

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Money Transmitters

Proposed Readoption with Amendments: N.J.A.C. 3:27

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17:15C-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009-55

Submit comments by April 18, 2009 to:

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The agency proposal follows:

Summary

The New Jersey Money Transmitter Act, N.J.S.A. 17:15C-1 et seq., (the “Act”) was enacted on May 1, 1998. The Act combined the licensing and regulation of the activities of foreign money transmission and the sale of checks, which previously were separately governed by the Foreign Money Remitter Act and the Check Sellers Act, under one law. The Act also brought under its umbrella the previously unregulated activities of domestic money transmission and third party payment service providers. Section 25 of the Act authorized the Commissioner to promulgate regulations. The Department of Banking and Insurance (Department) proposes to

readopt with amendments N.J.A.C. 3:27, Money Transmitters, which will expire on September 15, 2009, pursuant to N.J.S.A. 52:14B-5.1c. The rules provide a framework for the licensing and regulation of money transmitters. The rules require licensing, security devices and demonstration of adequate net worth. The Department has reviewed the current rules and has determined that they continue to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Several amendments are proposed to clarify and improve the rules.

N.J.A.C. 3:27-1 sets forth the general provisions for the chapter.

N.J.A.C. 3:27-1.1 sets forth the purpose and scope of the chapter. The Department proposes to amend N.J.A.C. 3:27-1.1(b) to update the text on the scope of the chapter.

N.J.A.C. 3:27-1.2 sets forth the definitions used in the chapter. The Department proposes an amendment to define “key shareholder.”

The Department proposes to readopt Subchapter 2, which requires all persons acting as money transmitters to be licensed, that licenses be renewed biennially, and sets forth the application requirements.

N.J.A.C. 3:27-3.1 requires all fees to be paid by a check payable to the Treasurer - State of New Jersey.

N.J.A.C. 3:27-4.1 sets forth the requirement that persons seeking initial licenses as money transmitters or foreign money transmitters comply with the requirements of N.J.S.A. 17:15C-8 and obtain a security device authorized by the Commissioner. It also sets the amount of the security device and the necessary terms it must contain.

N.J.A.C. 3:27-5.1(a) sets forth the requirement that applicants for initial licenses shall demonstrate a minimum net worth of \$100,000 plus an additional net worth of \$25,000 per location or agent to be located in this State up to a maximum of \$1,000,000.

N.J.A.C. 3:27-5.1(b) sets forth the requirement that applicants for a license as a foreign money transmitter only shall demonstrate a minimum net worth of \$50,000 plus an additional net worth of \$10,000 per location or agent to be located in this State, up to a maximum of \$400,000.

N.J.A.C. 3:27-6 sets forth requirements regarding the books and records of money transmitters.

N.J.A.C. 3:27-6.1(a) requires each licensee to make, keep and preserve in English, various books, accounts and other records for three years. The books, accounts and other records include: a record of each payment instrument sold and a record of each money transmission sent or accepted, including the name and address of each recipient; a general ledger containing all assets, liabilities, capital, income and expense accounts, which general ledger shall be posted at least monthly and all books closed quarterly; settlement sheets received from authorized delegates containing the date, name of the delegate, name of the customer, the amount of the transmission, the country to which the transmission was submitted and the fee charged for the transmission; bank statements and bank reconciliation records; records of outstanding payment instruments; records of each payment instrument paid within the three-year period; records of completed money transmissions; records of outstanding money transmission orders; a list of the names and addresses of all of the licensee's authorized delegates; a list of all countries to which money is transmitted or from which money is received for transmission; a list of the names and addresses of all clearing banks through which the licensee's money transmission business is

conducted; records of all numbers including voids for numbered money transmission forms; all records required to be maintained pursuant to 31 CFR §§103.11 et seq.; and records of all events reported to the Office of Foreign Assets Control of the United States Department of the Treasury (OFAC) in compliance with all reporting requirements of OFAC.

N.J.A.C. 3:27-6.1(b) allows licensees to maintain the required documents through photographic, electronic or other similar methods.

N.J.A.C. 3:27-6.1(c) requires that the licensee maintain its records at its principal place of business or, with notice to the Commissioner, at another location. It further allows the Commissioner to request reimbursement of travel expenses incurred in the examination or investigation of records if the records are maintained outside of New Jersey. Alternatively, the Commissioner may require the licensee to make the records available to the Commissioner at its principal place of business, or at the Commissioner's office, within three business days after demand. The Commissioner may further require that those records be produced by an individual, on behalf of the licensee, who will be available to answer questions regarding those records and the business regulated under the Act. The Commissioner may require the appearance of a specific individual, or request that the licensee designate an individual with knowledge of the records and the business.

N.J.A.C. 3:27-7.1 sets forth the requirements for change of control of a money transmitting service.

N.J.A.C. 3:27-7.1(a) requires approval of the Commissioner prior to anyone directly or indirectly acquiring control of a licensee. Applications for change of control are required to be accompanied by information required of initial applicants for licensure and an amended version

of the last submitted annual report updated through the date of the application, as well as any documents related to the change of control, such as stock purchase agreements. The Commissioner may request copies or access to any or all of the materials retained in compliance with N.J.A.C. 3:27-6 prior to granting or denying approval.

At N.J.A.C. 3:27-7.1(b), the Department proposes to replace the words “a new application in accordance with” with “the information required by” N.J.A.C. 3:27-2.2(b). This will clarify that when a change of a key shareholder, executive officer, owner, partner or responsible manager occurs, the submission of an entire new application to the Department is not necessary. Rather, only the information referenced in that subsection is required to be submitted.

N.J.A.C. 3:27-8.1 sets forth the penalty provisions relating to money transmitters.

A 60-day comment period is provided on this notice of proposal, and therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The rules proposed for readoption with amendments apply to all persons or entities serving as money transmitters, check sellers and third party payment service providers (hereafter collectively known as “money transmitters”) in New Jersey. The rules proposed for readoption with amendments should continue to have a favorable impact on money transmitters, the public and the Department. The rules proposed for readoption will continue to allow the Commissioner to monitor money transmitters, affording the general public an adequate level of protection through licensing, reporting and regulation. The rules proposed for readoption will continue to

allow the Department to fulfill its regulatory duties by providing clear and comprehensive guidelines.

Economic Impact

There will be some negative economic impact on money transmitters as a result of the rules proposed for readoption with amendments. Money transmitters will bear the compliance costs associated with the recordkeeping and reporting requirements. They also will bear the cost of the fees associated with the criminal background checks. For a discussion of the compliance requirements, see the Summary above. Money transmitters will also bear the continued costs associated with maintaining security devices. However, these costs are not unduly burdensome and are necessary to ensure the Department's ability to adequately monitor and regulate money transmitter licensees. In addition, requirements such as providing security devices and annual reports and the maintenance of books and records are statutorily required.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments are not subject to any Federal standards or requirements.

Jobs Impact

The Department does not anticipate that any new jobs will be generated or lost as a result of the rules proposed for readoption with amendments. Money transmitters will use existing staff for continued compliance with the rules.

The Department invites commenters to submit any data or studies concerning the jobs impact of the rules proposed for readoption with amendments together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact as a result of the rules proposed for readoption with amendments.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is required because the money transmitters to whom the rules proposed for readoption with amendment apply often employ fewer than 100 full-time employees, and therefore are "small businesses" as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Reporting and compliance requirements which affect all money transmitters, regardless of size, are found in the rules proposed for readoption. See the Summary above for discussion of the reporting and compliance requirements and see the Economic Impact above for a discussion on the costs of these requirements. As stated above, it is anticipated that money transmitters will use existing staff for compliance with the rules. No professional services are required.

The rules regarding initial applications, annual reports, maintenance of books, records and accounts and applications for change of control are necessary to ensure the Department's ability to adequately monitor and regulate money transmitter licensees and protect consumers as discussed above. Moreover, the Department does not believe that these rules are unduly

burdensome. The purpose of these rules is to protect the financial integrity of money transmitters and in turn protect the consumers who use them. Thus, the purpose does not vary based upon business size. However, there is a differentiation made between those who act as foreign money transmitters and those engaged in other activities. Those who only engage in foreign money transmission have reduced net worth and bonding requirements in recognition of the generally prevailing difference in size between these smaller entities and the other types of licensees.

Smart Growth Impact

The Department does not believe that the rules proposed for readoption with amendments will have any impact upon the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption with amendments will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the regulation would evoke a change in the average costs associated with housing because the rules proposed for readoption concern the activities of money transmission and sale of checks.

Smart Growth Development Impact

The rules proposed for readoption with amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the regulation would evoke a change in

housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the rules proposed for re adoption concern the activities of money transmission and sale of checks.

Full text of the rules proposed for re adoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:27.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

3:27-1.1 Purpose and scope

(a) (No change.)

(b) This chapter shall apply to all [licenses which are issued or renewed under the Act on or after July 31, 1998] **licensed money transmitters and to all persons whose activities require that they be licensed under the Act.**

3:27-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

. . .

“Key shareholder” means any person, or group of persons acting in concert, who is the owner of 25 percent or more of any voting class of an applicant’s or licensee’s stock.

3:27-7.1 Applications for change of control or key personnel

(a) (No change.)

(b) Any change of key shareholders, executive officers, owners, partners, or managers responsible for the licensed business shall require the submission of [a new application in accordance with] **the information required by** N.J.A.C. 3:27-2.2(b).

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