

TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS
FINDING OF EMERGENCY

Pursuant to Government Code Section 11346.1, the California Corporations Commissioner amends Title 10, Chapter 3, of the California Code of Regulations under the CORPORATE SECURITIES LAW OF 1968 by amending section 260.102.14 as emergency regulations. The emergency regulation relates to the online filing of a notice under Section 25102(f) of the Corporations Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 25102(f) provides an exemption from the qualification (permit) requirement for specified securities transactions, provided that the issuer of the securities files a notice with the California Corporations Commissioner ("Commissioner"). Rule 260.102.14 provides instructions on the filing of the notice and sets forth a form. The Department of Corporations ("Department") is adapting a computer program to permit the online filing of the notice required under Section 25102(f) through the Internet. Accordingly, the proposed amendments to Rule 260.102.14 authorize the form to be filed online, and set forth requirements for online filings.

AUTHORITY

Sections 25102(f) and 25610, Corporations Code.

REFERENCE

Section 25102(f), Corporations Code.

FINDING OF EMERGENCY

This emergency regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare for the reasons set forth below.

The Department is currently working on an information technology project that creates an online filing computer program to allow for the filing of the notice required under Section 25102(f) of the Corporations Code. The project is near completion, and the public will soon be able to access the online filing computer program. The fact that the Department initiated an online filing project was not unforeseen; however, the procedural changes necessary to the current filing requirements in order to implement online filings were unforeseen, and in fact were just developed in March, April, May, and June of 2003. (See Doe v. Wilson, 57 Cal. App. 4th 296 (1997), discussing what constitutes an emergency under the Administrative Procedure Act.)

The Department was unable to adopt a regulation to allow for online filing until the online filing procedures were created. The online filing computer program is now at a point where the Department has adequate information on the changes necessary to the rules so that the Department may initiate a rulemaking action.

However, the Department does not have sufficient time to enact a regulation through the rulemaking process in order to have the rule in place upon deployment of the online filing computer program. Without the adoption of these amendments as emergency regulations, the Department will be unable to deploy the new computer program, and unable to allow the public to make the required filings online.

This emergency regulation allowing for the filing of the Corporations Code Section 25102(f) notices online is necessary to allow the programmers to deploy the new program in the next few weeks, and to facilitate a new, streamlined filing process that will save filers the time and expense of filing manually. This emergency regulation is necessary to allow the rule to be in place, and the deployment of the new computer program to occur, while the programmers are under contract and available to troubleshoot problems that occur as the public begins to use the system. A delay in deployment is costly and may cause the Department to lose access to the expertise necessary to deploy the system. For these reasons, this emergency regulation is necessary for the immediate preservation of the general welfare. This finding of emergency is supported by the case of Schenley Affiliated Brands Corp. v. Kirby, 21 Cal. App. 3d 177 (1971), where the court deferred to the agency's determination that an impending deadline constituted an emergency under the Administrative Procedure Act.

COSTS TO LOCAL AGENCIES AND SCHOOL DISTRICTS

This regulation does not impose a mandate on local agencies or school districts.

COST OR SAVINGS TO STATE AGENCY

This regulation will not result in any cost or savings to any state agency; any cost to any local agency or school district; any other nondiscretionary cost or savings imposed on local agencies; or any cost or savings in federal funding to the state.

CONTACT PERSON

Inquiries concerning this action, may be directed to Kathy Womack at (916) 322-3553. The backup contact person is Karen Fong at (916) 322-3553, Department of Corporations, 1515 K Street, Suite 200, Sacramento, California, 95814.

Dated: June 26, 2003
Sacramento, California

DEMETRIOS A. BOUTRIS
California Corporations Commissioner

By _____
TIMOTHY L. Le BAS
Deputy Commissioner and General Counsel
Office of Law and Legislation