

TITLE 11, DIVISION 1, CHAPTER 4

DEPARTMENT OF JUSTICE

Notice Published: December 11, 2015

NOTICE OF PROPOSED RULEMAKING

The Office of the Attorney General, Department of Justice (DOJ), proposes to amend Sections 310 and 312 of Title 11, Division 1, Chapter 4, and Section 999.1 of Title 11, Division 1, Chapter 15, of the California Code of Regulations, regarding the Schedule B filing requirement for charitable organizations and entities over which the Attorney General has enforcement and supervisory powers and regarding the use of annual registration and renewal fees.

Public Hearing

DOJ will hold a public hearing starting at 10:00 a.m. on January 27, 2016, at the Auditorium in the Ronald Reagan State Building located at 300 S. Spring Street, Los Angeles, CA 90013. The public hearing will conclude by 5:00 p.m., or earlier, depending on attendance by the public. The Auditorium is wheelchair accessible.

DOJ will hold a public hearing starting at 10:00 a.m. on January 29, 2016, at the Auditorium in the Hiram W. Johnson State Building located at 455 Golden Gate Avenue, San Francisco, CA 94102. The public hearing will conclude by 5:00 p.m., or earlier, depending on attendance by the public. The Auditorium is wheelchair accessible.

At each hearing, any person may present statements orally or in writing relevant to the proposed action described in the Informative Digest. DOJ requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

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 January 25, 2016. DOJ will consider only comments received at the Department of Justice, 300 S. Spring St., Suite 1702, Los Angeles, CA 90013, by that time. Submit comments to:

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

Authority and Reference

DOJ proposes to amend Sections 310 and 312 of the California Code of Regulations Title 11, Division 1, Chapter 4, and Section 999.1 of the California Code of Regulations Title 11, Division 1, Chapter 15. 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).

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 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 annual periodic reports]; § 12599 subds. (b) & (c) [requiring commercial fundraisers to register and report]; § 12599.1, subds. (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 310 and 312 of Chapter 4, and 999.1 of Chapter 15, implement, interpret, and make specific the above sections of the Government Code.

Effect of the Proposed Rulemaking:

The proposed amendments to Sections 310 and 999.1 clarify and codify the Attorney General’s practice that specific donor information is exempt from public disclosure subject to limited exceptions. The proposed amendments also require that for all notices and requests for approval submitted to the Attorney General pursuant to the subsections of sections 999.2 through 999.5, the persons or organizations submitting confidential documents must separately designate and request that such documents not be maintained in the Public File. The proposed amendments to Section 312 clarify that annual registration and renewal fees may be used by the Attorney General to enforce registration and reporting provisions, which is consistent with Government Code section 12587.1, subdivision (d). Also, the amendments correct typographical errors in the addresses of the Attorney General’s San Francisco, Los Angeles, and Sacramento office locations and also amend an existing incorrect subsection reference regarding notice requirements.

The amendments to the regulations include:

- Provisions that donor information exempt from public inspection pursuant to the Internal Revenue Code will be maintained as confidential by the Attorney General subject to certain limited exceptions;
- The requirement that for all notices and requests for approval submitted to the Attorney General pursuant to the subsections of sections 999.2 through 999.5, Registrants must separately designate documents that they request to be maintained as confidential;
- Clarification language that annual registration and renewal fees may be used by the Attorney General to enforce registration and reporting provisions as set forth in Government Code section 12587.1, subdivision (d); and
- Miscellaneous corrective, technical, and non-substantive amendments.

The public benefits include the codification of the Attorney General's practice to maintain donor information as confidential and clarifying the limited circumstances in which donor information may be released. Registrants will understand that subject to limited exceptions involving law enforcement purposes, donor information will be maintained as confidential and not subject to public inspection. For all notices and requests for approval submitted to the Attorney General pursuant to the subsections of sections 999.2 through 999.5, Registrants must separately designate the information that they request to be maintained as confidential. The separate designation of documents will also require that Registrants take a more active role in specifying what documents they consider to be privileged and the basis of such privilege. The separate designation of documents will save time and resources of the Registry and legal staff, allowing confidential information requests to be processed more efficiently. The proposed amendments clarifying that the Attorney General may use annual registration and renewal fees to enforce registration and reporting provisions are consistent with Government Code section 12587.1.

Comparable Federal Regulations:

Title 26, Internal Revenue Code section 6104, subsection (d)(3)(A), is comparable to the Section 310 proposed amendments. Internal Revenue Code section 6104, subsection (d)(3)(A), provides that the name and address of contributors to tax exempt organizations shall not be disclosed unless the organization is a private foundation or political organization. The proposed amendments to Section 310 are comparable stating, "Donor information exempt from public inspection pursuant to Internal Revenue Code section 6104(d)(3)(A) shall be maintained as confidential by the Attorney General." The proposed amendments to Section 310 differ from the federal statute by setting forth specific limited exceptions related to law enforcement for the disclosure of donor information.

Comparable State Statutes:

Government Code section 12587.1, subsection (d), is comparable to the Section 312 proposed amendments. Government Code section 12587.1, subsection (d), provides that moneys in the Registry of Charitable Trusts Fund shall be used by the Attorney General to enforce registration and reporting provisions. The proposed amendments to Section 312 are comparable and provide that registration and renewal fees and the Registry of Charitable Trusts Fund shall be used to enforce the registration and reporting provisions.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

DOJ has determined that this proposed regulation is not inconsistent or incompatible with existing regulation. After conducting a review for any regulations that would relate to or affect this area, DOJ has concluded that these are the only regulations that concern the Supervisions of Trustees and Fundraisers for Charitable Purposes Act.

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: Mandate is not imposed and no reimbursement required.

Cost or savings to any State agency: No cost, and the proposed amendments will promote efficiency with Registry staff.

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. 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 nor will they 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, nor the State's environment. The proposed regulations benefit the public and California charities by codifying the Attorney General's existing practice of maintaining specific donor information that is exempt from disclosure by the Internal Revenue Service as confidential by the Attorney

General's Office. The proposed regulations will assist registrants and donors in understanding that specific donor information is treated as confidential and excluded from the Registry's public file.

Cost Impacts on Representative Private 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.

Business Report

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 charitable organizations to file the same donor information with the Registry that is filed with the Internal Revenue Service. The proposed amendments do not change these requirements and, instead, codify the Attorney General's existing practice of maintaining donor information as confidential. These amendments will benefit the Registrants who provide donor information. The public and Registrants will benefit from improved Registry efficiencies in processing confidential requests and providing non-confidential information.

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 amendments to Sections 310 and 999.1 regarding the Attorney General's treatment of donor information does not affect small businesses. Furthermore, the additional proposed amendments to the regulations make only technical changes and clarifications to regulations and impose no adverse economic impacts on charitable entities. There is no adverse economic impact on small businesses.

Consideration of Alternatives

DOJ must determine that no reasonable alternative has been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed, or 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 at the scheduled hearing or 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 either:

Jami L. Cantore, Deputy Attorney General

California Department of Justice
Charitable Trusts Section
300 S. Spring St., Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2569
Email: Jami.Cantore@doj.ca.gov

OR

MariaElena Hernandez, Legal Analyst
California Department of Justice
Charitable Trusts Section
300 S. Spring St., Suite 1702
Los Angeles, CA 90013
Telephone: (213) 620-6339
Email: MariaElena.Hernandez@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. 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 Jami L. Cantore, Deputy Attorney General, 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 Jami L. Cantore, Deputy Attorney General, 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 Jami L. Cantore, Deputy Attorney General, 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.