

INITIAL STATEMENT OF REASONS FOR
PROPOSED RULEMAKING TO AMEND
REGULATIONS UNDER THE MONEY TRANSMISSION ACT

In accordance with Government Code section 11346.2(b), the Department of Financial Protection and Innovation (“Department”) has prepared the following initial statement of reasons in support of the proposed rulemaking under the California Money Transmission Act (Fin. Code, § 2000 et seq.).

SPECIFIC PURPOSE OF AMENDMENT OF REGULATION (Gov. Code, § 11346.2, subd. (b)(1))

The purpose of the proposed amendment is to clarify the officer’s certification requirement and provide greater flexibility to applicants and licensees when submitting their money transmitter receipt for approval. Section 2100 of the Financial Code requires an applicant or licensee to file a certified copy of every receipt form used by it or its agents for receiving money for transmission prior to its first use. Applicants or licensees must submit for the Commissioner’s approval a sample receipt for any money received for transmission, along with certification from an officer of the applicant or licensee that the sample receipt is the receipt form to be used by the applicant or licensee and its agents.

By this rulemaking, the Commissioner proposes to amend sections 80.4119 and 80.5200.1 of title 10 of the California Code of Regulations. The amended sections would remove language that the officer’s certification be in accordance with section 5.3007 of title 10 of the California Code of Regulations. Deleting this cross-reference would clarify that the officer’s certification does not need to be signed by a corporate secretary or adhere to other disclosure requirements if a corporate secretary is unavailable, thereby giving licensees and applicants greater flexibility.

Problem: Sections 80.4119, subdivision (a)(2) and 80.5200.1, subdivision (a)(2), title 10, of the California Code of Regulations require applicants to provide a certification by an officer in accordance with section 5.3007, title 10, of the California Code of Regulations. Section 5.3007 provides alternative ways to comply with a law that requires certification by a secretary if the corporation filing the document has no secretary or the secretary is unavailable. However, neither section 80.4119 nor section 80.5200.1 mandates the *secretary* of a corporation to certify the receipt—they only require an *officer* certify the receipt. Financial Code section 2100 also does not require the secretary to certify the receipt. Since the law does not require the officer’s certification to be signed by the corporate secretary, the cross-reference to section 5.3007, which is only applicable to a law that requires certification by a secretary, causes confusion as to whether the corporate secretary must sign the officer certification.

Rationale: The proposed amendments would clarify that the officer certification does not need to be signed by the applicant’s or licensee’s corporate secretary, thereby providing

greater flexibility to applicants and licensees. While the reference to section 5.3007 may seem to imply that the corporate secretary must provide the certification, the language of section 5.3007 itself is only initiated upon a requirement of certification by a secretary in the law or by the Commissioner. As a result, its reference in sections 80.4119 and 80.5200.1 makes it unclear whether those sections actually require a *secretary*, as opposed to *any officer*, to provide the certification. The proposed amendments clarify that the certification is valid if it is by any officer of the applicant or licensee. Allowing any officer to provide the certification promotes greater flexibility for both applicants and licensees. This is necessary to avoid undue burden on applicants and licensees that either do not have a secretary or simply find it more convenient for another officer to sign the certification. Certification by a secretary does not provide any greater assurance to the Department than certification by any other officer. Therefore, amending the regulations will avoid uncertainty and unnecessary burdens.

BENEFITS ANTICIPATED FROM REGULATORY ACTION (Gov. Code, § 11346.2, subd. (b)(1))

The anticipated benefits include greater flexibility for the money transmitter industry and reduced confusion stemming from the reference to Financial Code section 5.3007.

POTENTIAL FOR ADVERSE ECONOMIC IMPACT ON BUSINESS AND INDIVIDUALS (Gov. Code, § 11346.3, subd. (a))

The Commissioner has determined that this regulatory proposal will not have an adverse economic impact on individuals or businesses, including the ability of California businesses to compete with businesses in other states. The proposed amendment will provide clarification and greater flexibility to money transmitter applicants and licensees on the officer certification requirement for receipt approval.

ECONOMIC IMPACT ASSESSMENT (Gov. Code, § 11346.3, subd. (b))

The Creation or Elimination of Jobs Within the State

The Commissioner has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in the State of California. The application to approve a receipt for money received for transmission will continue to have the same substantive requirements. Therefore, the proposed amendment should not impact job creation or elimination.

The Creation of New Businesses or the Elimination of Existing Businesses Within the State

The Commissioner has determined that this regulatory proposal will not have a significant impact on the creation of new businesses or the elimination of existing businesses in the State of California because the proposed amendment only applies to applicants and licensees under the Money Transmission Act.

The Expansion of Business Currently Doing Business Within the State

The Commissioner has determined that this regulatory proposal will not have an impact on the expansion of licensed money transmitters currently doing business in this state. The proposed amendment clarifies a regulatory requirement and provides greater flexibility to licensees and applicants. Therefore, this regulatory proposal should not significantly impact the business of existing or prospective money transmitter licensees.

The Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety and the State's Environment

The Commissioner has determined that this regulatory proposal will not have an impact on the health and welfare of California residents, worker safety or the state's environment. The proposed amendment seeks to clarify existing regulations and provide greater flexibility for existing and prospective money transmitter licensees. Therefore, the regulatory proposal does not benefit the health and welfare of California residents, workers safety, or the state's environment.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS (Gov. Code, § 11346.2, subd. (b)(5)(A))

There are no reports cited in the specific Purpose of Regulation section or the Economic Impact Assessment section. The Department did not rely upon any technical, theoretical, or empirical study, report, or other similar document in proposing this regulatory action.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES AND REASONS FOR REJECTING THOSE ALTERNATIVE (Gov. Code, § 11346.2, subd. (b)(4)(B))

No reasonable alternative considered by the Department or that have otherwise been identified and brought to the attention of the Department would be as effective and less burdensome to affected private persons or would lessen any adverse impact on small business.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY OR OTHER EVIDENCE RELIED ON BY AGENCY (Gov. Code, § 11346.2, subd. (b)(6)(A))

The Department did not rely on any information in determining that the proposed regulatory action will not have a significant adverse economic impact on business. The proposed amended regulations are necessary to process applications for receipt approval under the Money Transmission Act.