

Title 460 WAC
FINANCIAL INSTITUTIONS,
DEPARTMENT OF
(SECURITIES DIVISION)

Chapters

460-44A
460-80

Exempt transactions.
Franchise registration.

Chapter 460-44A WAC
EXEMPT TRANSACTIONS

WAC

460-44A-503

Filing of notice and payment of fee.

WAC 460-44A-503 Filing of notice and payment of fee. (1) An issuer offering or selling securities in reliance on WAC 460-44A-504, 460-44A-505, or 460-44A-506 shall file with the administrator of securities of the department of financial institutions or his or her designee a notice and pay a filing fee as follows:

(a)(i)(A) For an offering of a security in reliance upon the Securities Act of 1933, Regulation D, Rule 230.506 and RCW 21.20.327(2) and 21.20.320(1), the issuer shall file a notice on Securities and Exchange Commission Form D marking Rule 506 and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of such securities in the state of Washington, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following.

(B) For an offering in reliance on Securities and Exchange Commission Rule 505 and WAC 460-44A-505, the issuer shall file the initial notice on Securities and Exchange Commission Form D marking Rule 505 and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of securities in the state of Washington which results from an offer being made in reliance upon WAC 460-44A-505, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following;

(C) For an offering in reliance on Securities and Exchange Commission Rule 504 and WAC 460-44A-504, the issuer shall file the initial notice on Securities and Exchange Commission Form D marking Rule 504 and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance upon WAC 460-44A-504;

(D) For an offering in reliance on Securities and Exchange Commission Rule 147 and WAC 460-44A-504, the issuer shall file the initial notice on Washington Securities Division Form WAC 460-44A-504/Rule 147 and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscrip-

tion agreement by an investor in the state of Washington which results from an offer being made in reliance on the exemption of WAC 460-44A-504;

(ii) The issuer shall include with the initial notice a statement indicating:

(A) The date of first sale of securities in the state of Washington; or

(B) That sales have yet to occur in the state of Washington.

(b) The issuer shall file with the administrator or his or her designee such other notices on Form D as are required to be filed with the Securities and Exchange Commission. For purposes of this section, the initial notice on Securities and Exchange Commission Form D shall consist of either the Temporary Form D (17 CFR 239.500T) as adopted by the Securities and Exchange Commission together with an executed uniform consent to service of process on Form U-2 while Temporary Form D remains in effect from September 15, 2008 through March 15, 2009, or the notice of sales on Form D filed in paper or electronic format with the Securities and Exchange Commission through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 CFR Part 232) and in effect on September 15, 2008.

(c) If the issuer files a notice of sales on Temporary Form D or a copy of the notice of sales on Form D filed in electronic format with the Securities and Exchange Commission, it shall either be manually signed by a person duly authorized by the issuer or a photocopy of a manually signed copy.

(d) By filing for the exemption of WAC 460-44A-504 or 460-44A-505, the issuer undertakes to furnish to the administrator, upon request, the information to be furnished or furnished by the issuer under WAC 460-44A-502 (2)(b) or otherwise to any purchaser that is not an accredited investor. Failure to submit the information in a timely manner will be a ground for denial or revocation of the exemption of WAC 460-44A-504 or 460-44A-505.

(2) An issuer may file an amendment to a previously filed notice of sales on Form D at any time.

(3) An issuer must file an amendment to a previously filed notice of sales on Form D for an offering:

(a) To correct a material mistake of fact or error in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake or error;

(b) To reflect a change in the information provided in the previously filed notice of sales on Form D, as soon as practicable after the change, except that no amendment is required to reflect a change that occurs after the offering terminates or a change that occurs solely in the following information:

(i) The address or relationship of the issuer of a related person identified in response to Item 3 of the notice of sales on Form D;

(ii) An issuer's revenues or aggregate net asset value;

(iii) The minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in a decrease of more than ten percent;

(iv) Any address or state(s) of solicitation shown in response to Item 12 of the notice of sales on Form D;

(v) The total offering amount, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent;

(vi) The amount of securities sold in the offering or the amount remaining to be sold;

(vii) The number of nonaccredited investors who have invested in the offering, as long as the change does not increase the number to more than thirty-five;

(viii) The total number of investors who have invested in the offering;

(ix) The amount of sales commissions, finders' fees or use of proceeds for payments to executive officers, directors or promoters, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent; and

(c) Annually, on or before the first anniversary of the filing of the notice of sales on Form D or the filing of the most recent amendment to the notice of sales on Form D, if the offering is continuing at that time.

(4) An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.

(5) Amendments to notices filed before September 15, 2008 and to notices filed on or after September 15, 2008 in paper format using Temporary Form D (17 CFR 239.500T) must use Temporary Form D but need only report the issuer's name and the information required by Part C and any material change in the facts from those set forth in Parts A and B.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9), and (17). 09-24-078, § 460-44A-503, filed 11/30/09, effective 12/31/09; 08-16-072, § 460-44A-503, filed 7/31/08, effective 9/15/08; 98-11-014, § 460-44A-503, filed 5/12/98, effective 6/12/98; 96-15-063, § 460-44A-503, filed 7/17/96, effective 8/17/96. Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-44A-503, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320 (1) and (16) and 21.20.450. 89-17-076 (Order SDO-122-89), § 460-44A-503, filed 8/17/89, effective 9/17/89; 88-15-024 (Order SDO-71-88), § 460-44A-503, filed 7/12/88. Statutory Authority: RCW 21.20.320 (1) and (17). 86-15-003 (Order SDO-80-86), § 460-44A-503, filed 7/3/86. Statutory Authority: RCW 21.20.320(1), 21.20.340(11) and 21.20.450. 82-21-031 (Order SDO-98-82), § 460-44A-503, filed 10/15/82.]

Chapter 460-80 WAC

FRANCHISE REGISTRATION

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

460-80-310	Offering circular. [Order 11, § 460-80-310, filed 3/3/72.] Repealed by 09-22-050, filed 10/29/09, effective 11/29/09. Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110.
460-80-430	Purchase receipts. [Order 11, § 460-80-430, filed 3/3/72.] Repealed by 09-22-050, filed 10/29/09, effective 11/29/09. Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110.

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.

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110. 09-22-050, § 460-80-050, filed 10/29/09, effective 11/29/09.]

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.

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100,

and 19.100.110. 09-22-050, § 460-80-060, filed 10/29/09, effective 11/29/09.]

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 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.

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110. 09-22-050, § 460-80-100, filed 10/29/09, effective 11/29/09; Order 11, § 460-80-100, filed 3/3/72.]

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 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 receiving 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.

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110. 09-22-050, § 460-80-108, filed 10/29/09, effective 11/29/09. Statutory Authority: RCW 19.100.250. 92-02-054, § 460-80-108, filed 12/30/91, effective 1/30/92.]

WAC 460-80-110 Franchise registration application.

All applications for registration, renewal or amendment of a franchise shall be in the form as provided by the director and 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 to the treasurer of the state of Washington.

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110. 09-22-050, § 460-80-110, filed 10/29/09, effective 11/29/09. Statutory Authority: RCW 19.100.040(12), 19.100.070(2) and 19.100.250. 80-04-036 (Order SDO-38-80), § 460-80-110, filed 3/19/80; Order 11, § 460-80-110, filed 3/3/72.]

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) Application;
- (b) Supplemental information page(s);
- (c) Seller disclosure form;
- (d) A copy of the Franchise Disclosure Document.

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

- (a) A consent to service of process; and
- (b) One copy of any advertising to be used in connection with the offer or sale in this state of franchises.

(3) Disclosure: 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).

(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.

(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.

(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.

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110. 09-22-050, § 460-80-125, filed 10/29/09, effective 11/29/09. Statutory Authority: RCW 19.100.250. 92-02-054, § 460-80-125, filed 12/30/91, effective 1/30/92; 80-04-036 (Order SDO-38-80), § 460-80-125, filed 3/19/80.]

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.

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110. 09-22-050, § 460-80-135, filed 10/29/09, effective 11/29/09.]

WAC 460-80-140 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).

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110. 09-22-050, § 460-80-140, filed 10/29/09, effective 11/29/09. Statutory Authority: RCW 19.100.040(7) and 19.100.250. 80-04-036 (Order SDO-38-80), § 460-80-140, filed 3/19/80; Order 11, § 460-80-140, 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 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.

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110. 09-22-050, § 460-80-195, filed 10/29/09, effective 11/29/09; Order 11, § 460-80-195, filed 3/3/72.]

WAC 460-80-300 Receipt of offering circular. Each person that sells a franchise that is registered or required to be registered pursuant to RCW 19.100.020 shall 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 therefore in the form prescribed by the director.

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110. 09-22-050, § 460-80-300, filed 10/29/09, effective 11/29/09. Statutory Authority: RCW 19.100.250. 80-04-036 (Order SDO-38-80), § 460-80-300, filed 3/19/80; Order 11, § 460-80-300, filed 3/3/72.]

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.

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110. 09-22-050, § 460-80-305, filed 10/29/09, effective 11/29/09.]

WAC 460-80-315 Washington 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 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).

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110. 09-22-050, § 460-80-315, filed 10/29/09, effective 11/29/09. Statutory Authority: RCW 19.100.250, 95-08-015, § 460-80-315, filed 3/24/95, effective 4/24/95; 92-02-054, § 460-80-315, filed 12/30/91, effective 1/30/92; 88-01-060 (Order SDO 112B-87), § 460-80-315, filed 12/17/87. Statutory Authority: RCW 19.100.040 (4), (7), and (20), and 19.100.250. 80-04-036 (Order SDO-38-80), § 460-80-315, filed 3/19/80.]

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 prospective franchisees.

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110. 09-22-050, § 460-80-400, filed 10/29/09, effective 11/29/09; Order 11, § 460-80-400, 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 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.

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110. 09-22-050, § 460-80-410, filed 10/29/09, effective 11/29/09; Order 11, § 460-80-410, 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 bank, trust company, or an independent escrow agent acceptable to the director. A copy of the impound agreement shall be filed with the director.

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110. 09-22-050, § 460-80-440, filed 10/29/09, effective 11/29/09; Order 11, § 460-80-440, 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.

A request to the director to authorize the release of impounds to the franchisor shall contain the following:

(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 agreement.

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

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

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

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

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110. 09-22-050, § 460-80-450, filed 10/29/09, effective 11/29/09; Order 11, § 460-80-450, filed 3/3/72.]

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.

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110. 09-22-050, § 460-80-460, filed 10/29/09, effective 11/29/09.]

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 seven days prior to the publication.

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110. 09-22-050, § 460-80-500, filed 10/29/09, effective 11/29/09; Order 11, § 460-80-500, filed 3/3/72.]

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.

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110. 09-22-050, § 460-80-510, filed 10/29/09, effective 11/29/09.]

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.

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110. 09-22-050, § 460-80-520, filed 10/29/09, effective 11/29/09.]

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.

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110. 09-22-050, § 460-80-530, filed 10/29/09, effective 11/29/09.]

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.

[Statutory Authority: Chapter 19.100 RCW, RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, and 19.100.110. 09-22-050, § 460-80-540, filed 10/29/09, effective 11/29/09.]