

**INSTRUCTIONS FOR FILING
A UNIFORM FRANCHISE REGISTRATION APPLICATION
USING THE “NEW FTC FRANCHISE RULE”
AFTER JULY 1, 2007**

I. Background

On January 23, 2007, after a twelve year regulatory review, the Federal Trade Commission (“FTC”) announced that it had adopted a final amended Franchise Rule, with a Statement of Basis and Purpose and Regulatory Analysis (the “2007 Franchise Rule”).¹ The 2007 Franchise Rule represents the first time the FTC has amended its Franchise Rule (the “Original Franchise Rule”) since 1978, when it was originally promulgated.²

Among other things, the 2007 Franchise Rule adopts new requirements for franchisors preparing franchise disclosure documents, also called “offering circulars.” Since December 30, 1993, the FTC has allowed franchisors to prepare and distribute disclosure documents under one of two disclosure formats: (1) the FTC’s Original Franchise Rule; or (2) the Uniform Franchise Offering Circular (“UFOC”) Guidelines, adopted on April 23, 1993 by the North American Administrators Association, Inc. (“NASAA”).³ After NASAA adopted the UFOC Guidelines, fifteen states (“Registration States”) required franchisors to follow that disclosure format to comply with state franchise laws. As a practical matter, most franchisors have chosen to prepare their disclosure documents under the UFOC Guidelines, even in states where that format is not specifically required.

The FTC’s 2007 Franchise Rule adopts disclosure requirements that closely track the UFOC Guidelines.⁴ In some instances, however, the 2007 Franchise Rule omits or streamlines UFOC Guideline disclosure requirements, such as broker disclosures, cover page risk factors, and detailed computer requirements. In addition, the 2007 Franchise Rule incorporates new disclosure requirements not found in the UFOC Guidelines, including disclosures related to a franchisor’s parent, franchisor initiated litigation, confidentiality clauses and the existence of trademark-specific franchisee associations. The 2007 Franchise Rule also substantially revised the UFOC Guideline disclosure of statistical information on franchisees and outlets (Item 20), adopting the approach suggested by NASAA in its comment to the FTC’s Notice of Proposed Rulemaking.⁵

¹16 CFR 436, as amended, 72 FR 15444 (Mar. 30, 2007).

²43 FR 59614 (Dec. 21, 1978).

³16 CFR 436.1 (a)-(e), 58 FR 69224 (Dec. 30, 1993).

⁴2007 Franchise Rule at 14.

⁵2007 Franchise Rule at p.165.

In light of the similarities between the 2007 Franchise Rule and the UFOC Guidelines, and the FTC's lengthy and comprehensive regulatory review that preceded its adoption of the 2007 Franchise Rule, NASAA intends at this time to adopt the disclosure requirements under the 2007 Franchise Rule as a successor to the UFOC Guidelines, with minimal additional requirements, the most significant being a state risk factor cover page.

The FTC's 2007 Franchise Rule allows franchisors to choose to follow the new disclosure format on July 1, 2007, and some franchisors may seek to utilize that disclosure format in the Registration States as soon as possible. Consequently, until NASAA adopts a replacement for the UFOC Guidelines, NASAA recommends that, as of July 1, 2007, Registration States permit franchisors to file in those states franchise disclosure documents prepared under the 2007 Franchise Rule, in accordance with the Instructions set forth below. Franchisors may continue to file and use in the Registration States franchise disclosure documents prepared under the UFOC Guidelines until July 1, 2008.

II. Uniform Franchise Registration Application

In order to register a franchise in the Registration States, franchisors must continue to follow the Instructions provided under the UFOC Guidelines for filing franchise registration applications, and must continue to file the following application documents, other than the disclosure document, in the format required under the UFOC Guidelines:

- A. Uniform Franchise Registration Application Page;
- B. Supplemental Information page(s);
- C. Certification page;
- D. Uniform Consent to Service of Process;
- E. Sales Agent Disclosure Form;
- F. If the applicant is a corporation or partnership or limited liability company, an authorizing resolution if the application is verified by a person other than applicant's officer or general partner;
- G. Uniform Franchise Offering Circular, or
Uniform Franchise Disclosure Document (see Part III below);
- H. Application Fee (varies by state);
- I. Auditor's consent (or a photocopy of the consent) to the use of the latest audited financial statements in the offering circular; and
- J. Advertising or promotional materials, if required.

III. The Uniform Franchise Disclosure Document

- A. Format.

The Uniform Franchise Disclosure Document shall be prepared in the format required

under the 2007 Franchise Rule, 16 CFR 436.3 -.5, as amended, (Subparts C and D), with the additions listed at Section III B and C below. A copy of the contents and instructions for preparing a Uniform Franchise Disclosure Document under the 2007 Franchise Rule, along with accompanying definitions applicable for preparing that form of disclosure document, is attached to these Instructions at Exhibit 1.

B. State Cover Page.

The Uniform Franchise Disclosure Document shall include the following State Cover Page prepared in accordance with these Instructions and shall immediately follow the Cover Page described at 16 CFR 436.3 of the 2007 Franchise Rule:

1. State the following legend:

STATE COVER PAGE

Your state may have a franchise law that requires a franchisor to register or file with a state franchise administrator before offering or selling in your state. REGISTRATION OF A FRANCHISE BY A STATE DOES NOT MEAN THAT THE STATE RECOMMENDS THE FRANCHISE OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT.

Call the state franchise administrator listed in Exhibit ___ for information about the franchisor, about other franchisors, or about franchising in your state.

2. State the following:

MANY FRANCHISE AGREEMENTS DO NOT ALLOW YOU TO RENEW UNCONDITIONALLY AFTER THE INITIAL TERM EXPIRES. YOU MAY HAVE TO SIGN A NEW AGREEMENT WITH DIFFERENT TERMS AND CONDITIONS IN ORDER TO CONTINUE TO OPERATE YOUR BUSINESS. BEFORE YOU BUY, CONSIDER WHAT RIGHTS YOU HAVE TO RENEW YOUR FRANCHISE, IF ANY, AND WHAT TERMS YOU MIGHT HAVE TO ACCEPT IN ORDER TO RENEW.

3. If any of the following apply, state the following, using capital letters as shown:

Please consider the following RISK FACTORS before you buy this franchise:

THE FRANCHISE AGREEMENT REQUIRES YOU TO RESOLVE DISPUTES WITH US BY [LITIGATION/ARBITRATE/MEDIATION] ONLY IN [STATE]. OUT-OF-STATE [LITIGATION/ARBITRATION/MEDIATION] MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO

[SUE/ARBITRATE/MEDIATE] WITH US IN [STATE] THAN IN YOUR OWN STATE.

THE FRANCHISE AGREEMENT STATES THAT [STATE] LAW GOVERNS THE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.

4. In addition to the above, disclose other risk factors required by a state administrator.
5. If one or more risk factor applies, also state:

THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

6. If applicable, state the following:

We use the services of one or more FRANCHISE BROKERS or referral sources to assist us in selling our franchise. A franchise broker or referral source is our agent and represents us, not you. We pay this person a fee for selling our franchise or referring you to us. You should be sure to do your own investigation of the franchise.

7. (a) State the following:

Effective Date: _____

- (b) Leave the effective date blank until notified of effectiveness by the state administrator.
- (c) If an applicant is using a multi state disclosure document, the applicant may list multiple state effective dates together on a separate page following the Supplement State Cover page.

A sample State Cover Page is attached following these Instructions at Exhibit 2.

C. Receipt.

If applicable state law requires a franchisor to provide the disclosure document earlier than the 14 days provided in the 2007 Franchise Rule, the franchisor shall add a statement to the receipt page to the uniform franchise disclosure document to accurately reflect state law requirements to deliver the disclosure document.

Exhibit 1: Uniform Franchise Disclosure Document

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[ATTACHED SEPARATELY]

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Exhibit 2–Sample State Cover Page

STATE COVER PAGE

Your state may have a franchise law that requires a franchisor to register or file with a state franchise administrator before offering or selling in your state. REGISTRATION OF A FRANCHISE BY A STATE DOES NOT MEAN THAT THE STATE RECOMMENDS THE FRANCHISE OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT.

Call the state franchise administrator listed in Exhibit ___ for information about the franchisor, about other franchisors, or about franchising in your state.

MANY FRANCHISE AGREEMENTS DO NOT ALLOW YOU TO RENEW UNCONDITIONALLY AFTER THE INITIAL TERM EXPIRES. YOU MAY HAVE TO SIGN A NEW AGREEMENT WITH DIFFERENT TERMS AND CONDITIONS IN ORDER TO CONTINUE TO OPERATE YOUR BUSINESS. BEFORE YOU BUY, CONSIDER WHAT RIGHTS YOU HAVE TO RENEW YOUR FRANCHISE, IF ANY, AND WHAT TERMS YOU MIGHT HAVE TO ACCEPT IN ORDER TO RENEW.

Please consider the following RISK FACTORS before you buy this franchise:

1. THE FRANCHISE AGREEMENT REQUIRES YOU TO RESOLVE DISPUTES WITH US BY ARBITRATION ONLY IN MINNESOTA. OUT-OF-STATE ARBITRATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO ARBITRATE WITH US IN MINNESOTA THAN IN YOUR OWN STATE.
2. THE FRANCHISE AGREEMENT STATES THAT MINNESOTA LAW GOVERNS THE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS
3. THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

We use the services of one or more FRANCHISE BROKERS or referral sources to assist us in selling our franchise. A franchise broker or referral source is our agent and represents us, not you. We pay this person a fee for selling our franchise or referring you to us. You should be sure to do your own investigation of the franchise.

Effective Date: _____