting principles as set forth in rules as adopted pursuant to chapter 460-60A WAC etc. Such financial statements should be audited by a certified public accountant having the same qualifications and restrictions as those set forth in WAC 460-60A-100, except where the particular form or this section permits the use of unaudited statements for interim periods.~~

~~(b) In extraordinary cases the director may waive the requirement for audited statements if the statements have been prepared by an independent certified public accountant or independent public accountant and the director is otherwise satisfied as to the reliability of such statements and as to the ability of the franchisor to perform future commitments. Such waiver will ordinarily be granted only upon a showing that the franchisor has not had prior audited statements; that the close of the most recent or current fiscal year is so near the time of filing of the application that it would be unreasonably costly or impractical to provide audited statements with the application; and that audited statements will be furnished within a reasonable time after the end of the most recent or current fiscal year. In such cases the director may impose an impound condition and such other conditions and restrictions as in his discretion may be appropriate.~~

~~(c) The use of unaudited financial statements as provided in these rules does not relieve the applicant or any person from any liability for false and misleading statements contained in such financial statements.)~~ The Franchise Disclosure Document must

include financial statements that comply with the instructions for Item 21 of the Franchise Disclosure Document, 16 CFR § 465.5(u).

AMENDATORY SECTION (Amending Order 11, filed 3/3/72)

WAC 460-80-195 Approval is not an endorsement. The filing of the application for registration or the effectiveness of the registration does not constitute a finding by the director that any document filed under ~~((this act))~~ the Franchise Investment Protection Act, chapter 19.100 RCW, is true, complete and not misleading. Neither any such fact nor the fact that an exemption is available for a transaction means that the director has passed in any way upon the merits or qualification of, or recommended or given approval to any person, franchise or transaction.

AMENDATORY SECTION (Amending Order SDO-38-80, filed 3/19/80)

WAC 460-80-300 Receipt of offering circular. Each ~~((prospective purchaser of a franchise))~~ person that sells a franchise that is registered or required to be registered pursuant to RCW 19.100.020 shall ((sign a)) ensure that the Franchise Disclosure Document and other required documents are delivered to each offeree in accordance with RCW 19.100.080 and shall obtain a signed receipt ((in substantially the following form that they have received the offering circular and that they received the same before signing the receipt and completing the sale.

ACKNOWLEDGEMENT OF RECEIPT OF OFFERING
CIRCULAR BY PROSPECTIVE FRANCHISEE FROM
(NAME OF FRANCHISOR)

~~The undersigned, personally and/or as an officer or partner of the proposed franchisee, does hereby acknowledge receipt of "the franchise offering circular for prospective franchisees required by the state of Washington" including all exhibits attached thereto, to wit: (List exhibits to be attached, including, but not limited to, financial statements, franchise agreement, lease agreements, etc.) I acknowledge that I received the offering circular at least 48 hours prior to signing this receipt and completing the sale.~~

~~Dated:~~

.....
individually and/or as an officer
or partner of.....
a(.....corporation)

(~~.....partnership~~))

therefore in the form prescribed by the director.

NEW SECTION

WAC 460-80-305 Franchise agreement addendum. Every franchisor registered or required to be registered pursuant to RCW 19.100.020 shall, in each sale of a franchise in Washington, conform its franchise agreement to the Franchise Investment Protection Act, chapter 19.100 RCW, and the rules adopted thereunder or include in its franchise agreement or Franchise Disclosure Document an addendum concerning the applicability of the Franchise Investment Protection Act, chapter 19.100 RCW. The addendum shall be in the form prescribed by the director.

AMENDATORY SECTION (Amending WSR 95-08-015, filed 3/24/95, effective 4/24/95)

WAC 460-80-315 Washington ((~~uniform franchise offering circular~~)) Franchise Disclosure Document. To implement the offering circular and disclosure requirements of RCW 19.100.030 (4) (a) and 19.100.040, the director adopts the ((~~Uniform Franchise Offering Circular (UFOC) as amended~~)) requirements for preparing the contents of a Franchise Disclosure Document set forth in sections III. and VII. of the 2008 Franchise Registration and Disclosure Guidelines promulgated by the North American Securities Administrators Association, Inc. (NASAA) ((on April 25, 1993)).

AMENDATORY SECTION (Amending Order 11, filed 3/3/72)

WAC 460-80-400 Impounds. The director may, by rule or order, require as a condition to the effectiveness of the registration the impound of franchise fees if he or she finds that such requirement is appropriate to protect ((~~the~~)) prospective franchisees.

AMENDATORY SECTION (Amending Order 11, filed 3/3/72)

WAC 460-80-410 Imposition of impound. In a case where the applicant has failed to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training or other items included in the offering, the director (~~(or administrator)~~) may impose as a condition to the registration of a franchise offering an impoundment of the franchise fees and other funds paid by the franchisee or subfranchisor until no later than the time of opening of the franchise business.

AMENDATORY SECTION (Amending Order 11, filed 3/3/72)

WAC 460-80-440 Depository. Funds subject to an impound condition shall be placed in a separate trust account with a ~~((national))~~ bank ~~((located in Washington or a Washington bank or))~~, trust company, or an independent escrow agent acceptable to the director. A ~~((written consent))~~ copy of the ~~((depository to act in such capacity))~~ impound agreement shall be filed with the director.

AMENDATORY SECTION (Amending Order 11, filed 3/3/72)

WAC 460-80-450 Release of impounds. The director will authorize the depository to release to the franchisor such amounts of the impounded funds applicable to a specified franchisee (or subfranchisor) upon a showing that the franchisor has fulfilled its obligations under the franchise agreement, or that for other reasons the impound is no longer required for protection of franchisees.

~~((An application for an order of))~~ A request to the director ~~((authorizing))~~ to authorize the release of impounds to the franchisor shall ~~((be verified and shall))~~ contain the following:

~~((a))~~ (1) A statement of the franchisor that all required proceeds from the sale of franchises have been placed with the depository in accordance with the terms and conditions of the impound ~~((condition))~~ agreement.

~~((b))~~ (2) A statement of the depository signed by an appropriate officer setting forth the aggregate amount of impounds placed with the depository.

~~((c))~~ (3) The names of each franchisee (or subfranchisor) and the amount held in the impound for the account of each franchisee (or subfranchisor).

~~((d))~~ (4) A statement by the franchisee that the franchisor has performed his obligations under the franchise contract.

~~((e))~~ (5) Such other information as the director may require in a particular case.

NEW SECTION

WAC 460-80-460 Guarantee of performance, deferrals and other arrangements. In lieu of an impound under RCW 19.100.050, the director may accept a guarantee of the franchisor's performance under the franchise agreement by the franchisor's parent or affiliate, a surety bond, an agreement to defer payment of the franchise fee, or other arrangements to protect the interests of a franchisee acceptable to the director. Any such agreements must be in the form and content prescribed by the director.

AMENDATORY SECTION (Amending Order 11, filed 3/3/72)

WAC 460-80-500 Advertising--Filing requirement--Timing. All advertising to be used to offer a franchise, subject to the registration requirement, for sale must be filed in the office of the director at least ~~((7))~~ seven days prior to the publication ~~((and all advertising shall be subject to the following statement of policy:~~

~~(a) An advertisement should not contain any statement or inference that a purchase of a franchise is a safe investment or that failure, loss or default is impossible or unlikely, or that earnings or profits are assured.~~

~~(b) An advertisement should not normally contain a projection of future franchisee earnings unless such projection is (i) based on past earnings records of all franchisees operating under conditions, including location, substantially similar to conditions affecting franchises being offered (ii) for a reasonable period only and (iii) is substantiated by data which clearly supports such projections.~~

~~(c) An advertisement should normally contain the name and address of the person using the advertisement.~~

~~(d) If the advertisement contains any endorsement or recommendation of the franchises by any public figure, whether express or implied (for example, by the inclusion of such person's photograph or name in the advertisement), full disclosure shall be made of any compensation or other benefit given or promised by the franchisor or any person associated with the franchisor to such person, directly or indirectly. The disclosure required in this~~

~~subsection (d) shall be made in the same document containing the advertisement or, if such advertisement is presented on radio or television, as a part of the same program, without any intermission or other intervening material.~~

~~(e) Any advertisement which refers to an exemption from or reduction in taxation under any law should be based on an opinion of counsel, and the name of such counsel should be stated in the advertisement).~~

NEW SECTION

WAC 460-80-510 Advertising--Contents. All advertising to be used to offer a franchise, subject to the registration requirement, for sale is subject to the following limitations:

(1) An advertisement shall not contain any statement or inference that a purchase of a franchise is a safe investment or that failure, loss, or default is impossible or unlikely, or that earnings or profits are assured.

(2) An advertisement should not normally contain a projection of future franchisee earnings unless such projection is:

(a) Based on past earnings records of all franchisees operating under conditions, including location, substantially similar to conditions affecting franchises being offered;

(b) For a reasonable period only; and

(c) Is substantiated by data which clearly supports such projections.

(3) An advertisement should normally contain the name and address of the person using the advertisement.

(4) If the advertisement contains any endorsement or recommendation of the franchises by any public figure, whether express or implied (for example, by the inclusion of such person's photograph or name in the advertisement), full disclosure shall be made of any compensation or other benefit given or promised by the franchisor or any person associated with the franchisor to such person, directly or indirectly. The disclosure required in this subsection shall be made in the same document containing the advertisement or, if such advertisement is presented on radio or television, as a part of the same program, without any intermission or other intervening material.

(5) Any advertisement which refers to an exemption from or reduction in taxation under any law should be based on an opinion of counsel, and the name of such counsel should be stated in the advertisement.

NEW SECTION

WAC 460-80-520 Advertising--Internet advertising and trade shows. "Advertisement" as defined under RCW 19.100.010 includes, in addition to the items expressly set forth in that provision, communications on the internet and at trade shows in connection with an offer or sale of a franchise.

NEW SECTION

WAC 460-80-530 Advertising--Exception from filing requirement for internet advertising not directed into this state. Internet advertising of a franchise offering that is required to be registered in this state is not subject to the requirements for filing advertisements set forth in RCW 19.100.100 so long as the following conditions are satisfied:

(1) The franchisor discloses to the director the uniform resource locator ("URL") address or similar address or device identifying the location of the internet advertising:

(a) On the cover page of the Franchise Disclosure Document included with an application for registration that is effective in the state of Washington; or

(b) On a notice filed with the director within five business days after publication; and

(2) The internet advertising is not directed to any person in the state of Washington by, or on behalf of, the franchisor or anyone acting with the franchisor's knowledge.

NEW SECTION

WAC 460-80-540 Advertising--Exception from franchise registration for internet advertisements not directed into this state. The offer or sale of a franchise via the internet is not subject to registration pursuant to RCW 19.100.020 where:

(1) The offer is made pursuant to an available and perfected exemption from franchise registration; or

(2) If the franchise is not registered or exempt:

(a) The internet offer indicates, directly or indirectly, that the franchises are not being offered to residents of Washington;

(b) The internet offer is not otherwise specifically directed to any person in this state by, or on behalf of, the franchisor or anyone acting with the franchisor's knowledge; and

(c) No franchises are sold in Washington by, or on behalf of, the franchisor until the offering is registered and declared

effective and the Washington Franchise Disclosure Document has been delivered to the offeree before the sale and in compliance with the Franchise Investment Protection Act, chapter 19.100 RCW.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 460-80-310	Offering circular.
WAC 460-80-430	Purchase receipts.