

51 N.J.R. 637(a)

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RULE ADOPTIONS

Reporter

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> LAW AND PUBLIC SAFETY -- DIVISION OF CONSUMER AFFAIRS*

Agency

LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > CHARITIES
REGISTRATION UNIT

Administrative Code Citation

Adopted Amendments: N.J.A.C. 13:48-4.3 and 5.3

Text

Financial Reports List of Contributors

Proposed: December 17, 2018, at 50 N.J.R. 2549(a).

Adopted: March 19, 2019, by Paul R. Rodriguez, Acting Director,
Division of Consumer Affairs.

Filed: April 1, 2019, as R.2019 d.036, **with non-substantial changes** not
requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 45:17A-21.b.

Effective Date: May 6, 2019.

Expiration Date: November 21, 2024.

Summary of Public Comments and Agency Responses:

The official comment period ended February 15, 2019. The Director of
the Division of Consumer Affairs (Division) received comments from
Linda M. Czipo, President and CEO, Center for Non-Profits.

1. COMMENT: The commenter states that the amended rules will impose
burdens on non-profit organizations. The commenter points out that,
under Federal regulations, organizations with gross receipts that are

normally \$ 50,000 or less may file a Form 990-N e-Postcard with the Internal Revenue Service as opposed to a Form 990 or 990-EZ. The Form 990-N e-Postcard does not include contributor information. The commenter states that the amendments to N.J.A.C. 13:48-4.3 and 5.3 would require such organizations to submit contributor information that they were not required to file with the Federal government. The commenter states that there are at least 1,800 New Jersey organizations that qualify to submit the Form 990-N e-Postcard. The commenter also contends that organizations with revenues above \$ 50,000 will also incur burdens under the amended rules. Online registration for charitable organizations does not allow organizations to incorporate Form 990 by reference. The commenter is concerned that, without such incorporation, organizations will be required to manually input donor information, which would be time consuming. The commenter recommends that N.J.A.C. 13:48-4.3 and 5.3 be amended so that 501(c)(3) organizations and organizations that file Form 990-N e-Postcard would be exempt from contributor reporting requirements.

RESPONSE: N.J.S.A. 45:17A-31 requires all charitable organizations to maintain complete and accurate records of their activities in this State. Those records, including contributor information, are to be made available upon demand of the Attorney General. Because organizations that filed Internal Revenue Service form 990-N are required to maintain contributor information, the Division does not believe that filing a contributor schedule would present a significant burden to those organizations, which, by definition, can have no more than 10 contributors of \$ 5,000.00 or more.

However, the Summary of the proposed amendments set forth that the intent of the amendments was to require charitable organizations that would have previously been required to report contributor information to the Internal Revenue Service to continue to report this information to the Division. As charitable organizations that file Internal Revenue Service Form 990-N were not previously required to report contributor information to the Internal Revenue Service or the Division, the Division will not require those organizations to report this information now. The Division has changed N.J.A.C. 13:48-4.3 and 5.3 upon adoption to reflect that intent, and thanks the commenter for raising this issue.

The commenter also asserts that contributor information will need to be manually uploaded by larger charitable organizations because the Form 990 cannot be incorporated by reference in online registration. To clarify, charitable organizations are still able to incorporate Form 990 by reference, and are already required to upload the form, including all schedules, as part of their registration process. The online registration does require organizations to input certain

financial information, to the extent it is required for the system to determine which form the organization is required to complete and calculate the appropriate fee. The Division does not believe that the input of the required financial information with the upload of relevant documents, imposes a significantly increased burden on charitable organizations, and in any event, such burden would not be attributable to the rule now under consideration.

As to the commenter's recommendation to exempt all 501(c)(3) organizations from the scope of the proposed amendments, the Division does not believe that a change from the notice of proposal is warranted. Charitable organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code are not affected by the change in Internal Revenue Service rules that prompted the proposed amendments and remain subject to the same reporting requirements that they were previously. Therefore, the Division does not believe that the proposed amendments require 501(c)(3) charities to report to the Division any donor information that they are not already required to report to the Internal Revenue Service and to the Division under existing rules.

[page=638] 2. COMMENT: The commenter contends that the definition of "charity" confuses the distinction between 501(c)(3) organizations and other non-profit organizations. While the commenter recognizes that "charity" is defined in the Charitable Registration and Investigation Act (Act), N.J.S.A. 45:17A-18 et seq., the commenter believes that the use of the term "charity" in N.J.A.C. 13:48 ignores distinctions between 501(c)(3) organizations and other organizations regulated under the Act. The commenter is concerned that the use of the term "charity" will cause 501(c)(3) organizations to believe they must comply with the reporting requirements of N.J.A.C. 13:48-4.3 and 5.3. The commenter intends to lobby for changes to the Act and recommends that the Division amend N.J.A.C. 13:48, so that the term "charity" and "charitable organization" would be used solely for 501(c)(3) organizations. The commenter recommends that other organizations regulated by the Division be referred to as "regulated organizations," "registrant organizations," or "covered organizations."

RESPONSE: The commenter correctly recognizes that these concerns are more appropriately directed to the Legislature than to the Division. "Charitable organization" is defined in N.J.S.A. 45:17A-20 to include both 501(c)(3), as well as certain other types of non-profit organizations, such as social welfare, philanthropic, humane, or public health organizations. The reporting requirements in N.J.A.C. 13:48-4.3 and 5.3 apply to all organizations that fall within that statutory definition. As there is no statutory distinction between 501(c)(3) organizations and other organizations, the Division declines to change

its rules to introduce new terminology that departs from the statute's terminology.

3. COMMENT: The commenter asks what the Division does with information regarding donors and whether such information will be shared with other departments or agencies. The commenter questions what steps will be taken to protect information from security breaches and whether such information is subject to Freedom of Information Act or Open Public Records Act requests. The commenter also asks if the requirements of the amended rules conflict with other State statutes or rules regarding donor disclosure.

RESPONSE: The Charitable Registration and Investigation Act states at N.J.S.A. 45:17A-31 that donor information is not considered to be a matter of public record and shall not be made available for public inspection. Accordingly, the Division does not provide donor information in response to Open Public Record Act requests. (The Freedom of Information Act is applicable only to Federal government agencies, not state agencies. See 5 U.S.C. § 552.) Also pursuant to N.J.S.A. 45:17A-31, the Division does not use donor information for any purpose inconsistent with the Charitable Registration and Investigation Act. As with other personal information in custody of the Division, the Division has measures in place to protect its confidentiality. The Division does not perceive any conflict between the longstanding donor reporting requirements of the Charitable Registration and Investigation Act and the related rules, on the one hand, and any other statute requiring donor disclosures, on the other hand. In addition, the reporting requirements in the rules are consistent with the statutory requirements of the Charitable Registration and Investigation Act.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments are governed by N.J.S.A. 45:17A-18 et seq., and are not subject to any Federal requirements or standards.

Regulations

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***):

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

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.-7. (No change.)

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;

9. If a charitable organization's Internal Revenue Service filing under (a)8 above did not include a completed schedule B, a schedule of every contributor who, during the organization's previous tax year, gave the charitable organization, directly or indirectly, money, securities, or any other type of property totaling \$ 5,000 or more. In determining the total amount, separate and independent gifts of less than \$ 1,000 can be disregarded. The schedule shall include:

i. The name and address of each contributor;

ii. The total amount each contributor gave; and

iii. For noncash property contributions, a description of the noncash property given, fair market value of the noncash property, and the date the noncash property was received by the charity; and

10. (No change in text.)

(b) Charitable organizations that filed an Internal Revenue Service Form 990-N are not required to provide the information required pursuant to (a)9 above.

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

13:48-5.3 Financial reports; audits

(a) (No change.)

(b) Information required for the financial report shall include the following:

1.-3. (No change.)

4. A statement of cash flows; and

5. If a charitable organization's Internal Revenue Service filing under N.J.A.C. 13:48-5.1(b)5 did not include a completed schedule B, a schedule of every contributor who, during the organization's previous tax year, gave the charitable organization, directly or indirectly,

money, securities, or any other type of property totaling \$ 5,000 or more. In determining the total amount, separate and independent gifts of less than \$ 1,000 can be disregarded. The schedule shall include:

- i. The name and address of each contributor;
- ii. The total amount each contributor gave; and
- iii. For noncash property contributions, a description of the noncash property given, fair market value of the noncash property, and the date the noncash property was received by the charity.

(c) Charitable organizations that filed an Internal Revenue Service Form 990-N are not required to provide the information required pursuant to (b)5 above.

Recodify existing (c)-(g) as ***(d)-(h)*** (No change in text.)

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