

CALIFORNIA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

June 25, 2015

**NOTICE OF MODIFICATIONS TO TEXT OF  
PROPOSED REGULATIONS**

Pursuant to Government Code section 11346.8, subdivision (c), and California Code of Regulations, title 1, section 44, the Department of Justice is providing notice of changes made to proposed regulations in Title 11, sections 313, 314, 315, 316, 999.6, 999.7, 999.8, 999.9, 999.9.1, 999.9.2, 999.9.3, 999.9.4 and 999.9.5, that were noticed on September 26, 2014.

If you have any comments regarding the proposed changes, the Department of Justice will accept written comments between Thursday, June 25, 2015 and Monday, July 13, 2015. All written comments must be submitted to the Department of Justice no later than 5:00 p.m. on Monday, July 13, 2015, and addressed to:

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All written comments received by 5:00 p.m., on or before close of business on Monday, July 13, 2015, pertaining to the indicated changes will be reviewed and responded to by the Department of Justice's staff as part of the compilation of the rulemaking file. Please limit your comments to the modifications to the text.

**TITLE 11. LAW  
DIVISION 1. ATTORNEY GENERAL  
CHAPTER 4. REGULATIONS ADOPTED PURSUANT TO THE SUPERVISION OF  
TRUSTEES AND FUNDRAISERS FOR CHARITABLE PURPOSES ACT**

**Text of Modified Regulations**

The Office of the Attorney General has illustrated changes to the original text in the following manner: regulation language originally proposed is underlined in blue; additions to the language originally proposed are double underlined in blue; regulation language originally deleted is in red strikethrough using a "-"; and deletions from the proposed language are shown in red double strikethrough using a "-".

### § 313. Address of Record.

Every registrant and applicant is responsible for keeping the Registry of Charitable Trusts informed of the registrant's or applicant's current address. Any notice, order or document issued by the ~~Registry~~ Attorney General shall be deemed properly served if mailed to the registrant's or applicant's address of record. The address of record is the address listed on the most recent registration or renewal form filed with the Registry unless the registrant or applicant has subsequently notified the Registry of a change of address in writing.

Note: Authority cited: Sections 12584, 12585, 12586(a) and (b) and 12587, Government Code. Reference: Sections 12594, 12598(a), 12599, 12599.1, 12599.2, Government Code.

### § 314. ~~Grounds for Issuance of Cease and Desist Order.~~

~~(a)~~ The grounds upon which a cease and desist order may be issued include, but are not limited to, the following:

~~(1)~~(a) Refusal or failure, after notice, to produce ~~any~~ records of the organization or to disclose ~~any~~ information required to be disclosed.

~~(2)~~(b) Making a material false statement in an application, statement, or report required to be filed.

~~(3)~~(c) Failure to file a financial report, or filing an incomplete financial report.

~~(4)~~(d) Engaging in any act prohibited pursuant to Government Code section 12599.6.

(e) Engaging in any act that requires registration under Government Code section 12580 et seq., if unregistered, delinquent, suspended or revoked. Such acts include but are not limited to, solicitation for charitable purposes.

(f) Violation of a cease and desist order constitutes disobedience of or resistance to a lawful order pursuant to Government Code section 11455.10. The Attorney General may pursue a contempt sanction for violations pursuant to Government Code section 11455.20, in addition to any other remedy otherwise available to the Attorney General.

Note: Authority cited: Sections 11400 et seq. and 11500 et seq., 12581, 12584, 12585, 12587, 12598, Government Code. Reference: Sections 12581, 12581.2, 12584, 12585, 12586, 12588, 12591, 12591.1, 12595, 12596, 12597, 12599, 12599.1, 12599.2, 12599.6 and 12599.7, Government Code; Sections 17510, 17510.2, 17510.25, 17510.3, 17510.4, 17510.5, 17510.8, 17510.85, 17510.9, Business and Professions Code;

[Sections 5142, 5230, 51231, 5232, 5233, 5235, 5236, 5237, 5238, 6215, 7231, 7233, 7236, 7237 and 7238, Corporations Code.](#)

*Comment: Subsection (a)(1): The word “any” is removed to avoid confusion. All of the requested information must be produced and failure to do so constitutes grounds for the issuance of a cease and desist order.*

*Subsection (a)(5) clarifies that the cease and desist authority extends to unregistered entities. A person or entity that is required to be registered with the Registry of Charitable Trusts cannot operate unless it is both registered and its registration status is current and in good standing.*

*Subsection (a)(6) clarifies that violation of a cease and desist order is “[d]isobedience of or resistance to a lawful order,” that is subject to the contempt sanction under Government Code section 11455.10, subdivision (a).*

### **§ 315. Imposition of Penalty.**

~~(a) Penalties imposed on any person or entity shall not exceed one thousand dollars (\$1,000) per act or omission, for each act or omission that constitutes a violation of the Supervision of Trustees and Fundraisers for Charitable Purposes Act (Government Code section 12580 et seq.) or Chapter 15 (commencing with section 999.6) of Division 4 of Title 11 of the California Code of Regulations.~~

~~(b) At least five days prior to imposing the penalty, the Attorney General shall provide notice to the person or entity that committed the violation by certified mail to the address of record.~~

~~(c) Penalties shall accrue, commencing on the fifth day after notice is given, at a rate of one hundred dollars (\$100) per day for each day until that person or entity corrects that violation. When the Attorney General determines that the violation has been corrected, the Attorney General shall issue a written notice identifying the beginning and ending dates of the violation along with the total amount of the penalties accrued by the person or entity committing the violation.~~

~~(d) Unless a timely appeal has been filed, all penalties must be paid within thirty (30) days of the issuance of the notice setting forth the amount of the penalty, unless the Attorney General has agreed to a later date in writing.~~

(a) The Attorney General may assess a penalty pursuant to Government Code section 12591.1, not to exceed \$1,000 for each act or omission that constitutes a violation. To assess a penalty, the Attorney General shall serve a written notice by certified mail that states the basis of the violation and the amount of the penalty.

(1) For violations of Government Code section 12586.1, subdivisions (c), (d), (e) or (f), the notice must be mailed at least 30 days before the penalty becomes effective. The notice shall advise the recipient how to correct or appeal the violation. If the recipient provides documentation to the Attorney General within 30 days that the violation has been corrected the penalty will not be imposed.

(2) For other violations, the notice shall be mailed at least 5 days before the penalty becomes effective. When the violation occurs in connection with a solicitation for charitable purposes, each call, mailing or request constitutes a separate violation regardless of whether it results in a donation.

(3) If the act or omission that constitutes a violation is ongoing, the notice may include a statement that penalties shall continue to accrue at a rate of \$100 per day for each day until the violation is corrected. The notice shall advise the recipient how to correct the violation and how to inform the Attorney General that the violation has been corrected. When the Attorney General determines that the violation has been corrected, the Attorney General shall issue a written notice identifying the beginning and ending dates of the violation along with the total amount of the penalty.

(b) Appeals shall be made in accordance with California Code of Regulations, title 11, section 999.6, subdivision (c). Unless a timely appeal has been filed, all penalties must be paid within 30 days of the issuance of the notice setting forth the amount of the penalty, unless the Attorney General has agreed to a later date in writing.

Note: Authority cited: Sections 11400 et seq., and 11500 et seq., 12581, 12584, 12585, 12587, 12598, Government Code. Reference: Sections 12581, 12581.2, 12584, 12585, 12586, 12588, 12591, 12591.1, 12595, 12596, 12597, 12599, 12599.1, 12599.2, 12599.6 and 12599.7, Government Code; Sections 17510, 17510.2, 17510.25, 17510.3, 17510.4, 17510.5, 17510.8, 17510.85, 17510.9, Business and Professions Code; Sections 5142, 5230, 51231, 5232, 5233, 5235, 5236, 5237, 5238, 6215, 7231, 7233, 7236, 7237 and 7238, Corporations Code.

*Comment: This provision has been rewritten for purposes of clarity and to address issues raised in the comments. Subsection (a) reflects that the Attorney General may assess penalties up to \$1,000 for violations.*

*Subsection (a)(1) reflects that pursuant to Government Code section 12591.1, subdivision (i), violations of Government Code section 12586.1, subdivisions (c), (d), (e) or (f) are treated differently than other violations. The recipient will be given 30 days*

*notice and an opportunity to correct the violation before a penalty can be imposed. If the recipient corrects the violation within the 30 days, no penalty will be imposed.*

*Subsection (a)(2) applies to all other violations for which penalties may be assessed under the Supervision Act and related laws. In response to comments, the subsection now codifies existing law that in connection with a solicitation, each solicitation constitutes a separate violation, regardless of the medium used and regardless of whether the solicitation results in a donation.*

*Subsection (a)(3) clarifies that if the recipient refuses to stop violating the law after receiving 5 days notice of the violation from the Attorney General, an additional penalty of \$100 per day per violation may be assessed until the recipient stops violating the law.*

*Subsection (b) clarifies that appeals of penalties will be handled in the same manner as other administrative appeals. Currently, the Department of Justice contracts with the Office of Administrative Hearings to provide administrative law judges to conduct administrative hearings to adjudicate administrative appeals.*

### **§ 316. -Suspension of Registration.**

(a) If the Attorney General assesses penalties under section 315, the Attorney General may suspend the registration of that person or entity in accordance with the procedures set forth in section 999.6 et seq. of Title 11 of the California Code of Regulations.

(b) The registration of any person or entity that fails to timely pay a ~~civil~~ penalty shall be automatically suspended until the ~~fine~~ penalty is paid and no registration shall be renewed until the ~~fine~~ penalty is paid.

Note: Authority cited: Sections 11400 et seq., and 11500 et seq. 12581, 12584, 12585, 12587, 12598, Government Code. Reference: Sections 12581, 12581.2, 12584, 12585, 12586, 12588, 12591, 12591.1, 12595, 12596, 12597, 12599, 12599.1, 12599.2, 12599.6 and 12599.7, Government Code; Sections 17510, 17510.2, 17510.25, 17510.3, 17510.4, 17510.5, 17510.8, 17510.85, 17510.9, Business and Professions Code; Sections 5142, 5230, 51231, 5232, 5233, 5235, 5236, 5237, 5238, 6215, 7231, 7233, 7236, 7237 and 7238, Corporations Code.

*Comment: The proposed regulations used different terms to refer to penalties, including fine and civil penalty. The language has been revised to be consistent. This is not a substantive change.*

TITLE 11. LAW  
DIVISION 1. ATTORNEY GENERAL  
CHAPTER 15. ATTORNEY GENERAL REGULATIONS ~~UNDER NONPROFIT  
CORPORATIONS LAW REGARDING THE ADMINISTRATIVE ENFORCEMENT  
REVIEW APPLICABLE TO VIOLATIONS~~ OF THE SUPERVISION OF TRUSTEES  
AND FUNDRAISERS FOR CHARITABLE PURPOSES ACT

**§ 999.6. ~~Charitable Entity Registration Refusal, Revocation or  
Suspension.~~ Violations of Government Code section 12580 et seq.**

(a) The Attorney General may ~~refuse to register, or revoke, or suspend the registration of a charitable corporation, trustee, commercial fundraiser, fundraising counsel, and coventurer, for the reasons as specified in Section 12598, subdivision (e), of the Government Code.~~ take administrative action for violations of section 12580 et seq. of the Government Code, including but not limited to:

(1) refuse to register, or revoke, or suspend the registration of a charitable corporation, trustee, commercial fundraiser, fundraising counsel, and or coventurer for the reasons as specified in section 12598, subdivision (e), of the Government Code.

(2) issue a cease and desist order against any person or entity for reasons specified in section 12591.1, subdivision (b), of the Government Code.

(3) impose a ~~civil~~ penalty on any person or entity for reasons specified in section 12591.1, subdivision (c), of the Government Code.

(b) When ~~a registration is refused, revoked, or suspended,~~ an administrative action is taken, the Attorney General shall provide a written notice ~~which specifies~~ specifying the reasons for the action.

(c) ~~If the registrant seeks to appeal a registration action, it must request a hearing by filing a written appeal~~ An appeal of the Attorney General's administrative action must be filed with the Registrar of Charitable Trusts within ~~thirty (30)~~ calendar days of the date of the written notice's issue date or the right to appeal is waived and the notice becomes the final order of the Attorney General.

(1) The appeal must be in writing and shall ~~must~~ include: ~~The written appeal shall contain~~ the name and entity affiliation (if any), address and telephone number of the person appealing, the registration number (if any), and a statement of the basis of appeal.

(2) Notice of the hearing date, time and place shall be provided in accordance with the procedures set out in Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The failure of the person or entity ~~who has~~

~~appealed~~ to appear at the time and place of the hearing shall be deemed a withdrawal of the appeal, and the written notice of the ~~registration refusal, revocation, or suspension, the imposition of civil penalty, or the cease and desist order~~ administrative action shall constitute the Attorney General's final order subject to no further administrative review.

(d) All hearings provided for under this regulation shall be conducted by an administrative hearing officer appointed by the Attorney General. The hearing officer shall not have participated in the decision concerning the ~~registration, civil penalty, or the cease and desist order~~ administrative action that is the subject of the hearing, and is otherwise subject to the disqualification provisions of sections 11425.30 and 11425.40 of the Government Code.

(e) All hearings under this regulation shall be conducted in accordance with the procedures set out in Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except ~~where as applicable these~~ for provisions requiring the designation of administrative law judges.

(f) Except as otherwise prohibited by law, the Attorney General may delegate any of the powers and duties under sections 12598, subdivision (e), and 12591.1, subdivisions (b) and (c) of the Government Code and under these regulations to Department of Justice staff.

~~Note: Authority cited: Section 12598(e), Government Code. Reference: Sections 11400, et seq. and 11500, et seq., Government Code.~~

Note: Authority cited: Sections 11400 et seq. and 11500 et seq., 12581, 12584, 12585, 12586, 12587, 12598, Government Code; Reference: Sections 12581, 12581.2, 12584, 12586, 12588, 12591, 12591.1, 12595, 12596, 12597, 12598(e), 12599, 12599.1, 12599.2, 12599.6, 12599.7, 12599.8, Government Code; Sections 17510, 17510.2, 17510.25, 17510.3, 17510.4, 17510.5, 17510.8, 17510.85, 17510.9, Business and Professions Code; Sections 5142, 5230, 5231, 5232, 5233, 5235, 5236, 5237, 5238, 6215, 7231, 7233, 7236, 7237 and 7238, Corporations Code.

*Comment: The proposed regulations used different terms to refer to penalties, including fine and civil penalty. The language has been revised to be consistent. This is not a substantive change.*

*Changes to subsections (b), (c), (d) and (e) are for clarity and are not substantive changes. The term administrative action is used instead of attempting to separately list the potential types of administrative actions. The term administrative action includes registration refusal, revocation, suspension, the imposition of civil penalty, or a cease and desist order.*

*Subsection (f) has been modified to include the Attorney General's authority to issue cease and desist orders and penalties pursuant to Government Code section 12591.1.*

*For purposes of clarity, references to the Registry of Charitable Trusts, the Registrar of Charitable Trusts and the Attorney General's Office have been changed to the Attorney General. These changes are for consistency and are not a change in substance.*

#### **§ 999.7. Review of Hearing Officer's Proposed Decision.**

(a) Within 15 days after service of the hearing officer's proposed decision as provided for in Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, any party to an ~~an registration or a civil penalty action, or to a cease and desist order~~ administrative action may file a written brief served on all parties seeking review by the Attorney General of the proposed decision. Failure of a party to timely file such a brief waives the party's right to such a review.

##### (b) Briefing Procedure

(1) No later than 15 days after service of the written brief requesting review of the proposed decision, an opposition to the request (if any) must be filed and served on the parties.

(2) The parties' briefing may address the following:

(A) Whether the facts stated in the proposed decision are consistent with the evidence presented;

(B) Whether the proposed decision contains an accurate statement and/or application of the law; and

(C) Whether additional evidence exists that could not, with reasonable diligence, have been discovered and presented at the administrative hearing.

(3) The Attorney General may in his/her discretion upon a showing of good cause, extend the time requirements set forth herein unless irreparable harm would result from granting such an extension.

~~Note: Authority cited: Section 12598(e) Government Code. Reference: Sections 11517, 11518.5, and 11519 Government Code.~~

Note: Authority cited: Sections 11400 et seq. and 11500 et seq., 12581, 12584, 12585, 12586, 12587, Government Code; Reference: Sections 11517, 11518.5, 11519, 12581, 12581.2, 12584, 12586, 12588, 12591, 12591.1, 12595, 12596, 12597, 12598(e), 12599, 12599.1, 12599.2, 12599.6, 12599.7, 12599.8, Government Code; Sections 17510, 17510.2, 17510.25, 17510.3, 17510.4, 17510.5, 17510.8, 17510.85, 17510.9, Business and Professions Code; Sections 5142, 5230, 5231, 5232, 5233, 5235, 5236, 5237, 5238, 6215, 7231, 7233, 7236, 7237 and 7238, Corporations Code.



*Comment: The proposed regulations used different terms to refer to penalties, including fine and civil penalty. The language has been revised to be consistent. This is not a substantive change.*

*The term administrative action is used instead of attempting to separately list the potential types of administrative actions. The term administrative action includes registration refusal, revocation, suspension, the imposition of civil penalty, or a cease and desist order.*

#### **§ 999.8. Final Attorney General Decision.**

(a) Upon completion of the briefing process or after 15 days of service of the proposed decision, the Attorney General may do any of the following:

(1) Adopt the proposed decision in its entirety.

(2) Reduce or otherwise mitigate the proposed decision in its entirety.

(3) Make technical or non-substantive changes which do not affect the factual or legal basis of the proposed decision and adopt it as the final decision.

(4) Non-adopt the proposed decision. If the proposed decision is not adopted, the Attorney General may decide the case upon the record, including the transcript, or may refer the case back to the hearing officer to take additional evidence. If the case is remanded back to the hearing officer for taking additional evidence, another proposed decision shall be prepared based upon this additional evidence. The proposed decision shall be subject to the review and adoption procedures set out in these regulations.

(A) Before deciding any case on the record, the Attorney General shall give the parties the opportunity to present further written argument.

(B) If the record and/or the parties' arguments reveal the need for additional evidence, the Attorney General in his/her discretion may order the taking of additional evidence either by the Attorney General or by the hearing officer. Following the receipt of any additional evidence, the Attorney General may require further written or oral argument before deeming the case submitted for final decision.

(b) The proposed decision shall be deemed adopted by the Attorney General 100 days after service of the proposed decision by the hearing officer, unless within that time: (1) the Attorney General notifies the parties that the proposed decision is or is not adopted or is otherwise modified, or (2) the matter is referred to the hearing officer to take additional evidence.

(c) The decision shall become effective 30 days after it is mailed to the parties, unless reconsideration of the decision is ordered within that time or the Attorney General orders that the decision shall become effective sooner.

(d) The Attorney General may designate as precedent the decision or any part thereof that contains a significant legal or policy determination that is likely to recur.

(1) Once a decision is designated as precedent, parties may cite to such decisions in their briefs to the Attorney General, hearing officer, and the courts.

(2) If the Attorney General decides to designate precedent decisions under this regulation, then an index of significant legal and policy determinations made in these decisions shall be maintained and made available to the public at the Charitable Trust Registry as well as publicized annually in the California Regulatory Notice Register. The index shall be maintained at least annually, unless no precedent decisions have been designated since the last preceding update.

~~Note: Authority cited: Section 12598 (e) Government Code. Reference: Sections 11425.10(a)(7), 11425.60, 11517, 11518.5, and 11519 Government Code.~~

Note: Authority cited: Sections 11400 et seq. and 11500 et seq., 12581, 12584, 12585, 12586, 12587, 12598, Government Code; Reference: Sections 11425.10(a)(7), 11425.60, 11517, 11518.5, 11519, 12581, 12581.2, 12584, 12586, 12588, 12591, 12591.1, 12595, 12596, 12597, 12598(e), 12599, 12599.1, 12599.2, 12599.6, 12599.7, 12599.8, Government Code; Sections 17510, 17510.2, 17510.25, 17510.3, 17510.4, 17510.5, 17510.8, 17510.85, 17510.9, Business and Professions Code; Sections 5142, 5230, 5231, 5232, 5233, 5235, 5236, 5237, 5238, 6215, 7231, 7233, 7236, 7237 and 7238, Corporations Code.

#### § 999.9. -Grounds for Refusal, Revocation or Suspension.

~~(a)~~ The grounds for which a registration may be refused, suspended or revoked include, but are not limited to:

~~(1)~~ (a) Misuse of charitable assets.

~~(2)~~ (b) False or misleading statements and/or conduct in connection with a solicitation for charitable purposes, including any conduct in violation of sections 17510 et seq. through 17510.95 of the Business and Professions Code and section 12599.6 of the Government Code.

- ~~(3)~~ (c) False or misleading statements in a document required by law to be filed with a government agency, including the annual registration and renewal reports filed with the Attorney General and informational returns filed with the Internal Revenue Service and Franchise Tax Board. The omission of material information in response to a question in a document required by law to be filed with a government agency constitutes a false or misleading statement.
- ~~(4)~~ (d) Failure to comply with the Standards of Conduct for nonprofit corporations in sections 5230 through 5239 and 7230 through 7238 of the Corporations Code.
- ~~(5)~~ (e) Failure to prepare annual financial statements using generally accepted accounting principles that are audited by an independent certified public accountant in conformity with generally accepted auditing standards, as required by section 12586, subdivision (e), of the Government Code.
- ~~(6)~~ (f) Failure to produce records in response to a subpoena or written request from the Attorney General.
- ~~(7)~~ (g) An adverse action by a governmental entity related to the operation of a charity or the conduct of a solicitation for charitable purposes, including misuse of charitable assets and unlawful or misleading conduct related to solicitation for charitable purposes.
- ~~(A)~~ (1) An adverse action by a governmental entity, includes, but is not limited to, suspension, revocation or denial of registration, civil or criminal judgment, assessment of a fine, administrative or civil penalty, entry of assurance of voluntary compliance or enforceable settlement agreement, or an equivalent action regardless of its title.
- ~~(B)~~ (2) This includes any entity which that has an officer, director, or key employee, or which is owned or operated by a person who was the subject of an adverse action or who owned or operated such an entity, or was directly involved in such actions.

Note: Authority cited: Sections 11400 et seq. and 11500 et seq., 12581, 12584, 12585, 12586, 12587, 12598, Government Code; Reference: Sections 11425.10(a)(7), 11425.60, 11517, 11518.5, 11519, 12581, 12581.2, 12584, 12585, 12586, 12588, 12591, 12591.1, 12595, 12596, 12597, 12599, 12599.1, 12599.2, 12599.6 and 12599.7.

Government Code; Sections 17510, 17510.2, 17510.25, 17510.3, 17510.4, 17510.5, 17510.8, 17510.85, 17510.9, Business and Professions Code; Sections 5142, 5230, 5231, 5232, 5233, 5235, 5236, 5237, 5238, 6215, 7231, 7233, 7236, 7237 and 7238, Corporations Code.

*Comment: The modification to subsection (7)(a) clarifies that penalties imposed by other governmental agencies constitute an adverse action for purposes of this section regardless of the nomenclature or characterization used by the government entity.*

**§ 999.9.1. -Automatic Suspension.**

(a) A registration shall be automatically suspended if any of the following occur:

- (1) The organization's tax-exempt status is suspended or revoked by the Internal Revenue Service or Franchise Tax Board.
- (2) The registrant fails to file the periodic written reports~~a complete Form RRF 1~~ required by California Code of Regulations, title 11, section 301, for three consecutive years.~~The Form RRF 1 is not complete if it is not accompanied by the required attachments, renewal fee and the appropriate informational return filed with the Internal Revenue Service.~~
- (3) A corporation's corporate status is suspended or revoked by the California Secretary of State.
- (4) Failure of a commercial fundraiser for charitable purposes to maintain a valid bond or cash deposit in the amount required by law.~~The registration of a commercial fundraiser for charitable purposes, fundraising counsel or commercial coventurer shall be automatically suspended if any of the following occur:~~
  - ~~(A) Failure to file a completed annual registration form, including the payment of the required fees, on or before January 15;~~
  - ~~(B) Failure of a commercial fundraiser to maintain a valid bond or cash deposit in the amount of \$25,000; or~~
  - ~~(C) Failure to file completed annual financial reports on or before January 30.~~

- (5) Failure of a commercial fundraiser for charitable purposes, fundraising counsel for charitable purposes or commercial coventurer to file a completed annual registration form, including the payment of the required fees, on or before January 15. This provision does not apply to a commercial coventurer that meets the exemption requirements of Government Code section 12599.2(b).
- (6) Failure of a commercial fundraiser for charitable purposes or a commercial coventurer to file completed annual financial reports on or before January 30. This provision does not apply to a commercial coventurer that meets the exemption requirements of Government Code section 12599.2(b).
- (b) Prior to suspending the registration, the Attorney General shall mail a notice to the registrant. The notice shall identify the reason for the suspension and shall provide information to the registrant about what is needed to resolve the suspension. If the Attorney General does not receive the information needed to resolve the suspension within 30 days of the issuance of the notice, the registration is suspended.
- (c)~~(b)~~ A registrant must notify the Attorney General in writing within 10 ~~five~~ days of any change in its tax-exempt status or corporate status.
- (d)~~(c)~~ A registration ~~which~~ that has been continuously suspended for one year pursuant to this regulation shall be automatically revoked.
- (e)~~(d)~~ A registrant whose registration has been automatically suspended may appeal the suspension in the manner prescribed by section 999.6 et seq., however, the suspension shall remain in effect while the appeal is pending.
- (f)~~(e)~~ The registration of any person or entity that fails to timely pay a ~~civil~~ penalty shall be automatically suspended until the fine is paid and no registration shall be renewed until the fine is paid.
- (g) The Attorney General may stay or set aside, in writing, the suspension order and may require the registrant to comply with specific terms and conditions to stay or set aside the suspension order.
- (h) The suspension will remain in effect until the Attorney General notifies the organization in writing that the suspension has been set aside.

Note: Authority cited: Sections 11400 et seq. and 11500 et seq., 12581, 12584, 12585, 12586, 12587, 12597, 12598, Government Code. Reference Sections 12599, 12599.1, 12599.2, 12599.5, Government Code; Sections 2205, 5008.6, 6810, 8810 and 6910, Corporations Code; Section 23775, Revenue and Taxation Code.

*Comment: The proposed regulations used different terms to refer to penalties, including fine and civil penalty. The language has been revised to be consistent. This is not a substantive change.*

*Subsection (a)(2) has been modified for clarity. Section 301 sets forth the reports that must be filed with the Registry annually, including the Form RRF-1, a copy of the informational return filed with the Internal Revenue Service and the renewal fee. A registrant that fails to file all of the required documents for three consecutive years will be automatically suspended.*

*Subsection (b) has been added in response to comments regarding the impact and implementation of the automatic suspension provisions. Registrants will receive a 30 day notice and opportunity to cure the violation before the automatic suspension is imposed.*

*Subsections (b) through (e) have been renumbered as a result of the addition of a new subsection (b).*

*Subsection (c) has been modified in response to comments. The time period to notify the Attorney General of a change in an organizations tax exempt or corporate status has been increased to 10 days.*

*Subsections (g) and (h) have been added in response to comments raising concerns about ending or staying the suspension and circumstances in which the suspension can be stayed without harming the public.*

### **§ 999.9.2. Refusal to Renew Registration.**

(a) The ~~Registry of Charitable Trusts~~ Attorney General may refuse to renew the registration of any registrant ~~which~~ that has:

- (1) Failed to file a document with the ~~Registry~~ Attorney General as required by law.
- (2) Failed to pay fees or late fees.

(3) Failed to file ~~a complete Form RRF-1~~ the periodic written reports required by California Code of Regulations, title 11, section 301, ~~for three consecutive years. The Form RRF-1 is not complete if it is not accompanied by the required attachments, renewal fee and the appropriate informational return filed with the Internal Revenue Service, including all schedules filed with the return.~~

(4) Been the subject of an adverse action by a governmental entity related to the operation of a charity or the conduct of a solicitation for charitable purposes, including misuse of charitable assets and unlawful or misleading conduct related to solicitation for charitable purposes.

(A) An adverse action by a governmental entity, includes, but is not limited to, suspension, revocation or denial of registration, civil or criminal judgment, assessment of a fine, administrative or civil penalty, entry of assurance of voluntary compliance or enforceable settlement agreement, or an equivalent action regardless of its title.

(B) This includes any entity ~~which~~ that has an officer, director, or key employee, or which is owned or operated by a person who was the subject of an adverse action or who owned or operated such an entity, or was directly involved in such actions.

(b) Every registrant that is the subject of an adverse action by a governmental entity other than the California Attorney General must provide written notice to the ~~Registry of Charitable Trusts~~ Attorney General of the adverse action. The notice must be made within ~~thirty (30)~~ days of the action or prior to renewing the registration, whichever is sooner.

(c) A registrant whose renewal has been refused may appeal the refusal in the manner prescribed by section 999.6 et seq.

Note: Authority cited: Sections 11400 et seq. and 11500 et seq., 12581, 12584, 12585, 12586, 12587, 12598, Government Code. References Sections 12584, 12585, 12586, 12586.1, 12588, 12589, 12590, 12591 12599, 12599.1 and 12599.2, Government Code.

*Comment: This clarifies that the RRF-1 Form is not complete unless it is accompanied by the complete Form 990 or other version of the informational return filed with the IRS, including with all the schedules filed with the IRS.*

*Subsection (a)(3) has been modified to clarify that Attorney General may refuse to renew the registration of a registrant that fails to file the documents required by Section 301.*

*Subsection (a)(4)(a) clarifies that penalties imposed by other governmental agencies constitute an adverse action for purposes of this section regardless of the nomenclature or characterization used by the government entity.*

*For purposes of clarity, references to the Registry of Charitable Trusts, the Registrar of Charitable Trusts and the Attorney General's Office have been changed to the Attorney General. These changes are for consistency and are not a change in substance.*

### **§ 999.9.3. Disclosure and Restrictions on Use of Charitable Assets After Suspension or Revocation of Registration.**

- (a) Within 30 days of the revocation of a registration, the registrant shall provide an accounting of all charitable assets within ~~its~~ the registrant's possession, custody or control for 180 days prior to the effective date of the order, unless the ~~Registry of Charitable Trusts~~ Attorney General specifies a different period of time in the order. The ~~Registry~~ Attorney General, ~~in its discretion,~~ may require the registrant to provide an accounting of all charitable assets received, held, or distributed by the registrant for a period of up to ~~ten~~ 10 years before the effective date of the suspension or revocation.
- (b) A registrant ~~which~~ that has been suspended or revoked may not distribute or expend any charitable assets or assets subject to a charitable trust without the written approval of the Attorney General. Members of the board of directors or any person directly involved in distributing or expending charitable assets may be held personally liable in a civil action brought by the Attorney General for any charitable assets or assets subject to a charitable trust that are distributed or expended in violation of this regulation.
- (c) The Attorney General may direct a registrant whose registration has been suspended or revoked to distribute some or all of its charitable assets or assets subject to a charitable trust to another charitable organization or into a blocked bank account.

Note: Authority cited: Sections 11400 et seq. and 11500 et seq., 12581, 12584, 12585, 12586, 12587, 12598, 12599, 12599.1, 12599.2 and 12599.7, Government Code. Reference: Sections 12596, Government Code.



*Comment: For purposes of clarity, references to the Registry of Charitable Trusts, the Registrar of Charitable Trusts and the Attorney General's Office have been changed to the Attorney General. These changes are for consistency and are not a change in substance.*

#### **§ 999.9.4. Registrant Must Be In Good Standing to Operate or Solicit.**

A person or entity subject to the registration requirements of Government Code section 12580 et seq., must be registered and in good standing with the Registry of Charitable Trusts to operate or solicit for charitable purposes. A registration that ~~Any registrant whose registration~~ is delinquent, suspended or revoked is not in good standing and is prohibited from engaging in conduct for which registration is required, including, but not limited to solicitation for charitable purposes.

Note: Authority cited: Sections 11400 et seq. and 11500 et seq., 12581, 12584, 12585, 12586, 12587, 12598, 12598(e), 12599, 12599.1 and 12599.2, Government Code. Reference: Sections 12585, 12586 and 12586.1, Government Code.

*Comment: This clarifies that persons or entities that are required by law to register with the Attorney General must be registered with the Attorney General's Registry of Charitable Trusts and must maintain a current registration in good standing to be able to operate or solicit charitable assets.*

#### **§ 999.9.5. Reinstatement.**

A revoked registrant may petition the ~~Registrar of Charitable Trusts~~ Attorney General for reinstatement after the Order of Revocation has become final. The petition shall be in writing and must establish that ~~registrant~~ the petitioner is entitled to the relief sought. If the ~~Registrar~~ Attorney General, in his/ ~~or~~ her discretion, determines there is no threat to the public or to charitable assets, the ~~Registrar~~ Attorney General may ~~reinstate the registration upon proof of compliance with all of the terms and conditions, if applicable, set forth in the Order of Revocation. The Registrar may grant or deny the petition for reinstatement.~~ ~~or~~ The Attorney General may impose ~~additional~~ terms and conditions ~~as deemed appropriate~~ as a condition of reinstatement.

Note: Authority cited: Sections 11400 et seq. and 11500 et seq., 12581, 12584, 12585, 12586, 12587, 12598, Government Code. Reference: Section 11522, Government Code.

*Comment: This clarifies that the Attorney General has discretion to grant a petition for reinstatement when it would not pose a threat to the public or to charitable assets. The*

*decision to grant or deny a petition is discretionary. The Attorney General may also impose conditions when granting a petition.*

*For purposes of clarity, references to the Registry of Charitable Trusts, the Registrar of Charitable Trusts and the Attorney General's Office have been changed to the Attorney General. These changes are for consistency and are not a change in substance.*