

## INITIAL STATEMENT OF REASONS

### PROPOSED AMENDMENT OF REGULATIONS ADOPTED PURSUANT TO THE SUPERVISION OF TRUSTEES AND FUNDRAISERS FOR CHARITABLE PURPOSES ACT

#### I. Problem Statement

The Supervision of Trustees and Fundraisers for Charitable Purposes Act (“the Act”) (Government Code section 12580, et seq.), sets forth the Attorney General’s authority over charitable trustees and fundraising entities. Sections 300 through 316, title 11, of the California Code of Regulations are promulgated under the authority of the Act. The Act requires charitable entities, professional fundraisers, fundraising counsel, and commercial coventurers to register and file reports with the Attorney General’s Registry of Charitable Trusts (“Registry”). Sections 300 through 308 set forth registration and reporting requirements, and incorporate by reference the forms used for filing initial registration and annual reports.

The reporting forms are proposed to be revised to reflect changes in the newly promulgated regulations (Sections 999.9-999.9.5) which, among other things, authorize administrative actions based on adverse actions taken by other government agencies against the charity, its officers, directors or key employees and to inquire whether the charity’s board of directors is complying with the standards of conduct set forth in the Corporations Code. (Corp. Code, §§ 5230-5239, 7230-7238.)

Section 301 requires charities operating in California to file with the Registry copies of their tax returns that were filed with the Internal Revenue Service (“IRS”): IRS Form 990, 990-PF or 990-EZ. Previously, charities receiving less than \$25,000 filed with the Registry copies of their IRS Form 990-EZ, which provides financial information useful to donors, regulators, and watchdog organizations. However, the IRS raised its reporting threshold from \$25,000 to \$50,000 for charitable entities required to file Form 990-EZ. Form 990-EZ had been the sole source of financial information charities with less than \$25,000 in revenue provided to the Registry. Since the IRS raised the threshold to \$50,000, many charities now provide no substantive financial information for donors or the Attorney General to assess and determine if problems exist.

Additionally, the regulations, the forms incorporated by reference, and instructions to the forms, are not clearly written in some parts. These ambiguities create problems as registrants provide incorrect information or contact the Registry staff for clarification, depleting time and resources.

Government Code section 12583 exempts “educational institutions” from the filing, registration, and reporting requirements under the Act, but does not define “educational institutions.” The proposed amendments to Section 300.1 are necessary to provide clarity and guidance for charitable organizations to understand what organizations are exempt from the registration and reporting requirements as educational institutions.

Government Code section 12583 exempts “the United States, any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or to any of

their agencies or governmental subdivisions” from the filing, registration, and reporting requirements under the Act. The proposed amendments to Section 300.2 are necessary to provide clarity and guidance for governments to understand which of the public benefit corporations created for a governmental purpose are exempt from the registration and reporting requirements.

Penal Code section 320.5, subdivision (h)(1), provides that an eligible charitable organization may not conduct a raffle unless it registers with the Department of Justice. Additionally, subdivision (h)(6) of section 320.5 requires registrants to file annual reports and subdivision (h)(7) requires the Department to furnish a form to collect such information. Sections 410 through 426 of Title 11 of the California Code of Regulations are promulgated under the authority of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part I of Division 3 of Title 2 of the Government Code). These regulations incorporate by reference the raffle forms required by the Registry. Section 411 incorporates by reference Form CT-NRP-1 and Form CT-NRP-2. Section 415 requires every organization to submit a raffle registration application on Form CT-NRP-1 and Section 420 requires every registered organization to file on or before October 1 of each year a raffle report on Form CT-NRP-2. Section 416 provides the address for filing the raffle forms.

The proposed amendments to the two raffle forms, Form CT-NRP-1 and Form CT-NRP-2, are necessary to provide greater clarity and also add written instructions to assist and instruct raffle applicants and registrants on how to complete the forms.

## **II. Summary of Benefits**

The proposed amendments to the regulations and forms ensure that basic financial information will become available to the donating public promoting transparency and allowing for prospective donors to research and assess the performance of charitable organizations, including how they spend their charitable revenue and assets. The Attorney General will benefit from having basic financial information to assess potential problems or evaluate the need for audits or investigations. The proposed amendments will also clarify ambiguous provisions and instructions in the forms, saving time for both registrants and Attorney General staff. Finally, the proposed amendments to the forms and instructions will provide more information to the public concerning existing legal requirements and improve compliance through education.

### **III. Purpose and Necessity of Amendments to Regulations and Related Forms**

The Supervision of Trustees and Fundraisers for Charitable Purposes Act (“the Act”) (Government Code section 12580, et seq.), sets forth the Attorney General’s authority over charitable trustees and entities, and fundraisers. Sections 300 through 316 of Chapter 4, and Sections 999.6 through 999.9.5 of Chapter 15 of Title 11, Division 1 of the California Code of Regulations are promulgated under the authority of the Act. The Act requires the registration and filing of periodic reports by entities under the Attorney General’s authority and supervision, including:

- Government Code section 12581 provides that the Act applies to 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, over which the state or the Attorney General has enforcement or supervisory powers.
- Government Code section 12583 provides that the filing, registration and reporting provisions of this article do not apply to, inter alia, a charitable corporation or unincorporated association organized and operated as an educational institution.
- Government Code section 12585, subdivision (a), requires every charitable corporation, unincorporated association, and trustee subject to the Act to file with the Attorney General an initial registration form, under oath, setting forth information and attaching documents prescribed in accordance with rules and regulations of the Attorney General.
- Government Code section 12585, subdivision (b), provides that “[t]he Attorney General shall make rules and regulations as to the ... contents of the initial registration form and the manner of executing and filing that document or documents.”
- Government Code section 12586, subdivision (a), provides that charitable corporations, unincorporated associations, and trustees subject to the Act file periodic reports with the Attorney General, under oath, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof in accordance with the rules and regulations of the Attorney General.
- Government Code section 12586, subdivision (b), provides that “[t]he Attorney General shall make rules and regulations as to the time and manner for filing reports, the contents thereof, and the manner of executing and filing them.”
- Government Code section 12587 provides that the Attorney General may make additional rules and regulations necessary for the administration of the Act and that registration and renewal fees shall be used by the Department of Justice solely to operate and maintain the Attorney General’s Registry of Charitable Trusts and provide public access via the Internet to reports filed with the Attorney General.

- Government Code section 12599, subdivision (b), provides that a “commercial fundraiser for charitable purposes shall, prior to soliciting any funds, assets, or property ... for charitable purposes, or prior to receiving and controlling any funds, assets, or property ... as a result of solicitation in this state for charitable purposes, register with the Attorney General’s Registry of Charitable Trusts on a registration form provided by the Attorney General.”
- Government Code section 12599, subdivision (c), provides that a “commercial fundraiser for charitable purposes shall file with the Attorney General’s Registry of Charitable Trusts an annual financial report on a form provided by the Attorney General, accounting for all funds collected pursuant to any solicitation for charitable purposes during the preceding calendar year ... .”
- Government Code section 12599.1, subdivision (c), provides that a “fundraising counsel for charitable purposes shall, prior to managing, advising, counseling, consulting, or preparing material for, with respect to, the solicitation in this state of funds, assets, or property for charitable purposes, register with the Attorney General’s Registry of Charitable Trusts on a registration form provided by the Attorney General.”
- Government Code section 12599.1, subdivision (d), requires a fundraising counsel for charitable purposes to file an annual report with the Attorney General’s Registry of Charitable Trusts.
- Government Code section 12599.2, subdivision (c), requires that a commercial coventurer that does not meet certain requirements, “shall register and report to the Attorney General on forms required by the Attorney General.”
- Government Code section 12599.5 provides that each application for registration or renewal of registration by a commercial fundraiser for charitable purposes shall be accompanied by a cash deposit or by a bond in a form acceptable to the Attorney General.
- Government Code section 12599.8 provides that for any year that the balance sheet of a charitable organization shows that it holds restricted net assets, while reporting negative unrestricted net assets, the organization shall provide an explanation of compliance with its charitable trust responsibilities and proof of directors’ and officers’ liability insurance coverage to the Attorney General’s Registry of Charitable Trusts.

Penal Code section 320.5 provides that organizations eligible to conduct raffles must be tax-exempt, nonprofit organizations that have been qualified to conduct business in California for at least one year. Subdivision (h) of section 320.5 requires registration and reporting to the Department of Justice as conditions to operating a raffle.

The proposed amendments are necessary to clarify existing reporting requirements and make technical corrections to existing regulations and related forms. Making the regulations and forms

easier to understand enhances compliance, and also streamlines the processing of the forms by Registry staff.

New forms and instructions are proposed (Form CT-TR-1, Form CT-TR-1 Instructions, Form CT-4CF Instructions, Form CT-NRP-1 Instructions, and Form CT-NRP-2 Instructions). The justification for Form CT-TR-1 is discussed below. The Form CT-4CF Instructions (“Instructions for Submission of Cash Deposit or Surety Bond”), Form CT-NRP-1 Instructions (“Instructions for Application for Registration Nonprofit Raffle Program”), and Form CT-NRP-2 Instructions (“Instructions for Nonprofit Raffle Report”) are proposed because none currently exists.

The proposed amendments to California Code of Regulations, title 11, are discussed in more detail as follows:

1. Section 300 provides for the initial registration requirements for entities subject to the Act. The proposed amendments:

- Subdivision (b): Insert the short name “Form CT-1” to the “Initial Registration Form,” and incorporates the form by reference. The short name is necessary to clarify which form is to be used for the initial registration of entities subject to the Act. All forms have a similar short name (e.g., Form CT-1CF, Form CT-2CF, etc.). Form CT-1 is the existing form used for initial registration.
- Delete subdivision (b)(1) through (b)(20), which list information requested in the Initial Registration Form. Because Form CT-1 is incorporated by reference, the list is superfluous and should be deleted for clarity and consistency.
- Subdivision (c): Insert the language: “The registrant will be assigned a registration number (CT number) upon completion of the registration process.” This amendment is necessary to clarify that a CT number is issued at the completion of the registration process. The related amendment to Form CT-1, Part H (after identifying that the charity registrant contracts with a fundraising professional) asks for the fundraising professional’s contact information, including the “registration number assigned by the Registry of Charitable Trusts.” The CT registration number helps assure that fundraising professionals are complying with applicable law that mandates their registration, and enables the Registry to quickly identify fundraising professionals who contract with charitable entities. This proposed language is necessary to prompt charity registrants to ensure that their fundraising professionals are registered. The Registry has always assigned a registration number upon completion of the registration process. Fundraising professionals are prohibited from soliciting funds in California until the fundraising professional has registered and, if applicable, provided the required bond. (Gov. Code, §§ 12599, subd. (b) & 12599.5.)
- Additional minor technical edits that are designed to clarify and assist the donating public, applicants and registrants.

2. The proposed amendments to Form CT-1 include:
- Insert headers Part A through Part I and other non-substantive, organizational changes to make the form easier to understand and to follow the instructions to the form.
  - Deletes required information for organizations based outside California: “whether monitored in home state, and if so, by whom.” This language is not necessary to the regulation of registrants and is not required by statute or regulation.
  - Allows an authorized agent of the organization, such as an attorney or accountant, to sign the Form CT-1. This will allow the organization to have a knowledgeable person who is not an officer, director, or trustee to sign under penalty of perjury.
  - Add question: “List all DBAs and names the organization uses or has used.” The addition of this question will assist the Registry and donors in tracking organizations that may have registered before under a different name to find relevant information regarding the organization under all its different names.
  - Add question: “List all states in which you solicit charitable donations or have registered to do so, or in which you are exempt from registration but operate.” The addition of this question will assist the Registry, donors and the public in tracking and evaluating organizations that do business in other states. This information will support greater efficiencies in audits and investigations of charitable organizations that have a national presence.
  - Add question: “Does the organization share revenue or governance with any other non-profit organization (e.g., fiscal sponsorships and affiliations)? If yes, identify by name, address, and telephone.” The addition of this question will assist the Registry and donors obtain information about organizations that share revenue or governance with other non-profit organizations. While charities may properly share resources, this question allows the Attorney General’s office to probe whether each charity is establishing and exercising control over its fundraising, and whether it is engaging in deceptive acts or practices or any fraudulent conduct that creates a likelihood of confusion or misunderstanding. (Gov. Code, § 12599.6, subd. (b), (f)(1)-(4) (8).) There have been instances in which individuals have incorporated and operated multiple charities simultaneously for the purpose of deceptive solicitation practices and/or to report misrepresentations on their Form 990.
  - Add question: “Has the organization’s IRS tax-exempt status ever been denied, revoked, or modified? If yes, please explain circumstances on a separate sheet.” The amendment will allow the Registry to ensure that the charitable organization is in good standing with the IRS. (Cal. Code Regs., tit. 11, §§999.9 & 999.9.1.)
  - Add question: “Has the organization’s tax-exempt status ever been suspended or revoked by the Franchise Tax Board? If yes, please explain circumstances on a separate sheet.”

The amendment will allow the Registry to ensure that the charitable organization is in good standing with the FTB. (Cal. Code Regs., tit. 11, §§999.9 & 999.9.1.).

- Add question: “Has the organization’s corporate status ever been suspended or revoked by the Secretary of State?” If yes, please explain circumstances on a separate sheet.” The amendment will allow the Registry to ensure that the charitable organization is in good standing with the Secretary of State. (Cal. Code Regs., tit. 11, §§999.9 & 999.9.1.).
- Add question: “Are any officers, directors, trustees, or employees related by blood, marriage or adoption?” If yes, identify by name, title and relationship.” Charitable organizations are required to comply with the standards of conduct set forth in Section 5230 through 5239 and 7230 through 7238 of the Corporations Code. Section 5227 provides a limitation on interested persons serving on a board of directors. This question will elicit whether there are violations of section 5227. (Corp. Code, § 5227, Cal. Code Regs., tit. 11, §999.9, subd. (d).)
- Add question: “Has the organization or any of its officers, directors, or trustees been the subject of a court or administrative proceeding in any state regarding any solicitation or registration? If yes, please explain on a separate sheet.” The Attorney General has authority to refuse to register an organization if adverse action has been taken by a governmental entity related to the operation of the charity or the conduct of solicitation, including misuse of charitable assets and unlawful or misleading conduct related to solicitation for charitable purposes. (Cal. Code Regs., tit. 11, §§999.9 & 999.9.1.).
- Add question: “Have any of the organization’s officers, directors, or trustees been convicted of any crime involving the misuse or misappropriation of funds or any crime involving deception in the operation of a charity? If yes, identify by name and title.” The Attorney General has authority to refuse to register an organization if adverse action has been taken by a governmental entity related to the operation of the charity or the conduct of solicitation, including misuse of charitable assets and unlawful or misleading conduct related to solicitation for charitable purposes. (Cal. Code Regs., tit. 11, §§999.9.) This authority to refuse registration applies to the conduct of officers, directors, or key employees. (Cal. Code Regs., tit. 11, §§999.9, subd. (g)(2).)
- Insert the language on page 3: “Organizations with less than \$50,000 in either gross receipts or total assets are required to file Form CT-TR-1.”
- Additional minor proposed amendments to Form CT-1, which include a privacy notice pursuant to Civil Code section 1798.17, are made mainly for clarification and readability.

3. Instructions to Form CT-1 is a new attachment that will guide registrants how to correctly fill out and file Form CT-1. This includes specific instructions concerning: (1) which charitable organizations, including foreign corporations that do business in California, are required to file Form CT-1, and (2) how to claim exemption from registration and reporting if a hospital, educational institution, religious or mutual benefit corporation.

4. Section 300.1 is a new section that defines “educational institution.” Government Code section 12583 exempts an “educational institution” from the filing, registration, and reporting provisions of the Supervision of Trustees and Fundraisers for Charitable Purposes Act. This proposed amendment is intended to clarify the meaning of “educational institution” since the Act does not define the term and questions have arisen concerning the term. The definition references Corporations Code section 10251, public schools, and any non-profit organization that has four required elements: (1) primarily presents formal instruction, (2) maintains a regular faculty and curriculum, (3) has a regularly enrolled body of students, and (4) has either physical or virtual classroom facilities. The definition excludes organizations that primarily provide custodial care for children.

5. Section 300.2 is a new section that defines the government exemption under Government Code section 12583, which exempts “United States, any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or to any of their agencies or governmental subdivisions.” This proposed amendment is intended to clarify the government exemption, as applied to public benefit corporations, and has the following required elements: (1) the bylaws or articles show that the public benefit corporation was founded by government, to benefit government and its constituents, and that at dissolution all funds are transferred to the founding government, (2) the bylaws or articles demonstrate that government has the right to nominate or appoint members of the board, and (3) the founding government has the ability to prevent the loss of charitable assets through inspection rights, the right to conduct audits, or to obtain regular financial reports.

6. Section 301 provides for the periodic written reports required to be filed by charitable organizations with the Registry pursuant to the Act. The proposed amendments to Section 301:

- Provide for filing reports “under penalty of perjury,” which the forms already require. Government Code section 12586, subdivision (b), provides that “[t]he Attorney General shall make rules and regulations as to the ... contents [of reports filed], and the manner of executing and filing them.” Subdivision (a) of section 12586 states that periodic written reports shall be filed “under oath.” There is no substantive difference between filing under oath and filing under penalty of perjury.
- Insert the language “...the following reports must be filed with the Registry of Charitable Trusts annually by all registrants...” to clarify that there are two reports which must be filed annually.
- Insert the language “990-PF, 990-EZ, or 1120 as applicable” to clarify what forms are required to be filed with the Registry. These forms are accepted by the Registry based on what the registrant has filed with the IRS. Some registrants do not file the Form 990 with the IRS because they are not 501(c)(3) tax exempt, and instead file Form 1120. Therefore, the proposed amendments clarify that Form 1120 may be filed with the Registry. In this manner, a registrant is not burdened with filing a separate IRS form it would otherwise not be required to complete.



- Insert the language: “Organizations whose revenues fall below the threshold for filing IRS Form 990-EZ, shall file Form RRF-1 with the Registry, together with a treasurer’s report (Form CT-TR-1), hereby incorporated by reference, sufficient to identify and account for assets, liabilities, income and expenses.” The proposed treasurer’s report accounts for all assets, including revenue and disbursements. The IRS recently raised its filing threshold from \$25,000 to \$50,000. As a result, many registrants fall below the threshold and have no financial reporting requirement for the charitable assets under their control. Consequently, financial information on which donors rely to make giving decisions, and on which the Attorney General relies to assess whether directors, officers and trustees are protecting the charitable assets they hold in trust, is unavailable. Financial reporting is critical to the Attorney General’s statutory mandate to protect charitable assets, and to make financial information of charitable trustees and entities publicly available. The information posted on the Attorney General’s website helps donors make informed giving decisions and helps Attorney General staff analyze a registrant’s status and determine whether investigation or audit is necessary. Without this information, staff must send a written request for a financial report (pursuant to Government Code section 12588), which expends resources and delays assessment and correction of issues. The filing of a treasurer’s report does not create any appreciable burden as nonprofit public benefit corporations and charitable trustees in California are required to keep adequate books and records under existing law. (See Corp. Code, § 6320; Prob. Code, § 16063.) This duty requires that a nonprofit board of directors or trustee prepare, or have prepared, a treasurer’s report at least annually.

7. The proposed Annual Treasurer’s Report (“Form CT-TR-1”) will assist registrants, in compliance with the Section 301 amendments, to file an annual treasurer’s report. The form asks for basic financial information that includes assets, liabilities, income and expenses. This is information nonprofit organizations should have. Instructions to Form CT-TR-1 guide registrants how to correctly fill out and file the form.

8. The Annual Registration Renewal Fee Report (“Form RRF-1”) is required to be filed under the Act. The proposed amendments to the Form RRF-1:

- Move the spaces for Telephone Number and E-mail Address from the bottom to the top of the form for increased visibility and greater likelihood the form will be fully completed.
- Under Part A, insert question asking for percentage of Gross Annual Revenue that constitutes Noncash contributions. Noncash contributions, also known as gift-in-kind, can be used by charitable organizations to artificially inflate revenues. A charitable organization may also inflate the value of noncash contributions reported, to artificially reduce administrative and fundraising percentages. By improperly reporting noncash contributions, the donating public and the regulatory agencies that rely on charitable organization’s Form 990s to evaluate the organization’s efficiency are misled. The proposed percentage question will provide the public with valuable information on the percentage of noncash donations included in the reported total revenue.

- Under Part A, insert spaces for Registrants to include “Program Expenses” and “Total Expenses.” This amendment will assist donors in understanding the ratio of expenses that the organization spends on program and non-program expenses.
- Under Part B, delete question 3 which asks: “During this reporting period, did non-program expenditures exceed 50% of gross revenues?” Due to the proposed addition of information above in Part A concerning “Program Expenses” and “Program Expense %,” which provides more specific information than a “yes” or “no” answer, question 3 becomes superfluous and this amendment promotes efficiency, clarity and readability for registrants and donors.
- Under Part B, delete instructions asking for attachments that are duplicative of the Form RRF-1 Instructions. The amendment promotes efficiency, clarity and readability for registrants and donors.
- Under Part B, add a new question #9 concerning restricted net assets that will allow the Registry to identify charitable entities that serve as fiscal sponsors or fiscal agents, or otherwise hold assets in trust for unrelated charitable entities. The proposed question mirrors Government Code section 12599.8, and is necessary to enforce the statute. Identifying entities holding assets for unrelated charitable entities is necessary to allow Registry staff to assess their financial viability. This addition will reduce the likelihood of a fiscal sponsor defaulting and leaving no assets to reimburse charities for which it holds funds.
- Attach the privacy notice pursuant to Civil Code section 1798.17.

9. The proposed amendments to the Form RRF-1 Instructions:

- Delete the language, “The Form RRF-1 is a short form calling for the most current information available to the charity and is designed to close the reporting delays on significant issues of charity fiscal accountability.” This language is extraneous and proposed to be deleted for efficiency and readability.
- Correct a typographical error. The instruction on page 1 should read “even if the corporation **does not** file Form 990s annually ... .” (emphasis added.) This clarifies the reporting requirements for registrants pursuant to Government Code section 12586, subdivision (a). The filing requirement is applicable to all registrants, not just those that file Form 990s or those on extended reporting.
- Change the language to more clearly explain what organizations are required to file Form RRF-1.
- Replace the language “four months and fifteen days after the close of the organization’s calendar or fiscal year” with “no later than four months and fifteen days after the organization’s accounting period ends (May 15 for calendar year

filers).” This amendment makes no change to the deadline, but clarifies for registrants when their annual filing is due.

- Insert language that clarifies that a copy of IRS Forms 990, 990-PF, 990-EZ, or 1120 as filed with the IRS, together with all attachments and schedules, must be filed with the Registry. This language is proposed to clarify for registrants that the complete IRS Form, including attachments and schedules, must be filed with the Registry.
- Insert the language: “Organizations whose revenue falls below the threshold for filing IRS Form 990-EZ shall file Form RRF-1 with the Registry, together with a treasurer’s report (Form CT-TR-1) sufficient to identify and account for revenue, assets and disbursements. [See instructions for Form CT-TR-1.]” The proposed amendments to Section 301 require organizations that fall below the threshold for filing IRS Form 990-EZ (currently \$50,000 in annual gross receipts) to file a treasurer’s report annually with the Registry.
- Clarify the instructions concerning what revenue figure registrants should use to determine the applicable renewal fee. This change is necessary for clarity.
- Insert the language: “unless an amended report changes the amount of the fee due.” This clarification is necessary to alert registrants to the requirement to pay the correct fee, which is assessed on a sliding scale based on annual revenue. If an amended report changes the revenue to a higher fee level, an additional fee is due. This information is necessary to the Attorney General’s administration of registration and reporting requirements. (Gov. Code, § 12586, subd. (b).)
- Clarify the language explaining the State Charity Registration Number and other identification numbers, and how registrants may find those numbers. This amendment is minor and technical, and is necessary for clarity.
- Insert in Part A: “For each amount, report only whole dollars without rounding (e.g., \$100.99 should be reported as \$100).” This information is necessary for clarity and uniformity for reporting charitable organizations.
- Insert in Part B, proposed Question #6, the language: “each funding source.” This clarification is proposed to reduce the burden on the Registry and registrants. When filers provide an incomplete list of funding sources, the Registry must send a follow-up letter requesting complete information. This information is necessary to the Attorney General’s administration of registration and reporting requirements. (See Gov. Code, § 12586, subd. (b).)
- Insert in Part B, proposed Question #7, the language: “mailing address..... and e-mail address of each commercial fundraiser, fundraising counsel, or commercial coventurer.” This proposed clarification is intended to reduce the burden on the Registry and registrants. Filers need only provide the identity of fundraising professionals once – either in response to Question #4 or Question #7. This

information is necessary to the Attorney General's administration of registration and reporting requirements. (See Gov. Code, § 12586, subd. (b).)

- Insert in Part B, proposed Question #8 and #9, instructions to clarify how to answer those questions concerning vehicle donation programs and audited financial statements. These amendments are necessary for clarity.
- Insert in Part B an explanation of the request for signature of an authorized officer. This amendment is necessary to clarify who is an authorized officer, such as a president or chief executive officer.

10. Section 303 provides for the filing of written reports with the Registry. The proposed amendments to Section 303 are technical, and reflect the updated revision date of the Annual Registration Renewal Fee Report (Form RRF-1), the Treasurer's Report (Form CT-TR-1), whose proposal is discussed above under Section 301, and IRS Form 1120, as discussed above under Section 301.

11. Section 305 provides for the annual filing of reports with the Registry, including the deadline for such filing. The proposed amendments to Section 305 replace the language "not later than four (4) months and fifteen (15) days following the close of each calendar or fiscal year" with "no later than four months and fifteen days after the organization's accounting period ends (May 15 for calendar-year filers)." This amendment makes no change to the actual deadline, but clarifies for registrants when their annual filing is due. The proposed amendments to Section 305 also add the Treasurer's Report (Form CT-TR-1) and the IRS Form 1120 for registrants who file that form with the IRS, as discussed above under Section 301.

12. Section 306 pertains to the contents of periodic reports filed with the Registry. The proposed amendments to Section 306 make a non-substantive, technical change replacing "submitted under oath" with "executed under penalty of perjury," as already reflected in the current forms. Government Code section 12586, subdivision (a), states that periodic written reports shall be filed "under oath." Section 300 provides that the Form CT-1 be signed under penalty of perjury. There is no substantive difference between filing under oath and filing under penalty of perjury. A second amendment replaces the word "of" with "over" for clarity.

13. Section 307 provides for an extended reporting period for certain entities to file the IRS Form 990 whose gross revenue is under \$25,000 during any fiscal year and whose gross assets are under \$25,000 at all times during such year. The Attorney General has discretion to suspend the filing of reports pursuant to Government Code section 12586, subdivision (b). The proposed amendments delete Section 307 in its entirety. Recent IRS changes to the threshold for filing the 999-EZ from \$25,000 to \$50,000, and the proposed Form CT-TR-1 make Section 307 provisions, which provide that any organization with \$25,000 must file the 990-EZ, moot.

14. Section 308 provides for the registration, filing, and notice requirements for commercial fundraisers for charitable purposes. The proposed amendments to Section 308:

- Make a number of technical changes necessary for clarity, including making the title of the regulation more accurately reflect the content of the regulation, clarify that registrants are provided a registration number upon completion of the registration process, update the revision date for forms, clarify that reported revenue should be for nationwide numbers, and clarify that completed forms are signed under penalty of perjury.
- Insert the language: “Each registrant will be assigned a registration number upon completion of the registration process.” This language is added for clarification of existing practice and is necessary for the administration of the regulatory scheme.
- Insert the language under Section 308(a)(4): “and report all revenue raised nationwide; reporting is not restricted to revenue raised in California.” This language is necessary for clarification. California law requires commercial fundraisers for charitable purposes to file an annual financial report “accounting for all funds collected pursuant to any solicitation for charitable purposes during the preceding year.” (Gov. Code, § 12599, subd. (c).) The Registry receives inconsistent reports: some registrants provide revenue raised nationwide and others report only revenue raised in California.
- Insert the language under Section 308(e): “Each of the above-identified forms filed with the Attorney General shall be signed under penalty of perjury.” This will clarify the existing requirement that all forms filed with the Attorney General must be filed under penalty of perjury, as reflected on the current forms. Government Code section 12586, subdivision (a), requires that reports be filed “under oath.”

15. The proposed amendments to Form CT-1CF insert the question: “Does the commercial fundraiser for charitable purposes have a written contract with the charitable organization, in accordance with the provisions of Government Code sections 12599 and 12599.3?” This language is necessary to ensure that commercial fundraisers are in compliance with the statutory requirements that they have written contracts.

16. The proposed amendment to Form CT-1CF and the Form CT-1CF Instructions make technical, non-substantive changes and add a privacy notice pursuant to Civil Code section 1798.17. They are necessary for clarity and compliance.

17. The proposed amendments to Forms CT-2CF, CT-2TCF, CT-2VCF, CT-3CF, CT-5CF, CT-6F, CT-8CF, CT-9CF, and CT-10CF add a privacy notice pursuant to Civil Code section 1798.17. They are necessary for clarity and compliance.

18. The proposed amendments to Forms CT-2CF, CT-2TCF, CT-2VCF, CT-3CF, CT-5CF, CT-6CF, insert a line for registrants to write in an e-mail address as an additional means of contacting the registrant. This addition provides another means of contacting the commercial fundraiser and ensures the commercial fundraiser receives important notices and communications.

19. The proposed amendments to Forms CT-2CF, CT-2VCF, CT-6CF, and their respective form instructions, remove the language “national vs. state campaign.” This amendment is

necessary to clarify existing law, which does not limit reporting to funds raised in the State of California. Existing law requires commercial fundraisers for charitable purposes to file an annual financial report accounting for all funds collected pursuant to any charitable solicitation during the preceding year.” (Gov. Code, § 12599, subd. (c).) The Registry receives inconsistent reports: some provide revenue raised nationwide and others report only revenue raised in California.

20. The proposed amendments to Form CT-2VCF, line 5, clarify the distinction between “total amount to charity” versus “net proceeds.” The corrected term should read “proceeds,” not “proceedings.” The substitution of “net” in place of “total” is necessary to clarify existing reporting requirements and to avoid registrant confusion. Line 5 reports the amount received by charity after deduction of all additional expenses reported on Line 4. Thus, the correct term is “net” rather than “total.”

21. The proposed amendments to Forms CT-3CF, CT-4CF, and CT-5CF and their respective instructions make non-substantive, technical clean-up changes to the existing forms and instructions necessary for clarification.

22. The proposed amendment to Form CT-5CF deletes the check boxes regarding the commercial coventurer’s activities and instead requests a brief explanation of its activities. This amendment will promote efficiency, readability, and specificity by reducing space on the form and allowing the commercial coventurer to provide specific information that may not be available among the check boxes.

23. The proposed amendments to Form CT-6CF and instructions, in addition to removing the language “national vs. state campaign” language described above, make non-substantive, technical clean-up changes to the existing form and instructions necessary for clarification.

24. The proposed amendments to Forms CT-8CF, CT-9CF, and CT-10CF and their respective instructions make non-substantive, technical clean-up changes to the existing form and instructions necessary for clarification.

25. The proposed amendments to Form CT-11CF delete “SOLICIT” in the title of the form and replaces it with “PROVIDE SERVICES RELATED.” This change is made to correct an error in the title because the form is submitted by fundraising counsel which, pursuant to Government Code section 12599.1, do not solicit for charitable purposes. The other proposed amendments to Form CT-11CF and instructions make non-substantive, technical clean-up changes necessary for clarification.

26. Section 309 is a new section, stating: “The Attorney General may require that all instruments, reports or other data be filed electronically and may require the use of electronic signatures.” The Attorney General intends to make reports available to be filed electronically as a convenience for registrants and for greater efficiency. This amendment clarifies that such reports may be made electronically and through use of electronic signatures.

Penal Code section 320.5 and the Department of Justice Regulations for the Nonprofit Raffle Program set forth the Attorney General's authority over eligible organizations authorized to conduct raffles in California. (Sections 410 through 426 of Title 11, California Code of Regulations.) Section 320.5 and the Nonprofit Raffle Program regulations require the registration and the filing of reports by eligible organizations with the Attorney General's office. The proposed amendments to the Nonprofit Raffle Program regulations include the following:

27. Section 411 provides definitions applicable to the raffle regulations. The proposed amendments make minor technical changes, updating the revision date of two raffle forms, Form CT-NRP-1 and Form CT-NRP-2.

28. Section 415 provides that every eligible organization shall, prior to conducting any raffle, be registered with DOJ in the Nonprofit Raffle Program. The proposed amendment makes a minor technical change to update the revision date of the registration application Form CT-NRP-1.

29. The proposed amendments to Form CT-NRP-1 request the date the organization first qualified to conduct business in the State of California. The proposed instructions to Form CT-NRP-1 explain how to determine the date. An applicant must be qualified to do business for at least one year prior to conducting a raffle. Making this explicit in the application will assist the Registry in enforcing the statutory requirement and put the applicant on notice of the requirement. The proposed amendments to Form CT-NRP-1 include technical, non-substantive amendments necessary for readability and clarity, including moving requested information around the page and deleting superfluous information. The proposed amendments also add instructions to assist applicants complete and file Form CT-NRP-1.

30. Section 416 provides the address for filing raffle applications and other materials. The proposed amendment deletes the old telephone number and email address. The Registry contact information is listed on the Attorney General website and that information is superfluous in the text of regulations.

31. Section 420 provides that every eligible organization that is registered shall file, on or before October 1 of each year, a single report for the raffle or raffles conducted. The proposed amendment makes a minor technical change to update the revision date of the raffle report Form CT-NRP-2.

32. The proposed amendments to Form CT-NRP-2 are technical, non-substantive amendments made for readability and clarity, including deleting superfluous information. The proposed amendment adds a new question: "Did direct costs exceed 10% of gross receipts and did your organization use funds from sources other than from ticket sales to offset costs?" If registrants answer "no" to this question, they do not have to answer additional questions that do not apply to them, thereby saving time and increasing efficiency. The proposed amendments also add a new question to confirm that raffle funds were not used for any purpose outside California. Penal Code section 320.5 prohibits such use outside California. The proposed amendments also add instructions to assist applicants complete and file Form CT-NRP-2.

#### **IV. Technical, Theoretical, and/or Empirical Studies, Reports or Documents**

The Attorney General did not rely upon any technical, theoretical, or empirical study, report, or other similar document in proposing these amendments.

#### **V. Economic Impact Assessment/Analysis**

The Attorney General does not anticipate that these regulations will have any impact in creating or eliminating jobs within the State of California, creating or eliminating businesses in the State of California, or any impact on the expansion of businesses in the State of California. Clarifying regulations and making the forms and reports that charitable organizations and trustees file with the Registry easier to understand will benefit registrants and help prevent incorrect or incomplete reporting. Clarifying the language will help Registry staff save time and resources as fewer errors or missing information require follow-up. The filing of a treasurer's report does not create any additional burden as every charitable entity is required to keep adequate books and records of account. (See Corp. Code, § 6320; Prob. Code, § 16063.)

#### **VI. Reasonable Alternatives to the Proposed Amendments to Regulations and Related Forms and the Agency's Reasons for Rejecting those Alternatives**

Adoption of the proposed amendments is necessary to enable the Attorney General to carry out his enforcement responsibilities pursuant to the Act. No reasonable alternatives to the regulations were proposed or identified. The Attorney General determined the proposed regulations will not have a statewide adverse impact on small business, and therefore no alternatives that would lessen the impact were considered.

#### **VII. Reasonable Alternatives to the Proposed Regulatory Action that would Lessen any Adverse Impact on Small Business**

Non-profit organizations are excluded from the definition of a small business under Government Code section 11342.610, subdivision (b)(6). To the extent that professional fundraisers are small businesses, these changes do not impose any substantive additional requirements and there are no reasonable alternatives.

#### **VIII. Facts, Evidence, Documents, Testimony, Etc. Supporting Determination of No Significant Adverse Economic Impact on Business**

The proposed amendments to the forms that charities and other organizations are already required to file with the Registry of Charitable Trusts are generally clarifications and minor technical amendments that will have no adverse impact on such organizations. Most of the proposed changes are clarifications and improved instructions that will reduce the amount of time it will take to complete the forms which these organizations are already required to file with the Registry. The Form CT-TR-1 and questions on other required forms request information that charitable organizations have and are easily accessible. Therefore, the proposed amendments will have no significant adverse economic impact on business.



**IX. Mandates**

The proposed regulatory action does not mandate the use of specific technologies or equipment, or prescribe specific actions or procedures.

**X. Regulations Mandated by Federal Law (Gov. Code § 11346.2(c).)**

This proposal does not contain one or more regulations that are identical to one or more corresponding federal regulations.

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