

**TITLE 11, DIVISION 1, CHAPTER 4**  
**DEPARTMENT OF JUSTICE**

Notice Published on December 28, 2018

**NOTICE OF PROPOSED RULEMAKING**

The Office of the Attorney General, Department of Justice (“DOJ”), proposes to amend sections 300, 301, 303, 305, 306, and 308, and related forms incorporated by reference, add sections 300.1, 300.2, and 309 and delete section 307, of Title 11, Division 1, Chapter 4, of the California Code of Regulations, regarding reporting by organizations holding property for charitable purposes, commercial fundraisers for charitable purposes, fundraising counsel for charitable purposes, and commercial coventurers over which the Attorney General has enforcement and supervisory powers. DOJ also proposes to amend sections 411, 415, 416 and 420, and related forms incorporated by reference, of Title 11, Division 1, Chapter 4.6, of the California Code of Regulations, regarding reporting by organizations conducting raffles.

**Public Hearing**

DOJ has not scheduled a public hearing on this proposed action. However, DOJ will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period pursuant to Government Code section 11346.8.

**Written Comment Period**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to DOJ. The written comment period closes at 5:00 p.m. on February 11, 2019. DOJ will consider only written comments received at the California Department of Justice, Charitable Trusts Section, 300 S. Spring St., Suite 1702, Los Angeles, CA 90013, by that time. Submit comments to:

James Toma, Supervising Deputy Attorney General  
California Department of Justice  
Charitable Trusts Section  
300 S. Spring St., Suite 1702  
Los Angeles, CA 90013  
Email: James.Toma@doj.ca.gov

Teresa DePaz, Legal Secretary  
California Department of Justice  
Charitable Trusts Section  
300 S. Spring St., Suite 1702  
Los Angeles, CA 90013  
Email: Teresa.DePaz@doj.ca.gov

## **Authority and Reference**

DOJ proposes to amend sections 300, 301, 303, 305, 306, and 308, and related forms incorporated by reference, add sections 300.1, 300.2, and 309, and delete section 307, of the California Code of Regulations Title 11, Division 1, Chapter 4. DOJ also proposes to amend sections 411, 415, 416 and 420, and related forms incorporated by reference, of the California Code of Regulations, Title 11, Division 1, Chapter 4.6. DOJ is authorized to adopt these regulations pursuant to Government Code section 12586, subdivision (b) and to implement, interpret, and make specific the provisions of section 12580, et seq., of the Government Code (the Supervision of Trustees and Fundraisers for Charitable Purposes Act), and pursuant to Penal Code section 320.5.

## **Informative Digest/Policy Statement Overview**

### **Summary of Existing Laws and Regulations:**

The Supervision of Trustees and Fundraisers for Charitable Purposes Act, Government Code section 12580, et seq. (“the Act”) provides enforcement and supervisory powers over all charitable corporations, unincorporated associations, trustees and other legal entities holding property for charitable purposes, commercial fundraisers for charitable purposes, fundraising counsel for charitable purposes, and commercial coventurers. The Act establishes the Registry of Charitable Trusts, which is administered by DOJ. (Gov. Code, § 12587.1.) Organizations subject to the Act are required to file periodic reports with the Attorney General. (Gov. Code, §§ 12585, subd. (a) & 12586, subd. (a) [requiring registration and filing of periodic reports]; § 12599, subds. (b) & (c) [requiring commercial fundraisers to register and report]; § 12599.1(c) & (d) [requiring fundraising counsel to register and report]; 12599.2 [requiring specified coventurers to register and report].) The Attorney General is authorized to make rules and regulations regarding the time for filing reports, the content of such reports, and the manner of executing and filing them. (Gov. Code, § 12586, subd. (b).) Sections 300, 301, 303, 305, 306, 308, and 311 of Title 11, Division 1, Chapter 4, and the reporting forms incorporated by reference, implement, interpret, and make specific the requirements of the above sections of the Government Code.

Penal Code section 320.5 requires annual registration and reporting to conduct lawful raffles, and requires DOJ to furnish registration and reporting forms to collect information required of registered organizations. (Penal Code §320.5, subd. (h)(1), (6) & (7).) DOJ is authorized to adopt regulations necessary to effectuate the Nonprofit raffle program. (Penal Code §320.5, subd. (h)(4).)

### **Effect of the Proposed Rulemaking:**

The proposed amendments to sections 300, 301, 303, 305, 306, and 308, the addition of sections 300.1, 300.2, and 309, and the repeal of 307 of Title 11, Division 1, Chapter 4, and amendments to sections 411, 415, 416 and 420 of Chapter 4.6, clarify and make technical changes to the text

of the regulations and their related forms and instructions used for registration and periodic reporting.

Additionally, the proposed amendments to section 300, and the related Form CT-1 initial registration form and instructions incorporated by reference, seek additional information from charitable organizations including:

- All names the organization uses or has used (e.g., doing business as);
- All states in which the organization does business and/or solicits donations;
- All non-profit organizations with which the organization shares revenue or governance;
- The circumstances concerning any denial, revocation, or modification of the organization's IRS or FTB tax-exempt status;
- The circumstances concerning any suspension or revocation of the organization's corporate status by the Secretary of State;
- All officers, directors, trustees, or employees related by blood, marriage or adoption;
- The circumstances concerning any court or administrative proceedings in any state regarding solicitation or registration by the organization or any of its officers, directors, or trustees; and
- All officers, directors, or trustees convicted of any crime involving the misuse or misappropriation of funds or any crime involving deception in the operation of a charity.

Because Form CT-1 and instructions are now incorporated by reference, the amendments delete the superfluous numbered items (1) through (20) under 300(b) that specify the information required by Form CT-1.

Proposed section 300.1 defines the term "educational institution" for purposes of such organizations that are exempt from the registration and reporting requirements of the Act.

Proposed section 300.2 defines the required elements for purposes of government-related organizations that are exempt from the registration and reporting requirements of the Act.

The proposed amendments to section 301, and related forms and instructions, provide that those organizations required to register and file annual reports with the DOJ Registry of Charitable Trusts ("Registry"), whose revenue exempts them from filing IRS Form 990, 990-PF or 990-EZ, must file an annual treasurer's report with the Registry (Form CT-TR-1). The proposed treasurer's report makes section 307 irrelevant, and that section is therefore proposed for deletion. The treasurer's report enhances transparency and provides basic information that the public can use to make donation decisions, and additionally provides DOJ with basic information to assess any problems with the organization or the need for further investigation by DOJ.

The amendments to the regulations and forms also include:

- Addition of a question to the Form RRF-1 regarding charitable organizations holding restricted net assets while reporting negative unrestricted net assets, required pursuant to Government Code section 12599.8;

- Addition of requests for information on Form RRF-1 regarding total and program expenses, as well as noncash contributions;
- Minor changes to the fee schedule, in favor of charitable organizations, as a result of not requiring rounding up revenue figures that would then require a higher fee;
- Attachment of privacy notices to applicable forms;
- Addition of provisions that forms that are statutorily required to be “signed under oath” be filed under penalty of perjury;
- Clarification of which completed annual Internal Revenue Service forms must be filed with the Registry;
- Requirement of an email address on forms as an additional method of contact;
- Clarification that commercial fundraisers must report national revenue, not just California revenue;
- Addition of a question to the commercial fundraiser report form regarding written contracts to ensure that commercial fundraisers are in compliance with the applicable statute; and
- Miscellaneous technical and non-substantive amendments.

Proposed section 309 clarifies that the Attorney General may require all filings under the Act to be made electronically and with the use of electronic transfers.

The proposed amendments to section 420 and raffle Form CT-NRP-2 include:

- Request whether direct costs of raffle exceed 10% of gross receipts received from ticket sales and if organization used funds from sources other than ticket sales to offset costs; and
- Confirmation that raffle funds were not used for any purpose outside of California

Clarifying the forms and instructions that charitable entities and fundraising professionals file with the Registry benefits registrants, DOJ, and the public. Registrants will understand what information must be provided without assistance from the Registry. Forms that are complete when filed and contain accurate information help DOJ fulfill its oversight responsibilities. Registry staff saves time and resources by not having to answer unnecessary questions, allowing forms to be processed more efficiently. The public benefits from receiving information quickly by which they may assess the performance of charities who file forms and reports with the Registry.

#### **Comparable Federal Regulations:**

There are no existing federal regulations or statutes comparable to the proposed regulations.

#### **Determination of Inconsistency/Incompatibility with Existing State Regulations:**

DOJ has evaluated the proposal and finds that it is not inconsistent or incompatible with existing state regulations.

**Forms Incorporated by Reference – Title 11, Div. 1, Ch. 4, sections 300-316, California Code of Regulations.**

- Form CT-1 Initial Registration Form and Instructions thereto (Orig. 09/2017)
- Form CT-TR-1 Annual Treasurer's Report and Instructions thereto (Orig. 09/2017)
- Form RRF-1 Annual Registration Renewal Fee Report and Instructions thereto (Rev. 09/2017)
- Form CT-1CF Commercial Fundraiser for Charitable Purposes Annual Registration Form and Instructions thereto (Rev. 09/2017)
- Form CT-2CF Commercial Fundraiser for Charitable Purposes Annual Financial Report and Instructions thereto (Rev. 09/2017)
- Form CT-2TCF Commercial Fundraiser for Charitable Purposes Thrift Store Annual Financial Report and Instructions thereto (Rev. 09/2017)
- Form CT-2VCF Vehicle Donation Program Annual Financial Report and Instructions thereto (Rev. 09/2017)
- Form CT-3CF Registration Fundraising Counsel and Instructions thereto (Rev. 09/2017)
- Form CT-4CF Bond Form and Instructions thereto (Rev. 09/2017)
- Form CT-5CF Registration Commercial Coventurer and Instructions thereto (Rev. 09/2017)
- Form CT-6CF Annual Financial Report Commercial Coventurer and Instructions thereto (Rev. 09/2017)
- Form CT-8CF Deposit by Assignment and Instructions thereto (Rev. 09/2017)
- Form CT-9CF Receipt for Notice of Assignment Commercial Fundraiser and Instructions thereto (Rev. 09/2017)
- Form CT-10CF Notice of Intent to Solicit for Charitable Purposes Commercial Fundraiser (Rev. 09/2017)
- Form CT-11CF Notice of Intent to Provide Services Fundraising Counsel (Rev. 09/2017)

**Forms Incorporated by Reference – Title 11, Div. 1, Ch. 4.6, sections 410-426, California Code of Regulations**

- Form CT-NRP-1 Nonprofit Raffle Registration Form and Instructions thereto (Rev. 09/2017)
- Form CT-NRP-2 Nonprofit Raffle Report and Instructions thereto (Rev. 09/2017)

**Disclosures Regarding the Proposed Action**

*DOJ has made the following initial determinations:*

Mandate by federal law or regulation: None.

Other statutory requirements: None.

Mandate on local agencies and school districts: None.

Cost or savings to any State agency: No cost, and will allow DOJ to make early assessments in the initial stage of investigation and to process reporting more efficiently.

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.

Cost impacts on a representative private person or businesses: None. Every charitable entity is required by law to maintain books and records sufficient to account for its assets, including revenue and disbursements. DOJ is not aware of any cost impacts.

Significant effect on housing costs: None.

### **Results of the Economic Impact Analysis**

The proposed regulations will not create or eliminate jobs in California or create, eliminate or affect the expansion of California businesses. The proposed regulations will not adversely impact the health and welfare of California residents, worker safety, or the State's environment. The proposed regulations will assist DOJ in assuring charitable assets donated by California residents are used for the intended purpose and for the benefit of California beneficiaries of charity.

### **Cost Impacts on Representative Person or Business**

DOJ is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. In some circumstances, the amendments may save charitable organizations \$25 to \$75 in fees by not requiring them to round up their annual revenue.

## **Business Report**

The DOJ has determined that it is necessary for the health, safety, or welfare of the people of the state that the regulations apply to businesses. Existing law already requires commercial fundraisers for charitable purposes, fundraising counsel for charitable purposes, and commercial coventurers to register and report to the Registry of Charitable Trusts. The proposed amendments do not change these requirements and, instead, clarify the information provided by registrants to the Registry. These amendments will benefit the public who will receive more accurate information, registrants who will understand what information is required without needing to contact Registry staff, and DOJ who will receive more accurate information and save resources by not having to answer individual registrant questions.

## **Small Business Determination**

Pursuant to Government Code section 11342.610, subdivision (b)(6), a “small business” does not include an entity organized as a nonprofit corporation. Therefore, the proposed amendment to Section 301 adding the treasurer’s report does not affect small businesses. Furthermore, the additional proposed amendments to the regulations only clarify reporting requirements or make other non-significant changes to regulations and reports that impose no adverse economic impacts on charitable entities or fundraising professionals. There is no adverse economic impact on small businesses.

## **Consideration of Alternatives**

A rulemaking agency must determine that no reasonable alternative to the regulation has been identified or brought to its attention, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. DOJ invites interested persons to present statements or comments with respect to alternatives to the proposed amendments during the written comment period.

## **Contact Person**

General or substantive comments concerning this proposed rulemaking, including requests for copies of documents associated with this action such as the text of the proposed amendments and related forms, should be directed to:

James Toma, Supervising Deputy Attorney General  
California Department of Justice  
Charitable Trusts Section  
300 S. Spring St., Suite 1702  
Los Angeles, CA 90013  
Telephone: (213) 269-6549  
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Teresa DePaz, Legal Secretary  
California Department of Justice  
Charitable Trusts Section  
300 S. Spring St., Suite 1702  
Los Angeles, CA 90013  
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Fax: (213) 897-7605  
Email: Teresa.DePaz@doj.ca.gov

**Availability of Statement of Reasons, Text of Proposed Amendments, and Rulemaking File**

DOJ will make the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office located at California Department of Justice, Charitable Trusts Section, 300 S. Spring St., Suite 1702, Los Angeles, CA 90013, and on the DOJ website at [www.oag.ca.gov/charities](http://www.oag.ca.gov/charities). The rulemaking file consists of this notice, the text of proposed amendments, the initial statement of reasons, and any information upon which the DOJ is basing this proposal. Copies of these documents are also available upon request by contacting Maria Elena Hernandez at the above listed address.

**Availability of Changed or Modified Text**

After considering all timely and relevant comments, DOJ may adopt the proposed regulations substantially as described in this notice. If DOJ makes modifications 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 it adopts the regulation amendments as revised. Please send requests for copies of any modified regulations to James Toma or Teresa DePaz at the contact information above (Contact Person). DOJ will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**Availability of the Final Statement of Reasons**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Teresa DePaz, Legal Secretary, at the above contact information.

**Availability of Documents on the Internet**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the proposed amendments and related forms will be posted and available for downloading on our website: [www.oag.ca.gov/charities](http://www.oag.ca.gov/charities).