

RULE ADOPTIONS  
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LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
CHARITIES REGISTRATION UNIT

**Readoption with Amendments N.J.A.C. 13:48**  
**Adopted New Rule: N.J.A.C. 13:48-9.3**

**Charitable Fund Raising Rules**

Proposed: August 2, 2010 at 42 N.J.R. 1676(a).

Adopted: January 4, 2011 by Thomas R. Calcagni, Acting Director, Division of Consumer Affairs.

Filed: January 25, 2011 as R.2011 d.061, **without change**.

Authority: N.J.S.A. 45:17A-18 et seq., specifically 45:17A-21b.

Effective Dates: January 25, 2011, Readoption;

February 22, 2011, Amendments and New Rule.

Expiration Date: January 25, 2016.

**Federal Standards Statement**

A Federal standard analysis is not required because the rules readopted with amendments and a new rule are governed by N.J.S.A. 45:17A-18 et seq. and are not subject to any Federal requirements or standards.

**Full text** of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 13:48.

**Full text** of the adopted amendments and new rule follows:

**SUBCHAPTER 1. GENERAL PROVISIONS**

**13:48-1.1 Director**

The Director of the Division of Consumer Affairs shall be the person charged with the administration and enforcement of the Charitable Registration and Investigation Act, N.J.S.A. 45:17A-18 et seq.

**13:48-1.2 Applicability**

(a) These rules shall govern the registration and charitable fund raising activities of charitable organizations, federated fund raising organizations, professional fund raisers, solicitors and commercial co-venturers, pursuant to the Act.

(b) (No change.)

(c) Upon initial request by a potential registrant, or as the result of independent information received by the Attorney General, a determination form, to determine the applicability of the Act, will be supplied. There is no fee for this form, which may be requested by telephone, facsimile, letter sent to the address set forth in N.J.A.C. 13:48-1.4 or by e-mail

sent to AskConsumerAffairs@dca.lps.state.nj.us.

### 13:48-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

"Act" means the Charitable Registration and Investigation Act N.J.S.A. 45:17A-18 et seq.

...

"Caging agent" means the person, firm or company responsible for retrieving responses to solicitations from a return post office box, processing contributions and reporting the amount of contributions and non-contributions from the responses.

...

"Commercial co-venturer" means any person, including, but not limited to, any assignee, subcontractor, independent contractor or successor in interest who, for profit or other consideration, is regularly and primarily engaged in trade or commerce other than in connection with the raising of funds or any other thing of value for a charitable organization, and who advertises that the purchase or use of his or her goods, services, entertainment or any other thing of value will benefit a charitable organization.

...

"Custody, control, possession or access" means that a person has responsibility for the collection, distribution, protection or preservation of a charitable organization's money or other thing of value; or that a person has the power or authority to manage, direct, restrict, administer or oversee a charitable organization's money or other thing of value; or that a person has the power, authority, opportunity or right to make use of a charitable organization's money or other thing of value. By way of example, but not by limitation, the following demonstrate custody, control or possession of, or access to, a charitable organization's money or other thing of value:

1. A fund raising counsel or independent paid fund raiser has an agreement with an escrow, lock box or caging agent concerning a charitable organization's money or other thing of value;
2. A fund raising counsel or independent paid fund raiser has access to or the right to direct the use of a charitable organization's money in any financial or bank account;
3. A fund raising counsel or independent paid fund raiser has the authority or the opportunity to direct the manner in which collected contributions are handled, disbursed, transferred or deposited;
4. A fund raising counsel or independent paid fund raiser receives or retrieves responses to a solicitation from a post office box;
5. A fund raising counsel or independent paid fund raiser has access to debit or credit card information in response to a solicitation; or
6. A fund raising counsel or independent paid fund raiser accepts donations of goods and in kind, including vehicles, on behalf of the charity.

...

"Department of Education" means the Department of Education of the State of New Jersey.

...

"Escrow agent" means the person, firm or company responsible for operating any escrow or other account into which monies are deposited and for distributing those monies.

...

"Fund raising counsel" means any person, including any assignee, subcontractor, independent contractor or any other successor in interest, who is retained by a charitable organization for a fixed fee or rate to plan, manage, advise, consult or prepare material for or with respect to the solicitation in this State of contributions for a charitable organization, but who does not solicit contributions or employ, procure or engage any compensated person to solicit contributions. "Fund raising counsel" does not include a bona fide salaried officer, employee or volunteer of a charitable organization or an attorney, accountant or banker who renders professional services to a charitable organization or advises a person to make a charitable contribution during the course of rendering professional services to that person.

...

"Independent paid fund raiser" means any person, including any assignee, subcontractor, independent contractor or any successor in interest, who for compensation performs for, or on behalf of, a charitable organization any service in connection with which contributions are, or will be solicited in this State by that compensated person or by any compensated person he or she employs, procures or engages, directly or indirectly, to solicit contributions. "Independent paid fund raiser" does not include a bona fide salaried officer, employee or volunteer of a charitable organization or an attorney, accountant or banker who advises a person to make a charitable contribution during the course of rendering professional services to that person.

"Local unit" means a charitable organization that is affiliated with a parent organization under terms specified in the parent organization's charter, articles of organization, agreement of association, instrument of trust, constitution or other organizational instrument or bylaws.

...

"Solicitation" or "solicit" means the request, directly or indirectly, for money, credit, property, financial assistance or other thing of any kind or value, which will be used for a charitable purpose or to benefit a charitable organization. A solicitation takes place whether or not the person making the solicitation receives any contribution, except that a charitable organization's use of its own name in any communication is not alone sufficient to constitute a solicitation. "Solicitation" includes, but is not limited to, the following methods of requesting or securing money, credit, property, financial assistance or other thing of value:

[page=440] 1.-5. (No change.)

"Solicitor" means any individual who attempts to solicit or solicits contributions, for compensation. A bona fide salaried officer, employee or volunteer of a charitable organization shall not be deemed a solicitor.

## SUBCHAPTER 2. FEES

### 13:48-2.1 Fee schedule

(a) The following fees shall be charged by the Division for registration of charitable organizations (which includes for purposes of this subchapter, federated fund raising organizations), fund raising counsel, independent paid fund raisers and solicitors, and for filing of contracts and other documents:

1. A charitable organization, that is exempt from the registration requirements of the Act, but pursuant to N.J.A.C. 13:48-3.3(a)7 elects to register by filing a short form registration statement shall pay an annual registration fee of \$ 30.00. A late fee of \$ 25.00 shall be incurred by any organization that elects to file a registration statement but fails to

submit the complete annual registration filing within 30 days of the annual filing deadline.

2. A charitable organization that is required under the Act to file a short form registration statement shall pay an annual registration fee of \$ 30.00 with the annual filing, unless a filing extension was granted pursuant to N.J.A.C. 13:48-3.4. A late fee of \$ 25.00 shall be incurred by any organization that fails to submit a complete annual registration filing along with the applicable annual registration fee within 30 days of the annual filing deadline.

3. A charitable organization that is required under the Act to file a long form registration statement and received gross contributions of not more than \$ 100,000 during the most recently filed fiscal year of the organization, shall pay an annual registration fee of \$ 60.00 with the annual filing unless a filing extension was granted pursuant to N.J.A.C. 13:48-3.4. A late fee of \$ 25.00 shall be incurred by any organization that fails to submit a complete annual registration filing along with the applicable annual registration fee within 30 days of the annual filing deadline.

4. A charitable organization that is required under the Act to file a long form registration statement and received gross contributions of more than \$ 100,000 but not more than \$ 500,000 during the most recently filed fiscal year of the organization shall pay an annual registration fee of \$ 150.00 with the annual filing unless a filing extension was granted pursuant to N.J.A.C. 13:48-3.4. A late fee of \$ 25.00 shall be incurred by any organization that fails to submit a complete annual registration filing along with the applicable annual registration fee within 30 days of the annual filing deadline.

5. A charitable organization that is required under the Act to file a long form registration statement and received gross contributions of more than \$ 500,000 during the most recently filed fiscal year of the organization, shall pay an annual registration fee of \$ 250.00 with the annual filing unless a filing extension was granted pursuant to N.J.A.C. 13:48-3.4. A late fee of \$ 25.00 shall be incurred by any organization that fails to submit a complete annual registration filing along with the applicable annual registration fee within 30 days of the annual filing deadline.

6. (No change.)

7. All fund raising counsel and independent paid fund raisers shall pay an annual registration fee of \$ 250.00, payable upon initial registration and on July 1 of each renewal year thereafter. A partnership or corporation that offers either fund raising counsel or independent paid fund raiser services, or both types of services, shall pay a single annual registration fee, payable upon initial registration and on July 1 of each renewal year thereafter. Any fund raising counsel or independent paid fund raiser that fails to submit a complete annual registration filing along with the applicable annual registration fee within 30 days of July 1 shall pay a late fee of \$ 25.00.

8. In addition to the registration fee paid by independent paid fund raisers under (a)7 above, an independent paid fund raiser shall pay a registration fee of \$ 15.00 for each solicitor it registers pursuant to N.J.A.C. 13:48-8.1 upon initial registration and on July 1 of each renewal year thereafter. Upon renewal of registration, failure to submit a complete annual registration filing along with the applicable fee within 30 calendar days of July 1 shall result in a late fee of \$ 25.00.

9. (No change.)

10. The fee for filing a contract, or for the renewal or the extension thereof, defined for purposes of this paragraph as any written agreement between fund raising counsel or independent paid fund raiser and any other fund raising counsel or independent paid fund raiser shall be \$ 30.00 and shall be paid at least 10 days prior to the commencement of any solicitation activity in the State as set forth in that contract.

11. The fee for filing a final report, required to be filed by the charitable organization under N.J.S.A. 45:17A-29b at the conclusion of a charitable sales promotion conducted by a commercial co-venturer on behalf of a charitable organization, shall be \$ 10.00.

12. The fee for filing a financial report required to be filed by a fund raising counsel or independent paid fund raiser under N.J.S.A. 45:17A-27g(3) for a solicitation campaign, shall be \$ 10.00.

13. The fee for filing a written commitment, required to be filed by a fund raising counsel or independent paid fund raiser under N.J.S.A. 45:17A-32e(1), confirming a charitable organization's acceptance of donated tickets to an event, shall be \$ 10.00.

14. The fee for filing a 10-day notice, required to be filed under N.J.S.A. 45:17A-30d(1) by a law officers' organization to provide notice of any campaign involving multiple solicitations, shall be \$ 10.00.

15. (No change in text.)

(b)-(d) (No change.)

### SUBCHAPTER 3. GENERAL REQUIREMENTS

13:48-3.2 When registration deemed accepted; failure to satisfy registration requirements; notice and hearing

(a)-(c) (No change.)

(d) Acceptance of a registration shall not foreclose the Attorney General from denying an application, enforcing the registration or contract requirements of the Act or taking other appropriate action.

13:48-3.3 Organizations exempt from registration

(a) The registration requirements of these rules shall not apply to:

1.-2. (No change.)

3. Any educational institution, the curricula of which in whole or in part are registered or approved by the Department of Education or the New Jersey Commission on Higher Education, either directly or by acceptance of accreditation by an accrediting body recognized by these agencies;

4. (No change.)

5. A library registered by the Department of Education, provided that the annual financial report of that library shall be filed with the Department of Education, where it shall be open for public inspection;

6.-7. (No change.)

(b) Nothing in this section shall preclude the Attorney General from requiring an entity or organization claiming an exemption from registration to demonstrate that it meets the requirements of (a) above or from taking other appropriate action.

13:48-3.4 Extensions of time for annual filing of the renewal statement and financial report

(a) (No change.)

(b) For good cause shown, the Attorney General, in his or her discretion, may extend the time for the annual filing of the renewal statement and financial report for a period not to exceed 180 days, during which time the previous registration shall remain in effect.

(c)-(d) (No change.)

(e) The request shall be signed by an officer of the charitable organization who shall certify that the organization has filed the previous year's report; that the charitable organization has paid all fees and penalties due and owing to the

Division, if any; and that the request for an extension contains complete and accurate information.

(f)-(h) (No change.)

#### 13:48-3.5 Forms

Forms for filing information required by the Act are available upon request from the Division at the address set forth in N.J.A.C. 13:48-1.4 [page=441] or on the Division's website at [www.njconsumeraffairs.gov/ocp/charities.htm](http://www.njconsumeraffairs.gov/ocp/charities.htm).

#### 13:48-3.6 Notification of change of address; service of process

(a) A registrant shall notify the Attorney General in writing of any change of address currently filed with the Attorney General. Such notice shall be mailed to the Attorney General at the address set forth in N.J.A.C. 13:48-1.4 by certified mail, return receipt requested, not later than 10 days following the change of address.

(b)-(c) (No change.)

### SUBCHAPTER 4. REGISTRATION OF CHARITABLE ORGANIZATIONS--SHORT FORM REGISTRATION

#### 13:48-4.1 Short form registration

(a) Prior to operating or commencing solicitation activities in this State, the following charitable organizations, except those exempt from registration pursuant to N.J.A.C. 13:48-3.3, or those required to file a long form registration pursuant to N.J.A.C. 13:48-5, shall file a short form registration statement with the Attorney General:

1.-3. (No change.)

4. Any local post, camp, chapter or similarly designated element, or a county unit of that element, of a bona fide veterans' organization, which issues charters to the local elements throughout this State, or to any veterans' organization chartered under Federal law or to any service foundation of such an organization recognized in its bylaws.

(b) Information required for the initial and renewal short form registration statement shall include the following:

1. (No change.)

2. The name of any independent paid fund raiser, fund raising counsel or commercial co-venturer the charitable organization engaged during the most recent fiscal year;

3. The purpose for which the charitable organization is organized, as stated in the charitable organization's charter, articles of organization, agreement of association, instrument of trust, constitution or any other organizational instrument or bylaws;

4. (No change.)

5. A copy of the organization's Internal Revenue Service Form 1023 filed by the charity and the Internal Revenue Service Determination Letter;

6. The reason the charitable organization is eligible to file a short form registration;

7. A complete copy of the charitable organization's most recent Internal Revenue Service filing(s), including, but not limited to, Form 990, Form 990EZ, Form 990PF and Form 990T (with schedule A) if the organization filed any one or more of these forms during the most recent fiscal year being reported. All schedules and statements shall be included;

8. (No change.)

9. A statement whether the charitable organization has ever been denied registration or had its registration revoked in this or any other jurisdiction along with a list of those jurisdictions;

10. (No change.)

11. A statement whether:

i. The charitable organization is authorized by any other state to solicit contributions and, if so, a listing of the states in which authorization has been obtained;

ii. The charitable organization is or has ever been enjoined or ordered to cease and desist in any jurisdiction from soliciting contributions or has been found to have engaged in unlawful practices in the solicitation of contributions or the administration of charitable assets together with a listing of all such jurisdictions;

iii. (No change.)

iv. The organization has voluntarily entered into an assurance of voluntary compliance agreement or any similar order or legal agreement with any jurisdiction or Federal agency or officer together with an identification of the jurisdiction or Federal agency or officer;

12.-13. (No change.)

(c)-(e) (No change.)

(f) A short form registration shall be signed by two authorized officers, including the chief fiscal officer of the organization, who shall certify that all information contained in the registration statement is correct.

#### 13:48-4.2 Short form renewal

(a) A charitable organization that has filed an initial short form registration shall file a short form for renewal of its registration within six months after the close of its fiscal year provided the organization continues to meet the requirements of N.J.A.C. 13:48-4.1(a).

(b) (No change.)

#### 13:48-4.3 Financial reports

(a) A charitable organization filing a short form registration or a short form renewal shall file an accompanying annual financial report on a form prescribed by the Attorney General. The financial report form shall include the following:

1. The name, address, telephone number, e-mail and web address, if available, of the charitable organization and the New Jersey charitable registration number;

2.-6. (No change.)

7. Whether the charitable organization has engaged the services of an independent paid fund raiser, fund raising counsel or commercial co-venturer; the identity of any independent paid fund raiser or fund raising counsel; and the dates of any solicitation campaign or charitable sales promotion conducted in whole or in part on its behalf during the fiscal year;

8. A complete copy of the charitable organization's most recent Internal Revenue Service filings including, but not limited to, Form 990, Form 990EZ, Form 990PF, and Form 990T (with schedule A), if the organization filed any one

or more of these forms during the most recent fiscal year. All schedules and statements shall be included; and

9. (No change.)

## SUBCHAPTER 5. REGISTRATION OF CHARITABLE ORGANIZATIONS--LONG FORM REGISTRATION

### 13:48-5.1 Long form registration

(a) (No change.)

(b) Information required for the initial and renewal long form registration statement shall include the following:

1. The name of the charitable organization and any other name or names under which it intends to solicit contributions in this State;

2. The purposes for which the charitable organization has been organized as stated in the charitable organization's charter, articles of organization, agreement of association, instrument of trust, constitution or other organizational instrument or bylaws;

3.-4. (No change.)

5. A complete copy of the charitable organization's most recent Internal Revenue Service filings including, but not limited to, Form 990, Form 990EZ, Form 990PF, and Form 990T (with schedule A) if the organization filed any one or more of these forms during the most recent fiscal year being reported. All schedules and statements shall be included;

6. (No change.)

7. A statement disclosing whether, and giving pertinent information about, any of the charitable organization's above-listed officers, directors, trustees or principal salaried executive staff employees who:

i. Are related by blood, marriage or adoption to each other or to any officers, agents or employees of any fund raising counsel or independent paid fund raiser under contract to the charitable organization; are related by blood, marriage or adoption to any chief executive, employee; to any other employee of the charitable organization with a direct financial interest in the transaction; to any partner, proprietor, director, officer or trustee of the charitable organization; or to any shareholder of the charitable organization with more than a two percent interest in any supplier or vendor providing goods or services to the charitable organization and, if so, the name and business and home address and telephone number of each related party; or

ii. Have a financial interest in any activity engaged in by a fund raising counsel or independent paid fund raiser under contract to the charitable organization or any supplier or vendor providing goods or services to the [page=442] charitable organization and, if so, the name and business address and telephone number of each interested party;

8. (No change.)

9. A statement setting forth the place where and the date when the charitable organization was legally established and the form of the organization;

10.-11. (No change.)

12. The date when the charitable organization's fiscal year ends;

13. A statement whether:

i. The charitable organization is authorized by any other state to solicit contributions and, if so, a listing of the states in

which authorization has been obtained;

ii. The charitable organization is or has ever been enjoined or ordered to cease and desist in any jurisdiction from soliciting contributions or has been found to have engaged in unlawful practices in the solicitation of contributions or the administration of charitable assets together with a listing of all such jurisdictions;

iii. (No change.)

iv. The organization has voluntarily entered into an assurance of voluntary compliance agreement or any similar order or legal agreement with any jurisdiction or Federal agency or officer with an identification of the jurisdiction or Federal agency or officer;

14. Whether the organization intends to solicit contributions from the general public and the dates of any solicitation campaign or charitable sales promotion conducted in whole or in part on its behalf during the fiscal year;

15. A statement setting forth the charitable organization's tax exempt status along with copies of Federal or State tax exemption determination or exemption ruling letters and a copy of the Internal Revenue Form 1023 filed by the charitable organization and the Internal Revenue Service Determination Letter;

Recodify existing 15. and 16. as 16. and 17. (No change in text.)

(c) A charitable organization may incorporate by reference any information reported by the organization on Internal Revenue Service Form 990, Form 990EZ, Form 990PF, and Form 990T (with Schedule A).

(d) Upon initial registration only, every charitable organization required to file a long form registration shall include a copy of the charitable organization's charter, articles of organization, agreement of association, instrument of trust, constitution or other organizational instrument and bylaws.

(e) All long form registrations shall be signed by two authorized officers, including the chief fiscal officer of the organization, who shall certify that all information contained in the registration statement is correct.

(f) (No change.)

#### 13:48-5.2 Long form renewal

(a) A charitable organization, which has filed an initial long form registration shall file a renewal of its registration within six months after the close of its fiscal year.

(b) (No change.)

#### 13:48-5.3 Financial reports; audits

(a)-(b) (No change.)

(c) The annual financial report of every charitable organization that received more than \$ 500,000 in gross revenue during its most recently completed fiscal year shall be accompanied by:

1. A financial statement prepared in accordance with generally accepted accounting principles or other comprehensive basis of accounting principles consisting of the modified cash basis or regulatory basis, which has been audited in accordance with generally accepted auditing standards by an independent certified public accountant licensed by the jurisdiction in which he or she practices; and

2. All management letters prepared by the auditor in connection with the audit commenting on the internal accounting controls or management practices of the charitable organization.

(d) The annual financial reports of all charitable organizations that receive more than \$ 25,000 but less than \$ 500,000, shall be certified by the charitable organization's president or other authorized officer of the organization's governing board. If the Attorney General requests an audit, the charitable organization shall be notified in writing. In response, the charitable organization shall, within 120 days of the Attorney General's notification, submit:

1. A financial statement prepared in accordance with generally accepted accounting principles or other comprehensive basis of accounting principles consisting of the modified cash basis or regulatory basis, which has been audited in accordance with generally accepted auditing standards by an independent certified public accountant licensed by the jurisdiction in which he or she practices; and
2. All management letters prepared by the auditor in connection with the audit commenting on the internal accounting controls or management practices of the charitable organization.

(e)-(g) (No change.)

## SUBCHAPTER 6. REGISTRATION OF LOCAL UNITS BY PARENT ORGANIZATIONS

### 13:48-6.1 Registration of local units by parent organizations

(a)-(c) (No change.)

(d) The parent organization also shall provide all of the following information:

1. Upon initial registration, a copy of the parent organization's charter, articles of organization, agreement of association, instrument of trust, constitution or other organizational instrument and bylaws.
2. Upon initial registration and annual renewal, a separate statement that provides the following:
  - i. The name, street address and phone number of all local units within this State that it is registering;
  - ii.-iii. (No change.)

## SUBCHAPTER 7. REGISTRATION OF FUND RAISING COUNSEL AND INDEPENDENT PAID FUND RAISER

### 13:48-7.1 General requirements

(a) (No change.)

(b) The registration statement shall be on a form prescribed by the Attorney General, which shall contain the following information:

1.-2. (No change.)

3. A statement whether the fund raising counsel or independent paid fund raiser has or intends to have custody, control, possession or access to any charitable organization's money or other thing of value;

4. A statement whether:

i.-ii. (No change.)

iii. The fund raising counsel or independent paid fund raiser has been enjoined or ordered to cease and desist in any jurisdiction from soliciting contributions or have been found to have engaged in unlawful practices in the solicitation

of contributions or the administration of charitable assets and a listing of those jurisdictions.

iv.-v. (No change.)

5. (No change.)

6. A list of all the charitable organizations that have engaged or retained the services of the fund raising counsel or independent paid fund raiser within the past five years to plan or conduct solicitation activities in the State of New Jersey; and on renewal, a list of all campaigns it conducted in whole or in part during the fiscal year for or on behalf of the charitable organization; and

7. (No change.)

(c) (No change.)

(d) The registration statement shall be accompanied by the fee specified in N.J.A.C. 13:48-2.1.

(e)-(f) (No change.)

#### 13:48-7.2 Bond requirements for fund raising counsel and independent paid fund raisers

(a) A fund raising counsel or independent paid fund raiser who has or intends to have custody, control, possession or access to a charitable organization's money or other thing of value shall, at the time of making application for registration, file with the Attorney General a bond in which it shall be the principal obligor for the sum of \$ 20,000 for the initial registration.

(b)-(c) (No change.)

[page=443] (d) The bond shall be payable to the Attorney General for the benefit of any person who may have a cause of action against the principal obligor of the bond for any violation of the Act or for the purpose of satisfying any assessment against the principal obligor of the bond for any such violations.

(e)-(g) (No change.)

#### 13:48-7.3 Requirements for effective registration of fund raising counsel and independent paid fund raisers; failure to comply

(a) (No change.)

(b) It shall be a violation of the Act for any fund raising counsel or independent paid fund raiser to take custody, control or possession of, or to have access to, a charitable organization's money or other thing of value prior to filing a bond with the Attorney General and accomplishing registration in accordance with the Act and this chapter.

### SUBCHAPTER 8. REGISTRATION OF SOLICITORS

#### 13:48-8.1 General requirements

(a) (No change.)

(b) The registration shall be signed by both the solicitor and the independent paid fund raiser on a form prescribed by the Attorney General, which shall contain the following information:

1. The name and street address of the solicitor;

2. The name, address, registration number and telephone number of the independent paid fund raiser who employs the solicitor; and

3. (No change.)

(c)-(e) (No change.)

## SUBCHAPTER 9. CONTRACTS; CHARITABLE SALES PROMOTIONS REPORTS

13:48-9.1 Contract, service agreement and report requirements for fund raising counsel and independent paid fund raiser

(a) All fund raising counsel and independent paid fund raisers shall file with the Attorney General a copy of any contract with a charitable organization, together with a contract filing form supplied by the Division, at least 10 days prior to the performance of any service within this State. An additional copy of the contract shall be filed by the charitable organization, which obligation cannot be delegated to the fund raising counsel or independent paid fund raiser.

(b) Every contract shall contain a description of the relationship between the charitable organization and the fund raising counsel or the independent paid fund raiser and shall include the following information:

1. A statement of the respective obligations of the fund raising counsel or independent paid fund raiser and the charitable organization;

2. A clear statement of the fees or rate that will be paid to the fund raising counsel or independent paid fund raiser;

3. (No change.)

4. A statement as to whether the fund raising counsel or independent paid fund raiser will have or intends to have custody, control, possession or access to contributions;

5. A statement as to the guaranteed minimum percentage of the net proceeds from contributions that will be retained by the charitable organization, if any, or if the solicitation involves the sale of goods, services or tickets to a fund raising event, the percentage of the purchase price, if any, that will be retained by the charitable organization. Any stated percentage shall exclude any amount that the charitable organization is to pay as fund raising costs; and

6. A statement as to the percentage of the gross revenue from which the fund raising counsel or independent paid fund raiser will be compensated. If the compensation of the fund raising counsel or independent paid fund raiser is a flat fee, which is not contingent upon the number of contributions or the amount of revenue received, the compensation shall be expressed as a reasonable estimate of the percentage of the anticipated gross revenue and the contract shall clearly disclose the assumptions upon which the estimate is based. If the compensation of the fund raising counsel or independent paid fund raiser is calculated on the basis of a rate and time, the statement shall include a reasonable estimate of the total fee and the contract shall clearly disclose the assumptions upon which the estimate is based. The stated assumptions shall be based upon all of the relevant facts known to the fund raising counsel or independent paid fund raiser regarding the solicitation to be conducted on behalf of the charitable organization.

(c) Every contract shall be signed by two authorized officers of the charitable organization, one of whom must be a member of the organization's governing body, and the authorized contracting officer of the fund raising counsel or independent paid fund raiser.

(d) Every contract filed by the fund raising counsel or independent paid fund raiser shall be accompanied by the fee specified in N.J.A.C. 13:48-2.1(a)9.

(e) If the fund raising counsel or independent paid fund raiser at any time has or intends to have custody, control,

possession or access to the charitable organization's solicited contributions, the contract shall also include:

1. A statement as to the guaranteed minimum percentage of the gross receipts from contributions that will be remitted to the charitable organization, if any, or if the solicitation involves the sale of goods, services or tickets to a fund raising event, the percentage of the purchase price, if any, that will be remitted to the charitable organization. Any stated percentage shall exclude any amount that the charitable organization is to pay as fund raising costs;
2. The bank branch, address and each account number where all monies will be deposited;
3. The mailing address or addresses that will receive any contributions;
4. The name and address of any caging agent or escrow agent retained in connection with the performance of the contract; and
5. The names of the individuals who will be authorized signatories for the accounts where all the monies are deposited.

(f) A fund raising counsel or an independent paid fund raiser that at any time has or intends to have custody, control, possession or access to a charitable organization's solicited contributions shall file a report on forms prescribed by the Attorney General as follows:

1.-3. (No change.)

4. Any financial campaign report filed pursuant to this subchapter shall contain the following information:

i.-ii. (No change.)

iii. The mailing address or addresses to which the contributions were directed;

iv.-vii. (No change.)

5.-7. (No change.)

(g) A fund raising counsel or independent paid fund raiser that is not required to file a report pursuant to (f) above, shall file with the Division the information it receives or obtains from the charitable organization that is used to calculate the independent paid fund raiser's or fund raising counsel's compensation for the charitable campaign. The information submitted shall include the gross amount taken in by the charitable campaign and the net amount retained by the charitable organization and shall comply with the following requirements on a form prescribed by the Division:

1. The information shall be filed within 40 days after the expiration of the contract;
2. For campaign contracts lasting more than 12 months, the information must be filed within 40 days of the end of each of the charitable organization's fiscal years during which the campaign was conducted;
3. Upon the completion of a campaign contract lasting more than 12 months, the information must be filed within 40 days after the expiration of the contract or service agreement;
4. This report shall be signed by an authorized officer from the independent paid fund raiser or fund raising counsel;
5. The report shall be reviewed and signed by an authorized officer from the charitable organization; and
6. The financial campaign report shall be accompanied by the fee specified in N.J.A.C. 13:48-2.1(a).

13:48-9.2 Contracts with commercial co-venturers; sales promotion report

(a) A charitable organization that permits a charitable sales promotion to be conducted on its behalf shall obtain a written contract from the commercial co-venturer and shall file a copy of the agreement with the [page=444] Attorney General at least 10 business days prior to the initiation of that charitable sales promotion, solicitation or venture agreement.

(b) The charitable sales promotion contract shall include, but is not limited to, the following information:

1.-2. (No change.)

3. The dollar amount or percent per unit of goods or services purchased or used that will benefit the charitable organization or purpose. If the actual dollar amount or percent cannot reasonably be determined prior to the final date of the charitable sales promotion, the commercial co-venturer shall disclose an estimated dollar amount or percent. Any such estimate shall be reasonable and shall be based upon all of the relevant facts known to the commercial co-venturer and the charitable organization regarding the charitable sales promotion;

4. A requirement that the commercial co-venturer provide the charitable organization with the gross amount of income received by the commercial co-venturer attributable to the charitable sales promotion, solicitation or venture undertaken; and

5. A provision clearly and conspicuously stating that the parties are subject to the Act and the rules of this chapter.

(c)-(d) (No change.)

(e) A charitable sales promotion campaign report shall contain the following information:

1. (No change.)

2. A certification from an officer or principal of the commercial co-venturer, attesting to the gross amount of income received by the commercial co-venturer attributable to the charitable sales promotion, solicitation or venture;

3. The amount of money or other contribution remitted to the charitable organization covering each event or portion of an extended charitable sales promotion, solicitation or venture. If the contribution is other than money, a list of the donated goods or a description of the services donated, as well as their dollar value, must be attached to the report;

4. A copy of each advertisement, publication, solicitation or other material used as part of the charitable sales promotion to directly or indirectly induce a contribution; and

5. (No change in text.)

(f) (No change.)

13:48-9.3 Contract, service agreement and report requirements for contracts between fund raising counsel or independent paid fund raiser and any other fund raising counsel or independent paid fund raiser

(a) Every fund raising counsel or independent paid fund raiser shall file with the Attorney General a copy of any contract with another fund raising counsel or independent paid fund raiser, together with a contract filing form supplied by the Division at least 10 days prior to the performance of any service within this State.

(b) Every contract shall comply with the content and filing requirements of N.J.A.C. 13:48-9.1. Reports shall be filed consistent with the requirement of N.J.A.C. 13:48-9.1 and be accompanied by the fee specified in N.J.A.C. 13:48-2.1(a).

13:48-9.4 Failure to satisfy contract requirements; notice and hearing

(a)-(c) (No change.)

(d) Acceptance of a registration statement or any other required filing shall not foreclose the Attorney General from taking appropriate action.

## SUBCHAPTER 10. RECORDKEEPING REQUIREMENTS

### 13:48-10.2 Records of fund raising counsel and independent paid fund raiser

(a) Every fund raising counsel and independent paid fund raiser that has or intends to have custody, control, possession or access to a charitable organization's monies shall also maintain during each solicitation campaign, and for not less than three years after the completion of such campaign, the following records, which shall be available for inspection upon demand by the Attorney General:

1.-2. (No change.)

3. Records of all contributions, including the name and address of each contributor and the date and amount of the contribution, except that recordkeeping with regard to donations of goods and services in kind shall be limited to the dollar value received by or accruing to the charitable organization. In the case of vehicle donations, records shall include the vehicle identification number and model of the vehicle, the expenses related to the disposition of the vehicle and the net proceeds to the charity, unless the vehicle itself became the charitable organization's property;

4. The name, location and account number of each bank or other financial institution in which the fund raising counsel or independent paid fund raiser has deposited revenue from the solicitation campaign;

5. Records of the name, address and telephone number of each contributor donating tickets and the number of tickets donated, and of the name, address and telephone number of each organization receiving donated tickets for use by others, including the number of tickets for use by others, if a fund raising counsel or an independent paid fund raiser sells tickets to an event and represents that tickets will be donated for use by another; and

6. A copy of each advertisement, publication, solicitation or other material used as part of the charitable sales promotion to directly or indirectly induce a contribution.

(b) An independent paid fund raiser or fund raising counsel who does not have custody, control, possession or access to a charitable organization's funds shall also maintain for a period of three years the report it receives or obtains from the charity in accordance with N.J.A.C. 13:48-9.1(f).

(c) (No change in text.)

## SUBCHAPTER 11. FUND RAISING PRACTICES

### 13:48-11.2 Disclosures to the public; solicitations; receipts and confirmations; notice

(a) Prior to soliciting any contribution (except for an in-person solicitation) either telephonically, electronically or in writing, a charitable organization, unless exempt from registration pursuant to N.J.A.C. 13:48-3.3 and all independent paid fund raisers, commercial co-venturers and solicitors shall clearly and conspicuously disclose the following:

1.-4. (No change.)

(b)-(d) (No change.)

### 13:48-11.3 Disclosures to the public; canisters; honor boxes; public vending machines

(a) All canisters, honor boxes and public vending machines used to raise funds for charitable organizations required to

be registered under the Act shall clearly and conspicuously disclose the following:

1. The name, address and registration number of the charitable organization, as registered with the Attorney General, or the organization's name and address, if exempt; and

2. (No change.)

(b) (No change.)

## SUBCHAPTER 12. STANDARDS AND SUPERVISION

### 13:48-12.1 Charitable organization's responsibility for fund-raising activities

(a) A charitable organization shall establish and exercise control over fund raising activities conducted for its benefit and assure that the fund raising activities are conducted without coercion. The fund raising activities over which the charitable organization shall establish and exercise control include, but are not limited to:

1.-3. (No change.)

4. The procedure to report to its independent paid fund raisers who do not have custody, control, possession or access to a charitable organization's contributions the gross amount received during the charitable campaign and the net amount it retains;

Recodify existing 4.-9. as 5.-10. (No change in text.)

(b)-(c) (No change.)

## [page=445] SUBCHAPTER 13. VIOLATIONS

### 13:48-13.3 Grounds for denial, suspension or revocation of any registration

(a) After notice and an opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, any registration may be denied, suspended or revoked upon a finding that the registrant or any officer, director, trustee or principal salaried executive staff employee of a registrant or any other person subject to the Act:

1.-5. (No change.)

6. Has been adjudged liable in an administrative or civil proceeding involving theft, fraud or deceptive business practice including, but not limited to, any finding of unlawful practice or practices related to the solicitation of contributions or the administration of charitable assets, regardless of whether that finding was made in the context of an injunction, a proceeding resulting in penalties, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any state or Federal agency;

Recodify existing 6. and 7. as 7. and 8. (No change in text.)

## SUBCHAPTER 14. PENALTIES

### 13:48-14.1 Civil penalties; alternative remedies

(a) When a finding is made of a violation of the Act or these rules, after notice and an opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, in addition or as an alternative to revocation or suspension of a registration, a person may be ordered to:

1. Pay civil penalties in accordance with the Act as follows:

- i. Any person who has not previously been found to have violated the Act shall, in addition to any other relief authorized by the Act or any other law, be liable for a civil penalty of not more than \$ 10,000 for the first violation;
- ii. For a second violation, or if a person is found liable for more than one violation within a single proceeding, the liability for the second violation shall not exceed a civil penalty in the amount of \$ 20,000;
- iii. For a third violation, or if a person is found liable for more than two violations within a single proceeding, the liability for a third or any succeeding violation shall not exceed a civil penalty in the amount of \$ 20,000 for each additional violation;

2.-3. (No change.)