

FINAL STATEMENT OF REASONS
FOR RULE CHANGES UNDER THE
FRANCHISE INVESTMENT LAW

As required by Section 11346.2 of the Government Code, the California Corporations Commissioner ("Commissioner") sets forth below the reasons for the repeal of Rule 310.100.1 of the California Code of Regulations (10 C.C.R. Sec. 310.100.1).

The Department of Corporations ("Department") regulates the offer and sale of franchises under the Franchise Investment Law ("FIL") (Corporations Code Sections 31000 to 31516). Under the FIL, it is unlawful to offer or sell any franchise in this state unless the offer has been registered with the Commissioner or is exempt from registration. The FIL and its rules provide several exemptions from registration.

Rule 310.100.1, which was first adopted in 1971, provides an exemption from registration for offers or sales to persons who are not residents of California, if certain conditions are met. Specifically, this exemption would be available if (1) the offer or sale is made to a resident of a foreign state, territory or country, (2) the person is neither domiciled in this state to the knowledge of the seller nor actually present in this state, (3) the franchised business is not to be operated, wholly or partially, in this state, and (4) the sale of such franchise is not in violation of any law of the foreign state, territory or country concerned or of the United States.

Assembly Bill 3061 (Chapter 477, Statutes of 1996), which became effective on January 1, 1997, added Section 31105 of the Corporations Code under the FIL to provide an exemption from the registration requirements for an offer, sale or transfer of a franchise to a resident of another state or country if all locations from which sales, leases or other transactions between the franchised business and its customers are made, or goods or services are distributed, are physically located outside this state. The intent behind the enactment of Corporations Code Section 31105 was to create a less onerous and more updated exemption from registration for the offer or sale of franchises to non-California residents.

The Commissioner proposes to repeal Rule 310.100.1. Since an exemption from registration for the offer or sale of franchises to non-California residents has already been codified in statute through the enactment of Corporations Code Section 31105, Rule 310.100.1 is duplicative and therefore no longer necessary. Furthermore, since Rule 310.100.1 includes additional requirements that the exemption under Corporations Code Section 31105 no longer requires, such as the requirement that the non-California resident not be actually present in California and that the sale of the franchise not be in violation of any law of the foreign state or country or of the United

States, Rule 310.100.1 conflicts with the new statutory exemption. Thus, repealing Rule 310.100.1 is further necessary to eliminate confusion and inconsistent law.

ALTERNATIVES CONSIDERED

No alternative considered 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 regulation is proposed, would be as effective and less burdensome to affected private persons, or would lessen any adverse impact on small businesses.

DETERMINATIONS

The Commissioner has made a determination that the regulatory action does not impose a mandate on local agencies or school districts, which require reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Since this regulatory action would merely remove a redundant, and therefore unnecessary, rule that has already been codified in statute, the Department's determination is that this action would not have a significant adverse economic impact on business.

No written comments were received during the 45-public comment period which ended on April 8, 2002.

No requests for hearing were received. No public hearing was scheduled or heard.