

FINAL STATEMENT OF REASONS
FOR THE ADOPTION OF RULES 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 amendments to Section 310.111, Chapter 3 of Title 10 of the California Code of Regulations (10 C.C.R. Section 310.111).

The purpose of this rulemaking action is to clarify the procedure for filing the application for registration under the Franchise Investment Law (FIL), Corporations Code Section 31000 et seq., as a result of the Federal Trade Commission's (FTC) recent amendments to its franchise rule.

Under the FIL, the California Corporations Commissioner is responsible for regulating the offer and sale of franchises. The FIL is designed to provide potential franchisees with adequate information relating to the franchise operations in which they may invest and to ensure that the nature of the franchise agreement is clearly understood by the contracting parties. Existing law prohibits any person from offering or selling a franchise in this state unless the offer of the franchise has been registered with the Commissioner or is exempt from registration. Currently, all applicants for registration under the FIL must use the Uniform Franchise Offering Circular Guidelines (UFOC), as amended by the North American Securities Administrators Association, Inc. (NASAA) on April 25, 1993 as their disclosure format.

The offer and sale of franchises are also subject to federal law regarding disclosure requirements and prohibitions, as set forth in the FTC's rule, Part 436 (16 C.F.R. Part 436). States may enact laws that provide equal or greater protections to franchisees than Part 436. (See 16 C.F.R. Section 436.10(b).) Since December 30, 1993, the FTC has allowed franchisors to comply with the disclosure requirements of Part 436 through the use of the UFOC.

On March 30, 2007, the FTC published final amendments to Part 436 to streamline the rule, minimize compliance costs, and respond to changes in new technologies and market conditions in the offer and sale of franchises. As a result of the FTC's amendments, some requirements of Part 436 provide greater protections to franchisees than the UFOC. While the effective date of the FTC's amendments is July 1, 2007, franchisors may continue to use the FTC's original franchise rule (and thus the UFOC) until July 1, 2008. In response to the FTC's amendments to Part 436, NASAA has replaced the UFOC with the Uniform Franchise Disclosure Document Guidelines (UFDD), which incorporates the FTC's revisions to Part 436.

This rulemaking amends Section 310.111 to incorporate the UFDD, as adopted by NASAA on June 22, 2007 and effective July 1, 2007, as the Uniform Franchise Registration Application for registration applicants.

It is necessary to amend subsection (b) of Section 310.111 in order to reflect the dates of the transition period and mandatory effective date of the FTC's amended rules and to incorporate the UFDD, as adopted by NASAA on June 22, 2007 and effective July 1, 2007.

It is necessary to add subsection (c) of Section 310.111 in order to provide instructions for the use of the UFDD as adopted by NASAA on June 22, 2007 and effective July 1, 2007.

DETERMINATION GOVERNMENT CODE SECTION 11346.9(2)

The Commissioner has determined that the amendment of the regulation 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.

ALTERNATIVES CONSIDERED

No alternative considered by the Department would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons, or would lessen any adverse impact on small businesses.

ADDENDUM, REGARDING PUBLIC COMMENTS

No request for hearing was received during the 45-day public comment period, which ended on December 10, 2007. Accordingly, no hearing was scheduled or held.

COMMENTS RECEIVED DURING THE 45-DAY COMMENT PERIOD

The Department did not receive comments during the 45-day public comment period.

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