

NOTICE OF RULEMAKING ACTION
TITLE 10. CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT

NOTICE IS HEREBY GIVEN [Government Code Section 11346.5, Subdivision (a)(1)]

The Commissioner of Business Oversight (Commissioner) proposes to amend Sections 80.1 through 80.9, 80.100, 80.125, 80.126, 80.150 through 80.177, 80.3000, 80.3001, 80.3002, 80.4000 through 80.4313, 80.5000, 80.5200, 80.5201, 80.5300 through 80.5304, 95.2, 95.3, and 95.5030; adoption of Sections 80.125.10, 80.129, 80.158.10, 80.166.10, 80.4100.10, 80.4105.10, 80.4105.11, 80.4118.10, 80.4118.11, 80.5100, 80.5200.1, 80.5210, 80.5304.1, 80.5305, 95.550, and 95.600; and repeal of Sections 80.127, 80.171, 80.4110, 80.4112, 80.4114, 80.4306, 80.4307, and 80.5202, of Title 10 of the California Code of Regulations (C.C.R.). These proposed changes to the regulations relate to the implementation of the California Money Transmission Act.

On July 1, 2013, the Department of Corporations and the Department of Financial Institutions merged to form the Department of Business Oversight. The Department of Business Oversight (Department) has all of the powers, authority, enforcement, jurisdiction, laws and regulations that were under the former Department of Corporations and former Department of Financial Institutions.

AUTHORITY [Government Code Section 11346.5, Subdivision (a)(2)]

Sections 334, 2011, 2032, 2034, 2036, 2039, 2040, 2082, 2083, and 2086, Financial Code.

REFERENCE [Government Code Section 11346.5, Subdivision (a)(2)]

Division 3, Part 4, Title 9, Civil Code (Commencing with section 2295); Sections 17701.02, 17701.10, Article 1, Title 2.6, and 17708.04, Article 8, Corporations Code; Sections 2003, 2011, 2030, 2031, 2032, 2034, 2036, 2039, 2040, 2060, 2082, 2083, 2084, 2086, 2087, 2088, 2100, 2104, 2105, 2106, Chapter 1, Division 1.2, Chapter 3, Division 1.2, Chapter 5, Division 1.2, Chapter 6, Division 1.2, and Division 1.2, Financial Code; and Section 11077.1, Penal Code.

PUBLIC COMMENTS [Government Code Section 11346.5, Subdivision (a)(17)]

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department's contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD [Government Code Section 11346.5, Subdivision (a)(15)]

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department, addressed as follows:

Regular Mail

Department of Business Oversight
Attn: Karen Fong, Legal Division
1515 K Street, Suite 200,
Sacramento, CA 95814

Electronic Mail

regulations@dbo.ca.gov

Facsimile

(916) 322-5875

Comments may be submitted until 5:00 p.m., September 8, 2014. If the final day for the acceptance of comments is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day.

INFORMATIVE DIGEST [Government Code Section 11346.5, Subdivision (a)(3)]

Policy Statement and Specific Benefits Anticipated from Regulatory Action [Government Code Section 11346.5, Subdivision (a)(3)(C)]

The objectives of the proposed regulations are to:

- Adopt necessary rules to implement the Money Transmission Act.
- Amend the regulations of the former Payment Instruments Law because that law was repealed effective January 1, 2011.

The specific benefits anticipated by the proposed adoption of the rules include clarifying definitions, exemptions from the Money Transmission Act, application requirements for a license, administrative standards and procedures relating to an application for a license, requirements for consumer disclosures, determination of tangible shareholders' equity, and eligible securities.

By adopting the rules and forms in compliance with California's rulemaking procedures and standards, the proposed regulatory action increases transparency in government and encourages public participation in developing the rules.

Summary of Existing Laws and Regulations, and Effect of Proposed Action [Government Code Section 11346.5, Subdivision (a)(3)(A)]

Effective January 1, 2011, the Legislature repealed the provisions of the California Financial Code relating to money transmitters, issuers of travelers checks, and sellers of payment instruments and enacted the Money Transmission Act (Financial Code Section 2000 et seq.), which provides for the regulation and licensure by the

Commissioner of Business Oversight of persons in the business of money transmission, defined to mean the selling or issuing of payment instruments or stored value and the receiving of money for transmission.

The Money Transmission Act was amended, effective January 1, 2014, requiring the Department to adopt regulations to carry out and implement Sections 2011 and 2040 of the Financial Code.

Existing law includes definitions specific to the Money Transmission Act.

Existing law also provides for statutory exemptions from the Money Transmission Act as well as exemptions based on a finding that such action would be in the public interest and that the regulation of such persons or transactions is not necessary.

Existing law sets forth application requirements for a money transmitter license and administrative standards and procedures in determining whether to approve an application for a license.

Existing law also mandates certain consumer disclosures and Department review of such disclosures. These disclosures include receipts for money received for transmission, forms of payment instruments, and notices.

Existing law provides for minimum tangible shareholders' equity requirements and factors to be considered in determining whether to increase the amount of tangible shareholders' equity required.

Existing law sets forth categories of securities which are eligible securities and the computation of the value such eligible securities.

Existing Federal Regulation or Statute [Government Code Section, 11346.5, Subdivision (a)(3)(B)]

Money transmission is largely subject to state law and therefore there is no existing comparable federal regulation or statute. To the extent there are some federal regulations that overlap certain areas of money transmission activities, such as consumer disclosures and anti-money laundering, there is no significant difference between the proposed action and the federal regulations. Those federal regulations are United States Bank Secrecy Act Regulations (31 C.F.R. Chapter X) and Regulation E (12 C.F.R. Part 1005).

Existing State Regulations [Government Code Section 11346.5, Subdivision (a)(3)(D)]

The Department has conducted an evaluation of whether the proposed regulations are consistent with existing regulations and has concluded that these are the only regulations that implement the Money Transmission Act. Existing regulations correspond to the repealed Payment Instruments Law. The proposed regulatory action is consistent with policy considerations under the Money Transmission Act, and therefore the proposed amendments are neither inconsistent nor incompatible with existing state regulations.

FORMS INCORPORATED BY REFERENCE [Title 1, California Code of Regulations, Section 20, Subdivision (c)(3)]

There are no forms incorporated by reference in the proposed regulatory action.

DISCLOSURES REGARDING THE PROPOSED ACTION [Government Code Section 11346.5, Subdivision (a)(5) and (6), and (12)(A)]

- Mandate on local agencies and school districts: none.
- Cost or savings to any state agency: none.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: none.
- Other nondiscretionary cost or savings imposed on local agencies: none.
- Cost or savings in federal funding to the state: none.
- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: none.
- Significant effect on housing costs: none.

ECONOMIC IMPACT ON BUSINESS [Government Code Section 11346.5, Subdivision (a)(8)]

The Commissioner has made an initial determination that the proposed regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has not relied upon any facts, evidence, documents, testimony or other evidence to support the initial determination that the regulation will not have a significant adverse economic impact on business.

EFFECT ON SMALL BUSINESS [Title 1, California Code of Regulations, Section 4]

The proposed regulations will not affect small business because money transmitters are not a small business within the meaning of Government Code section 11342.610.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS [Government Code Section 11346.5, Subdivision (a)(9)]

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS [Government Code Section 11346.52 Subdivision (a)(10)]

The Department has determined that:

- The proposed action will not create or eliminate jobs within California;

- The proposed action will not create new businesses or eliminate existing businesses within this state;
- The proposed action will not affect the expansion of businesses currently doing business within California; and
- No benefits or adverse impacts to worker safety or to the state's environment are anticipated from this regulatory action.

BUSINESS REPORTING REQUIREMENT [Government Code Section 11346.5, Subdivision (a)(11)]

The Department finds that it is necessary for the health, safety, or welfare of the people of this state that the proposed reports required in this regulatory action apply to businesses.

CONSIDERATION OF ALTERNATIVES [Government Code Section 11346.5, Subdivision (a)(13)]

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

AVAILABILITY OF THE NOTICE, STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE [Government Code Section 11346.5, Subdivision (a)(16) and (20), and (b)]

As of the date this notice is published, the rulemaking file consists of this notice, the initial statement of reasons and the proposed text of the regulation. The proposed text may be obtained at any of the below Department of Business Oversight's Front Counters. The initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available by requesting Document PRO 03/14 - C from the contact person designated below.

Los Angeles Office:
300 S. Spring Street, Ste. 15513
Los Angeles, CA 90013-1259

Sacramento Office:
1515 K Street, Suite 200
Sacramento, CA 95814-4052

San Diego Office:
7575 Metropolitan Dr., Suite 108
San Diego, CA 92108

San Francisco Office:
45 Fremont Street, Suite 1700
San Francisco, CA 94105-2219

The notice, initial statement of reasons and proposed text are also available on the Department's Web site at www.dbo.ca.gov, at the top of the page click the "Laws and Regs" index tab, under Division of Financial Institutions click on the "Rulemaking" link.

As required by the Administrative Procedure Act, the Legal Division maintains the rulemaking file. The rulemaking file is available for public inspection and copying

throughout the rulemaking process at the Department of Business Oversight, Law and Policy Division, 1515 K Street, Suite 200, Sacramento, California 95814.

AVAILABILITY OF CHANGED OR MODIFIED TEXT [Government Code Section 11346.5, Subdivision (a)(18)]

If the Department makes changes which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts, amends or repeals the regulations as revised. A request for a copy of any modified regulation(s) should be addressed to the contact person designated below. The Department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS [Government Code Section 11346.5, Subdivision (a)(19)]

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

CONTACT PERSON [Government Code Section 11346.5, Subdivision (a)(14)]

Nonsubstantive inquiries concerning this action, such as requests for copies of the proposed regulation or questions regarding the timelines or rulemaking status, may be directed to:

Karen Fong
Rulemaking Coordinator
1515 K Street, Suite 200
Sacramento, California 95814
Telephone: (916) 322-3553
e-mail: Karen.Fong@dbo.ca.gov

Inquiries regarding the substance of the proposed regulation may be directed to:

Jennifer Rumberger
Senior Counsel
45 Fremont Street, Suite 1700
San Francisco, CA 94105-2219
Telephone: 415-263-8528
e-mail: Jennifer.Rumberger@dbo.ca.gov

Dated: July 9, 2014
Sacramento, California