

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-120-025 Definitions.** (1) A "bona fide officer or employee" of a charitable organization is one:

(a) Whose conduct is subject to direct control by such organization;

(b) Who does not act in the manner of an independent contractor in his or her relation with the organization; and

(c) Whose compensation is not computed on funds raised or to be raised.

(2) "Charitable organization" means any entity that solicits or collects contributions from the general public where the contribution is or is purported to be used to support a charitable ((activity)) purpose, but does not include any commercial fund-raiser ((or)), commercial fund-raising entity, commercial coventurer, or any fund-raising counsel, as defined in this section. ((("Charitable":

(a) Is not limited to its common law meaning unless the context clearly requires a narrower meaning;

(b) Does not include religious or political activities; and

(c) Includes, but is not limited to, educational, recreational, social, patriotic, legal defense, benevolent, and health causes.

(2)) Churches and their integrated auxiliaries are not charitable organizations, but are subject to RCW 19.09.100 (12), (15), and (18).

(3) "Charitable purpose" means any religious, charitable, scientific, testing for public safety, literary, or educational purpose or any other purpose that is beneficial to the community, including but not limited to recreational, environmental, humanitarian, patriotic, or civic purposes, the support of national or international amateur sports competition, the prevention of cruelty to children or animals, the advancement of social welfare, or the benefit of law enforcement personnel, fire fighters, and other persons who protect public safety. The term "charitable" is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

(4) "Charitable trust" means any real or personal property right held by an entity or person that is intended to be used for a charitable purpose(s). The trust may be created by will, deed,

articles of incorporation, or other governing instrument. It may be express or constructive.

~~((3))~~ (5) "Commercial coventurer" means a corporation, partnership, sole proprietorship, limited liability company, limited partnership, limited liability partnership, individual, or other entity that:

(a) Is regularly and primarily engaged in making sales of goods or services for profit directly to the general public; and

(b) Is not otherwise regularly or primarily engaged in making charitable solicitations in this state or otherwise raising funds in this state for one or more charitable organizations; and

(c) Represents to prospective purchasers that if they purchase a good or service from the commercial coventurer, a specified portion of the sales price or a certain sum of money or some other specified thing of value will be donated to a named charitable organization; and

(d) Does not ask purchasers to make checks or other instruments payable to a named charitable organization or any entity other than the commercial coventurer itself under its regular commercial name.

~~((4))~~ (6) "Commercial fund-raiser" or "commercial fund-raising entity" means any entity that for compensation or other consideration within this state directly or indirectly solicits or receives contributions for or on behalf of any charitable organization or charitable purpose, or that is engaged in the business of or is held out to persons in this state as independently engaged in the business of soliciting or receiving contributions for such purposes. However, a commercial coventurer, fund-raising counsel, or consultant, as defined by this section, is not a commercial fund-raiser or commercial fund-raising entity.

(7) "Compensation," means salaries, wages, fees, commissions, or any other remuneration or valuable consideration. Compensation shall not include reimbursement for expenses incurred and documented or noncash awards or prizes, valued at one hundred dollars or less, given annually to each volunteer.

~~((5) "Solicitation," means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with which:~~

~~(a) Any appeal is made for any charitable purpose; or~~

~~(b) The name of any charitable organization is used as an inducement for consummating the sale; or~~

~~(c) Any statement is made that implies that the whole or any part of the proceeds from the sale will be applied toward any charitable purpose or donated to any charitable organization; or~~

~~(d) The solicitation shall be deemed completed when made, whether or not the person making it receives any contribution or makes any sale.~~

(6) "Solicitation," as defined in RCW 19.09.020(16), for the purposes of these regulations, shall not include any of the following:

~~(a) An application or request for application for a grant,~~

~~contract, or similar funding from any foundation, corporation, governmental agency or similar entity which has an established application and review procedure for reviewing such requests;~~

~~(b) The attempt to sell a service or good which constitutes the basis of the charitable organization's activities under which the federal income tax exemption was granted, or is the primary purpose for the existence of the charitable organization. This includes, but is not limited to, admission to a theatrical or other performance presented by a charitable organization that is a drama, musical, dance, or similar group and fees for services such as a hospital provides or use of the charitable organization's facilities; or~~

~~(c) Bingo activities, raffles, and amusement games conducted under chapter 9.46 RCW and applicable rules of the Washington state gambling commission.~~

~~(7) "Commercial fund-raiser" or "commercial fund-raising entity" means any entity that for compensation or other consideration within this state directly or indirectly solicits, receives or raises contributions for or on behalf of any charitable organization or charitable purpose, or that is engaged in the business of or is held out to persons in this state as independently engaged in the business of soliciting or receiving contributions for such purposes. However, the following shall not be deemed a "commercial fund-raiser" or "commercial fund-raising entity":~~

~~(a) Any entity that provides fund-raising advice or consultation to a charitable organization within this state but neither directly nor indirectly solicits or receives or raises any contribution for or on behalf of any such charitable organization; or~~

~~(b) A bona fide officer or other employee of a charitable organization.~~

~~(8) "Renewal date" means the fifteenth day of the fifth month after the close of the organization's fiscal or accounting year.~~

~~(9) "Secretary" means the secretary of state or the secretary's designee, or authorized representative.) (8) "Contribution" means the payment, donation, promise, or grant, for consideration or otherwise, of any money or property of any kind or value which contribution is wholly or partly induced by a solicitation. Reference to dollar amounts of "contributions" or "solicitations" in this chapter means in the case of payments or promises to pay for merchandise or rights of any description, the value of the total amount paid or promised to be paid for such merchandise or rights.~~

~~(9) "Cost of solicitation" means and includes all direct and indirect costs, expenditures, debts, obligations, salaries, wages, commissions, fees, or other money or thing of value paid or incurred in making a solicitation.~~

~~(10) "Entity" means an organization, individual or institution with its own existence for legal and/or federal tax purposes. It has the capacity to enter into agreements or contracts, assume obligations, incur and pay debts, sue and be sued in its own right,~~

and to be held responsible for its actions. Entity may include, but is not limited to, an individual, organization, corporation, association, limited liability company, trust, group, partnership, proprietorship, company, estate, agency or unit of state government, person as defined in RCW 1.16.080, or any combination thereof.

For purposes of complying with registration requirements under Washington's Charitable Solicitations Act, "entity" does not include a branch, chapter, unit, affiliate or similar subordinate of another entity if said subordinate:

(a) Is under the direct supervision and control of the related entity;

(b) Does not have its own separate existence from the related entity for legal and/or federal tax purposes; and

(c) The related entity maintains registration under chapter 19.09 RCW.

Regardless of whether or not a subordinate is required to register under the act, it shall comply with the conditions set forth under RCW 19.09.100.

Interpretive note: Notwithstanding other facts that may be indicative of a separate existence for legal and federal tax purposes, a branch, chapter, unit, affiliate or similar subordinate; (i) has its own existence for legal purposes if said subordinate has an organizational structure separate from a related entity; and (ii) has its own existence for federal tax purposes if it has been issued a federal employer identification number separate from a related entity, falls under a central organization's IRS group exemption, is required to file a separate federal informational return, or is included in a central organization's group return.

(11) "Fund-raising counsel" or "consultant" means any entity or individual who is retained by a charitable organization for a fixed fee or rate, that is not computed on a percentage of funds raised, or to be raised, under a written agreement only to plan, advise, consult, or prepare materials for a solicitation of contributions in this state, but who does not manage, conduct, or carry on a fund-raising campaign and who does not solicit contributions or employ, procure, or engage in any compensated person to solicit contributions, and who does not at any time, have custody or control of contributions. A volunteer, employee, or salaried officer of a charitable organization maintaining a permanent establishment or office in this state is not a fund-raising counsel. An attorney, investment counselor, or banker who advises an individual, corporation, or association to make a charitable contribution is not a fund-raising counsel as a result of the advice.

(12) "General public" or "public" means any individual located in Washington state without a membership or other official relationship with a charitable organization before a solicitation by the charitable organization.

(13) "Income-producing assets" means assets that are purchased with the prospect that the assets will generate income or

appreciate in the future. In finance, an investment is a monetary asset purchased with the idea that the asset will provide income in the future or appreciate and be sold at a higher price; these investments would include, but are not limited to stocks, bonds or real property.

(14) "Membership" means that for the payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor, or other direct benefit, in addition to the right to vote, elect officers, or hold office. The term "membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation.

(15) "Other employee" of a charitable organization means any person:

(a) Whose conduct is subject to direct control by such organization;

(b) Who does not act in the manner of an independent contractor in his or her relation with the organization; and

(c) Who is not engaged in the business of or held out to persons in this state as independently engaged in the business of soliciting contributions for charitable purposes or religious activities.

(16) "Political organization" means those organizations whose activities are subject to chapter 42.17 RCW or the Federal Election Campaign Act of 1971, as amended.

(17) "Religious organizations" means those entities that are not churches or integrated auxiliaries as defined and includes nondenominational ministries, interdenominational and ecumenical organizations, mission organizations, speakers' organizations, faith-based social agencies, and other entities whose principal purpose is the study, practice, or advancement of religion.

(18) "Renewal date" means the fifteenth day of the fifth month after the close of the organization's fiscal or accounting year.

(19) "Secretary" means the secretary of state or the secretary's designee, or authorized representative.

(20) "Signed" means hand-written, or, if the secretary adopts rules facilitating electronic filing that pertain to this chapter, in the manner prescribed by those rules.

(21) (a) "Solicitation" means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with which:

(i) Any appeal is made for any charitable purpose; or

(ii) The name of any charitable organization is used as an inducement for consummating the sale; or

(iii) Any statement is made that implies that the whole or any part of the proceeds from the sale will be applied toward any charitable purpose or donated to any charitable organization.

(b) The solicitation shall be deemed complete when made, whether or not the person making it receives any contribution or makes any sale.

(c) A commercial fund-raiser is considered to solicit or

receive contributions from the public directly if contributions are solicited or received by the fund-raiser or by any officer, employee, principal, or shareholder of the commercial fund-raiser, including immediate family members.

(d) Contributions are considered to be solicited or received indirectly if they are solicited or received by:

(i) Any organization owned or controlled by the commercial fund-raiser or owned or controlled by any officer, employee, principal, or shareholder of the commercial fund-raiser, including immediate family members; or

(ii) Any person or organization, other than the charitable organization for which funds are solicited, with which the commercial fund-raiser as a contractual relationship governing the solicitation or receipt of contributions.

(e) "Solicitation" as defined in RCW 19.09.020(21), for the purposes of these regulations, does not include any of the following:

(i) An application or request for application for a grant, contract, or similar funding from any foundation, corporation, governmental agency or similar entity which has an established application and review procedure for reviewing such requests;

(ii) The attempt to sell a service or good which constitutes the basis of the charitable organization's activities under which the federal income tax exemption was granted, or is the primary purpose for the existence of the charitable organization. This includes, but is not limited to, admission to a theatrical or other performance presented by a charitable organization that is a drama, musical, dance, or similar group and fees for services such as a hospital provides or use of the charitable organization's facilities; or

(iii) Bingo activities, raffles, and amusement games conducted under chapter 9.46 RCW and applicable rules of the Washington state gambling commission.

AMENDATORY SECTION (Amending WSR 94-01-004, filed 12/1/93, effective 1/1/94)

**WAC 434-120-030 Public records.** Except as provided by RCW 42.17.310, all public records of the corporations division, which includes ~~((the))~~ charitable organization, commercial fund-raiser and charitable trust registrations ~~((and charitable trust section))~~, are available for public inspection and copying pursuant to rules of procedures in chapter 434-120 WAC ~~((and WAC 434-110-075))~~. Registrations of trusts with several or mixed purposes shall not be made public under RCW 11.110.040 and 11.110.075.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-120-040 Public information derived from registration.**

(1) Registration forms, and attachments, filed by charitable organizations and commercial fund-raisers pursuant to WAC 434-120-105 and 434-120-215, are available for public inspection or copying. For purposes of public reports derived from that registration information, the secretary shall calculate, and make available to the public, the following information:

(2) For charitable organizations, the percentage of total expenditures in a reporting year allocated to charitable program services. This shall be calculated by dividing the amount reported as expended for charitable purposes by the amount reported as total expenses, and multiplying by 100.

(3) For commercial fund-raisers the percentage of the proceeds of charitable solicitations which are paid to or retained by charitable organizations. This shall be calculated by dividing the amount reported pursuant to WAC 434-120-215 (2)(1)(iii)(B) by the amount reported pursuant to WAC 434-120-215 (2)(1)(iii)(A), and multiplying by 100.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-120-045 Change in status, notification.** An entity required to register under ((this)) chapter 19.09 RCW shall notify the charities program in writing of ((a)) any changes ((in:

~~(1) Principal officer, owner, or Washington representative within thirty days after the change.~~

~~(2) Business structure within thirty days, register the restructured or newly named entity as a new commercial fund-raiser and include evidence of separate bonding.~~

~~(3) Business name within thirty days, register the new name, and include evidence of bonding in the new name. If the fund-raiser will use both the existing name and the new name, include evidence of separate bonding for each name and include a fee of ten dollars)) to its registration pursuant to WAC 434-120-105 and 434-120-215, or any other changes within thirty days after the change.~~

The organization shall submit changes using the form available from the charities program. The fee for information changes is ten dollars per submittal of change.

NEW SECTION

**WAC 434-120-046 Record retention.** Charitable organizations and commercial fund-raisers shall keep, for a three-year period, the annual solicitation reports and the supporting documents including books, ledgers, prepared statements, compilations, reviews, or audit reports, or any other records on which they were based. Charitable trusts shall keep, for a three-year period, their annual financial information, and the supporting documents including books, ledgers, prepared statements, compilations, reviews, or audit reports, or any other records on which they were based. Solicitation reports, financial statements, and any other records, shall be available to the attorney general or county prosecutor on request.

AMENDATORY SECTION (Amending WSR 96-10-021, filed 4/24/96, effective 5/25/96)

**WAC 434-120-100 Who shall register.** (1) Any entity that will conduct a charitable solicitation or solicit funds from the general public for charitable purposes shall register with the (~~corporations division~~) charities program under the solicitations act.

(2) Entities exempt from registration are the following:

(a) (~~Any entity that provides fund-raising advice or consultation to a charitable organization within this state but neither directly nor indirectly solicits or receives any contribution for or on behalf of any such charitable organization;~~) Fund-raising counsel as defined in WAC 434-120-025(11);

(b) Any (~~entity whose sole purpose is religious or~~) political organization as defined in WAC 434-120-025(16);

(c) Any entity (~~who~~) which raises less than twenty-five thousand dollars in revenue in any accounting year, all of whose activities including fund-raising are conducted by volunteers, and whose officers or members do not receive assets of or benefits from the organization;

(d) A bona fide officer or other employee of the charitable organization for which the funds are solicited; and

(e) (~~Charitable organizations located outside of the state of Washington that meet the statutory requirements under RCW 19.09.076(2).~~) Any appeal for funds on behalf of a specific individual named in the solicitation, but only if all of the proceeds of the solicitation are given to or expended for the direct benefit of that individual. This does not include organizations that conduct solicitations for one or more individuals on a repeated or ongoing basis.

(3) Any entity exempt from registration by these regulations

soliciting or conducting a solicitation shall comply with the conditions for solicitations as described in RCW 19.09.100.

(4) Interpretive note: The secretary of state does not interpret RCW 19.09.065 as requiring a registration by an employee of an educational institution who, as part of his or her employment with the institution, solicits contributions on behalf of a nonprofit charitable foundation affiliated with that institution, if the foundation is registered and the educational institution is either:

(a) A public school, college, or university operated by the state of Washington, one of its school districts, or a comparable public institution of another state or nation; or

(b) A private entity that is nonprofit and charitable, having a program of primary, secondary, or collegiate instruction comparable in scope to that of any public school or college operated by the state of Washington or any of its school districts.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-120-103 Required forms and filings.** (1) A charitable organization complies with the filing and registration requirements of this chapter by filing the following documents with the secretary of state at the times, and in the manner, prescribed by these rules either the:

(a) State registration form described in WAC 434-120-105. This form is available through the charities program; or

(b) Unified Registration Statement developed by the National Association of State Charity Officials (NASCO), if accompanied by the components identified for filing in Washington in the unified registration statement (~~(appendix)~~) addendum.

(2) These forms are used for original registration form, as well as for (~~periodic~~) annual renewal. The purpose of this report is to provide basic information about the organization, as described in RCW 19.09.075.

(3) The state registration form or the unified registration statement must be filed together with:

(a) Solicitation report. This financial report is filed by all charitable organizations, except those exempted by these rules. The purpose of this report is to provide information regarding solicitations conducted during the reporting period. Solicitation reports are filed as part of an annual renewal; and

(b) All contracts between the commercial fund-raiser and all charitable organizations for which it solicits, as provided by WAC 434-120-240.

(4) The unified registration statement and the (~~(appendix)~~) addendum are available for download at: (~~(http://www.nonprofits.org/library/gov)~~)

<http://www.multistatefiling.org>.

(5) The financial statement required by WAC 434-120-130 does not need to be filed with the office of the secretary of state. The purpose of this statement is to verify and support the information filed in the solicitation report. This statement must be available upon request as provided in this chapter.

(6) This section is intended to be explanatory of other rules in this chapter, and not to modify or diminish the requirements of those rules.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-120-105 Charitable organization registration--Form and requirements.** (1) Charitable organizations registering under this act shall submit the registration form described in WAC 434-120-103. The secretary's failure to affirmatively reject or return an incomplete registration or other filing that does not fully comply with these rules or chapter 19.09 RCW shall not excuse the failure to comply.

(2) A registration is not complete, and will not be accepted for filing, unless it includes:

(a) The name of the organization, and every address (including both physical address and any mailing address if different), telephone number(s), fax number(s), ~~((and taxpayer identification number, including those of all offices, chapters, branches, and affiliates used in charitable solicitations reflected in the registration))~~ including any electronic mail or internet addresses used by the organization. Private mail boxes must be identified through use of the designation "PMB" followed by the box number;

(b) All of the names under which the organization will solicit contributions, including, but not limited to, ~~((the names of all offices, chapters, branches, and affiliates))~~ acronyms, abbreviations, DBAs and program names used in charitable solicitations reflected in the registration;

(c) The type of organization and taxpayer identification number, the unified business identifier, if the organization is registered in Washington and date established, and if the organization is incorporated, the state and date of incorporation;

(d) The ~~((end))~~ beginning and ending dates of its current fiscal or accounting year;

(e) The court or other forum, case number and title of all legal actions, if any, in which a judgment or final order was entered, or action is currently pending, against any organization or individual required to be identified in the registration. "Actions" include any administrative or judicial proceeding alleging that the entity has failed to comply with these rules, chapter 19.09 RCW, or state or federal laws pertaining to taxation,

revenue, charitable solicitation, or recordkeeping, whether such action has been instituted by a public agency or a private person or entity;

(f) A list of all states where the organization is registered for charitable solicitations;

(g) The name, address, and telephone number of the officers or of persons accepting responsibility for the organization, including the:

(i) Members of the board of directors or any committee or group serving the function of a board of directors, regardless of the name of the committee or group; and

(ii) Officers of the charitable organization, or the persons serving the function of officers, regardless of the title of the position;

(h) The names of the three officers or employees receiving the greatest amount of compensation from the organization;

(i) The purpose of the charitable organization, including, if applicable, the names and addresses of any specific beneficiaries which the charitable organization supports and to whom assets would be distributed to in the event of dissolution. When filing a renewal or an updated registration, the organization is not required to submit a list of beneficiaries if there have been no changes to that list;

(j) A statement indicating whether the organization is exempt from federal income tax, and copy of the letter by which the Internal Revenue Service granted the organization tax exempt status if the Internal Revenue Service has granted the organization such status. The organization shall indicate the section of the Internal Revenue Code under which they are exempt from the federal income tax;

(k) The name and address of the person or entity with authority for the preparation of financial statements or the maintenance of financial information on behalf of the organization;

(l) The name, address, and telephone number of an individual with expenditure authority who can respond to questions regarding expenditures of funds, and the names and addresses of any commercial fund-raiser (~~(and any commercial coventurer)~~) who (~~have~~) has the authority to expend funds or incur obligations on behalf of the organization;

(m) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305;

(n) A solicitation report of the charitable organization for the preceding fiscal or accounting year including, but not limited to:

(i) The types of solicitations conducted;

(ii) The name, physical address, and telephone number of any commercial fund-raiser (~~(, including any commercial coventurer)~~) conducting solicitations on behalf of the organization in Washington during the period covered by this report; and

(iii) The total dollar value of (~~(all support)~~) contributions received from solicitations, which includes but is not limited to,

special events, sale of inventory, and amounts collected on behalf of the charitable organization by a commercial fund-raiser (~~or commercial coventurer~~);

(iv) The total dollar value of revenue from all other sources;

(v) Gross receipts, including amounts collected on behalf of the charitable organization by a commercial fund-raiser or commercial coventurer regardless of custody of funds. "Gross receipts" include, but are not limited to, contributions, gross revenue from special events, sales of inventory, goods or services (including tickets to events), and all other revenue from solicitations;

(vi) The amount of total expenditures used directly for charitable program services, including payments to affiliates if costs involved are not connected with the administrative or fund-raising functions of the reporting organization;

(vii) The amount of total expenditures used for administrative and fund-raising costs, including amounts paid to or retained by a commercial fund-raiser or (~~commercial coventurer~~) fund-raising counsel. "Administrative and fund-raising costs" include, but are not limited to, the following expenses if not directly related to program services; salaries, wages, compensation, legal, accounting, occupancy, equipment costs, printing and publications, telephone, postage, supplies, travel, meetings, fees for services (including fund-raising consultation), and cost of goods or inventory sold that are not directly related to program services.

(viii) Total expenditures, including, but not limited to, amounts paid to or retained by a commercial fund-raiser, or (~~commercial coventurer~~) fund-raising counsel, amounts expended for charitable program services, administrative expenses, fees for services, and fund-raising costs incurred by the charitable organization.

(ix) Beginning assets; and

(x) Ending assets.

(o) A copy of the charitable organization's federal informational (~~tax~~) return (Form 990, (~~Form~~) 990PF, (~~or Form~~) 990EZ, or 990T) reflecting the fiscal or accounting year covered by this report; if the federal informational return does not contain the total amount of money applied to charitable purposes, fund-raising costs and other expenses as required pursuant to RCW 19.09.075 (7)(c), a supplemental report may be required by the secretary. The supplemental report shall be in the form prescribed by the secretary.

(p) The charitable organization may provide additional information which the organization believes would be of assistance in understanding other reported information, or to provide context for reported information.

(3) The organization shall report actual figures, and shall not use estimates, when completing a solicitation report or a supplemental solicitation report.

(4) (~~A parent organization may file a consolidated registration form when registering, including the solicitation information required for each of its related foundations,~~

~~supporting organizations, chapters, branches, or affiliates that solicit in the state of Washington, which are supervised or controlled by the parent organization. Registration and subsequent financial reporting requirements may be satisfied either separately or in consolidated form for all subsidiary organizations. A filing by the parent organization relieves each subsidiary organization identified in that filing of any duty to file independently.~~

(5)) All charitable ((solicitation)) organization registrations shall be signed and dated by the president, treasurer, or comparable officer of the organization or, in the absence of officers, person responsible for the organization.

#### NEW SECTION

**WAC 434-120-107 Audited financial report--Tiered reporting requirements (effective January 1, 2010).** (1) Charitable organizations submitting an initial registration, shall meet the financial reporting requirements, specified in RCW 19.09.075 or WAC 434-120-105. If an organization does not file a federal form (990, 990PF, 990EZ, 990T), the organization must complete the solicitation report contained in the form prescribed by the secretary.

(2) Charitable organizations that have more than one million dollars in annual gross revenue averaged over the last three fiscal years, shall have the federal financial reporting form (990, 990EZ, 990PF or 990T) reviewed by an independent third-party who normally prepares or reviews the federal returns in the ordinary course of their business. The independent review must be submitted to the secretary.

(3) Charitable organizations that have more than three million dollars in annual gross revenue averaged over the last three fiscal years, shall submit an audited financial statement prepared by an independent certified public accountant for the year immediately following the year in which the organization achieved a three year average of more than three million dollars.

(4) The secretary may waive the requirement to file audited financial statements prepared by an independent certified public accountant when the organization can demonstrate that they have reached a three year average of more than three million dollars in gross revenue through unusual or nonreoccurring revenue received in a single year without which they would have not met the three year annual gross average threshold.

(5) This rule becomes effective January 1, 2010.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-120-110 Organizations exempt from filing requirements--Optional filing.** (1) Charitable organizations exempt from the filing requirements of this chapter under RCW 19.09.076(1) and WAC 434-120-100 (2) (a), ~~(b) ((or))~~, (c), or (e) may register with the charities program.

(2) Charitable organizations choosing to register under this section shall register by:

(a) Completing the registration form specified by the secretary; and

(b) Paying the registration fee of twenty dollars.

(3) Charitable organizations registered under this section may change or update their registration by:

(a) Filing the update with the charities program; and

(b) Paying the ten-dollar update fee.

(4) Expedited processing under WAC 434-112-080 is available for registrations and updates under this section.

(5) The secretary offers this optional registration because some grant making entities and programs require registration with the charities program.

AMENDATORY SECTION (Amending WSR 97-16-035, filed 7/30/97, effective 8/30/97)

**WAC 434-120-130 Financial standards.** Upon the request of the attorney general, secretary or the county prosecutor, a charitable organization shall submit a financial statement containing, but not limited to, the following information within thirty days from date of request.

(1) The gross amount of the contributions pledged and the gross amount collected.

(2) The amount thereof, given or to be given to charitable purposes represented together with details as to the manner of distribution as may be required.

(3) The aggregate amount paid and to be paid for the expenses of such solicitation.

(4) The amounts paid to and to be paid to commercial fundraisers or charitable organizations.

(5) Copies of any annual or periodic reports furnished by the charitable organization, of its activities during or for the same fiscal period(~~(, to its parent organization, subsidiaries, or affiliates, if any)~~).

AMENDATORY SECTION (Amending WSR 96-10-021, filed 4/24/96, effective 5/25/96)

**WAC 434-120-140 How and when.** (1) Original registration: An entity required to register as a charitable organization shall complete the form described in WAC 434-120-105 and submit it with the fee in WAC 434-120-145 prior to conducting any solicitation.

(2) Annual renewal:

(a) An entity shall renew its charitable registration by no later than the fifteenth day of the fifth month after the end of its fiscal year.

(b) The renewal shall include the same information required for registration as described in WAC 434-120-105 and RCW 19.09.075, except that a determination letter from the Internal Revenue Service need not be attached if it was previously filed. The solicitation report will be based on the most recent filing with the Internal Revenue Service or if the organization does not file with the Internal Revenue Service, the solicitation report will be based on the most recently completed fiscal year. No organization may submit the same fiscal information for two consecutive years.

(c) No change in an entity's fiscal year shall cause the due date of a renewal to be more than one year after the previous registration or renewal. For purposes of renewals that include financial information for a partial year, due to a change of fiscal year, threshold levels for registration and financial statement requirements shall be determined on a prorated basis.

(3) (~~Change in status, notification:~~) An organization shall notify the (~~corporations division~~) charities program of a change in organization name, mailing address, organization structure, principal officer, (~~owner,~~) Washington representative, tax status, fiscal year, or any other information filed under RCW 19.09.075 or WAC 434-120-105 (~~, within thirty days after the change~~).

(4) The organization shall submit changes using the form available from the charities program within thirty days after the change and include the ten dollar fee.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-120-145 Fees.** (1) Original registration: Entities registering as charitable organizations shall pay a fee of twenty dollars for the first year of registration.

(2) Annual renewal: Organizations (~~reregistering~~) shall pay a renewal fee of ten dollars.

(3) Information changes: Organizations filing changes of information described in WAC 434-120-105, shall pay a fee of ten dollars for each submittal of change(s).

(4) Photocopy fees: For copy of a charitable organization registration form or letter, including the finance and solicitation reports, the fee is five dollars.

(5) Expedited service fees: For in-person service at the counter, or on-line filings, the fee is twenty dollars for one or more transactions in each charitable organization file requested.

(6) For service of process on a registered charity, (~~commercial coventures,~~) commercial fund-raiser, or charitable trust, the fee is fifty dollars.

AMENDATORY SECTION (Amending WSR 94-01-004, filed 12/1/93, effective 1/1/94)

**WAC 434-120-175 Voluntary verification information.** Each organization registering under the act may submit additional information, not required by law, for its file if the information is intended to inform the public about its programs and activities and to verify its existence. The (~~corporations division~~) charities program may place such information in the organization's file for a specified period of time. Persons coming into the office may read such information; however, no voluntary verification information shall be mailed out.

NEW SECTION

**WAC 434-120-180 Education program.** The secretary may develop and operate an education program for charitable organizations, their board members, and the general public. The secretary shall consult with the nonprofit and charitable sector and the charitable advisory council created in RCW 19.09.550 to develop curricula and other materials intended to educate charitable organizations, their board members, and the general public.

NEW SECTION

**WAC 434-120-185 Charitable advisory council.** The purpose of the charitable advisory council is to advise the secretary in the following areas:

(1) Training and education needs of charitable organizations within the state;

(2) Model policies related to governance and administration of charitable organizations in accordance with fiduciary principles;

(3) Emerging issues and trends affecting charitable organizations; and

(4) Other related issues at the request of the secretary.

The council will consist of thirteen members chosen by the secretary to represent a broad range of charities by size, purpose, geographic regions of the state, and general expertise in management and leadership of charitable organizations. An ex officio member will be appointed by the attorney general per RCW 19.09.510.

Members serve at the pleasure of the secretary. Terms are staggered, with the original board drawing lots for two- and three-year terms. All following terms are three years but all terms expire no later than when the appointing secretary leaves office. Vacancies may be filled by the secretary upon notice of a vacancy from the member.

The council will elect a chairperson from its members annually. The frequency of meetings will be at least twice a year, but additional meetings may be called by the secretary or the council. Council members are not compensated for their service, but may be reimbursed for expenses incurred in the conduct of their official duties. Reimbursement is at current state rates for travel and all reimbursement requests must be received within thirty days of incurring the expense.

AMENDATORY SECTION (Amending WSR 95-11-135, filed 5/24/95, effective 6/24/95)

**WAC 434-120-200 Required filings.** (1) A commercial fund-raiser complies with the filing and registration requirements of this chapter by filing the following documents with the secretary of state at the times, and in the manner, prescribed by these rules:

(a) Commercial fund-raiser registration form. This form is used as an original registration form, as well as an annual renewal form. The purpose of this report is to provide basic information about the organization, as described in RCW 19.09.079;

(b) Solicitation report. These reports are filed (~~periodically~~) annually by all commercial fund-raisers, except those exempted by these rules. The purpose of these reports (~~are~~) is to provide information regarding solicitations conducted during the reporting period, of an informational nature to the public. These reports must be filed in the time and manner specified in WAC 434-120-215;

(c) All surety bonds required by WAC 434-120-260; and

(d) All contracts between the commercial fund-raiser and all charitable organizations for which it solicits, as provided by WAC

434-120-240.

(2) The financial statement required by WAC 434-120-255 does not need to be filed with the office of the secretary of state. The purpose of this statement is to verify and support the information filed in the solicitation report. This statement must be available upon request as provided in this chapter.

(3) This section is intended to be explanatory of other rules in this chapter, and not to modify or diminish the requirements of those rules.

AMENDATORY SECTION (Amending WSR 97-16-036, filed 7/30/97, effective 8/30/97)

**WAC 434-120-210 Who shall register.** (1) Every commercial fund-raiser, as described in RCW 19.09.020(~~(+8)~~) (5), shall register each year, pursuant to WAC 434-120-215(~~(, except that commercial coventurers may instead register pursuant to WAC 434-120-212)~~).

(2) Suppliers of goods and services to charitable organizations for fund-raising purposes are exempt from registration, if they are not otherwise engaged in the business of charitable fund-raising.

(3) If a commercial fund-raiser does business under more than one name, each name used by that entity must be registered and bonded separately.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-120-215 Commercial fund-raiser registration--Form and requirements.** (1) Commercial fund-raisers registering under this act shall use the commercial fund-raiser registration form available in the office of the charities program. The secretary's failure to affirmatively reject or return an incomplete registration or other filing that does not fully comply with these rules or chapter 19.09 RCW, shall not excuse the failure to comply. The secretary's acceptance of a registration or other filing which violates these rules or chapter 19.09 RCW shall not excuse the violation.

(2) A registration is not complete, and will not be accepted for filing, unless it includes:

(a) The name of the organization, and every address (including both physical address and any mailing address if different), telephone number(s), fax number(s), of the commercial fund-raising

entity under which contributions are being solicited or received, including any electronic mail or Internet addresses used by the organization. Private mail boxes must be identified through use of the designation "PMB" followed by the box number;

(b) The name(s); address(es); and telephone number(s) of the individual(s) responsible for fund-raising activities of the entity in Washington state;

(c) The type of organization, taxpayer identification number, the unified business identifier if the organization is registered in Washington and date established, and if the organization is incorporated, the state and date of incorporation;

(d) The end date of its current fiscal or accounting year;

(e) The court or other forum, case number and title of all legal actions, if any, in which a judgment or final order was entered, or action is currently pending, against any organization or individual required to be identified in the registration. "Actions" include any administrative or judicial proceeding alleging that the entity has failed to comply with these rules, chapter 19.09 RCW, or state or federal laws pertaining to taxation, revenue, charitable solicitation, or recordkeeping, whether such action has been instituted by a public agency or a private person or entity;

(f) A list of all states where the organization is registered for fund-raising, including any other names under which the organization is currently registered or has been registered in the past three years;

(g) The name, address, and telephone number of the officers or of persons accepting responsibility for the organization;

(h) The names of the three officers or employees receiving the greatest amount of compensation from the organization;

(i) The name and address of the person or entity with authority for the preparation of financial statements or the maintenance of financial information on behalf of the organization;

(j) The name, address, and telephone number of an individual with expenditure authority who can respond to questions regarding expenditures of funds, and the names and addresses of any charitable organizations who have given the commercial fund-raiser authority to expend funds or incur obligations on behalf of the organization;

(k) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305;

(l) A solicitation report of the fund-raising activities of the entity for the preceding fiscal or accounting year including, but not limited to:

(i) The types of fund-raising services conducted;

(ii) The name of each charitable organization to whom this entity has provided fund-raising services;

(iii) The total dollar value of the following:

(A) Contributions received, either by the commercial fund-raiser or the charities with which the commercial fund-raiser contracts, as a result of services provided by the commercial fund-

raiser during the year shown above. (This is the total amount of money raised, regardless of who has possession of funds.)

(B) Funds either retained by, or paid to, the charities with whom the commercial fund-raiser contracts, after fees and any expenses have been subtracted. (This is the portion of money raised that the charities receive or keep after all fund-raising expenses have been deducted.)

(iv) The name, address, and telephone number of any other commercial fund-raiser retained in the conduct of providing fund-raising services;

(3) The commercial fund-raiser may provide additional information which the commercial fund-raiser believes would be of assistance in understanding other reported information, or to provide context for reported information.

(4) The commercial fund-raiser shall report actual figures and shall not use estimates when completing a solicitation report or a supplemental solicitation report.

(5) All commercial fund-raiser registrations shall be signed by an officer or owner of the commercial fund-raiser.

AMENDATORY SECTION (Amending WSR 94-01-004, filed 12/1/93, effective 1/1/94)

**WAC 434-120-220 Change in status, notification.** A commercial fund-raiser shall ~~((do the following))~~:

(1) Notify the ~~((corporations division))~~ charities program of a change in organization name, mailing address, principal officer, owner, ~~((or))~~ business structure, Washington representative ~~((within thirty days after the change)),~~ fiscal year or any other information filed under RCW 19.09.079 or WAC 434-120-215.

(2) ~~((Notify the corporations division of a change in business structure within thirty days, register the restructured or newly named entity as a new commercial fund raiser and include evidence of separate bonding.~~

~~((3) Notify the corporations division of a change in business name within thirty days, register the new name, and include evidence of bonding in the new name. If the fund raiser will use both the existing name and the new name, include evidence of separate bonding for each name and include a fee of ten dollars.))~~  
The commercial fund-raiser shall submit changes using the form available from the charities program within thirty days after the change and include the ten dollar fee.

AMENDATORY SECTION (Amending WSR 96-10-021, filed 4/24/96, effective 5/25/96)

**WAC 434-120-225 Annual ((reregistration)) renewal.** (1) Each commercial fund-raiser shall ((reregister)) renew annually by no later than the fifteenth day of the fifth month after the end of its fiscal year.

(2) ((A fund-raiser that changes its fiscal year shall notify the secretary of state of the change, in writing, within thirty days of making the change.)) No change in a fund-raiser's fiscal year shall cause the due date of a renewal to be more than one year after the previous registration or renewal. For purposes of renewals that include financial information for a partial year, due to a change of fiscal year, threshold levels for financial statement requirements shall be determined on a prorated basis.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-120-250 Fees.** All commercial fund-raisers shall pay an original registration fee at the time of filing and ((a yearly registration)) an annual renewal fee.

(1) The fee for original registration in this state is two hundred fifty dollars.

(2) The annual ((registration)) renewal fee is one hundred seventy-five dollars.

(3) The fee for filing changes in any information previously filed under RCW 19.09.079, and WAC 434-120-215 or for filing a contract is ten dollars.

(4) The late fee is fifty dollars for failing to renew registration by the due date. The commercial fund-raiser shall pay an additional late fee of one hundred dollars for each year that it was required to register under this act and failed to do so, including the current year. If the registration has lapsed for more than two years, the entity shall provide solicitation information for the previous two years and shall register as a new commercial fund-raiser under RCW 19.09.079, in addition to paying any late fees due under this section.

Any commercial fund-raiser failing to renew registration and conducting business may be subject to other penalties and remedies that may be imposed by law, including penalties for soliciting without being registered. These penalties are cumulative.

(5) The fee for expedited in-person service, and on-line filings, is twenty dollars for any and all transactions within one commercial fund-raiser file, in addition to regular fee for the transaction.

(6) The photocopy fee is ten dollars for copies of the annual registration form or letter.

~~((7) A commercial coventurer shall pay a registration fee of twenty dollars when it registers with the secretary or renews its registration.))~~

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-120-260 Surety bonds.** ~~((1))~~ In compliance with RCW 19.09.190 a registering commercial fund-raiser, as principal, shall submit proof of execution of a surety bond with one or more sureties whose liability in the aggregate will equal at least fifteen thousand dollars. Except as provided in WAC 434-120-265, commercial fund-raisers must provide proof of bonding if the commercial fund-raiser engages, or plans to engage, in one or more of the following practices:

~~((a))~~ (1) The fund-raiser directly or indirectly receives contributions from the public on behalf of any charitable organization; or

~~((b))~~ (2) The fund-raiser is compensated based upon funds raised or to be raised, number of solicitations made or to be made, or any similar method, even if the fund-raiser does not directly or indirectly receive the contributions; or

~~((c))~~ (3) The fund-raiser incurs or is authorized to incur expenses on behalf of the charitable organization; or

~~((d))~~ (4) Has not been registered with the secretary as a commercial fund-raiser for the preceding fiscal or accounting year shall execute a surety bond as principal with one or more sureties whose liability in the aggregate as such sureties will equal at least fifteen thousand dollars.

~~((2) A commercial fund-raiser is considered to solicit or receive contributions from the public directly if they are solicited or received by the fund-raiser or by any officer, employee, principal, or shareholder of the commercial fund-raiser, including immediate family members. Contributions are solicited or received indirectly if they are solicited or received by:~~

~~(a) Any organization owned or controlled by the commercial fund-raiser or owned or controlled by any officer, employee, principal, or shareholder of the commercial fund-raiser, including immediate family members; or~~

~~(b) Any person or organization, other than the charitable organization for which funds are solicited, with which the commercial fund-raiser has a contractual relationship governing the solicitation or receipt of contributions. Solicitations shall be deemed received by the fund-raiser if they are deposited into bank accounts wholly or partially owned or controlled by the commercial fund-raiser or other entity with which the commercial fund-raiser maintains a contractual relationship.~~

~~(3) If a commercial fund-raiser does business under more than~~

~~one name, each name used by that entity must be registered and bonded separately.)~~)

AMENDATORY SECTION (Amending WSR 94-01-004, filed 12/1/93, effective 1/1/94)

**WAC 434-120-270 Impairment of surety bond.** In the event that a final ((judgement)) judgment shall impair the liability of a surety bond and the full amount required is not in effect, the secretary shall suspend the registration of such commercial fund raiser. The commercial fund raiser may request reinstatement when it has restored the full amount of the required bond liability and satisfied all ((judgement)) judgment claims.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-120-310 Charitable trust registration--Form and requirements.** (1) Trustees registering under chapter 11.110 RCW shall use the registration form available in the office of the secretary of state. The secretary's failure to affirmatively reject or return an incomplete registration or other filing that does not fully comply with these rules or chapter 11.110 RCW shall not excuse the failure to comply.

(2) An initial registration form is not complete, and will not be accepted for filing, unless it includes:

(a) The trustee's name;

(b) The trustee's mailing address, and physical address if different;

(c) The name of the trust, its Federal Employer Identification Number, if any, or other identifying information sufficient to distinguish the trust from other registered trusts;

(d) A brief description of the charitable purposes of the trust, which may, at the trustee's option, include the names and addresses of any charitable organizations benefited by the trust;

(e) The market value of all trust assets invested for incoming-producing purposes as of the date on which the trustee received possession or control of the trust corpus;

(f) A copy of the governing instrument creating the trust;

(g) A statement indicating whether the trust is exempt from federal income tax, and, if exempt, the section of the Internal Revenue Code under which the trust is exempt from federal income tax;

(h) A copy of the letter by which the Internal Revenue Service

granted the trust tax exempt status if the Internal Revenue Service has granted the trust such status;

- (i) The end date of its current fiscal or accounting year;
- (j) A financial report of the trust for the preceding fiscal or accounting year, including, but not limited to:
  - (i) Beginning assets;
  - (ii) Total revenue;
  - (iii) Grants, contributions, and the amount of expenditures used directly for program services;
  - (iv) Compensation of officers, directors, trustees, etc.;
  - (v) Total expenses; and
  - (vi) Ending assets.
- (k) A copy of the trust's federal informational tax return (Form 990, (~~Form~~) 990PF, 990T, or (~~Form~~) 990EZ) reflecting the fiscal or accounting year contained in this report;
- (l) The name and telephone number of the preparer of the trust registration, if different from trustee.
- (3) The renewal registration form required by this rule shall be the same as the form described in WAC 434-120-310 except that the information required by WAC 434-120-310 (2) (d), (e), (f), (g) and (h) is not required.
- (4) The trust shall report actual figures, and shall not use estimates, when completing a financial report.
- (5) All charitable trust registrations shall be signed by the trustee, or, if the trustee is a corporation, of the corporate officer or employee responsible for the trust.
- (6) A copy of the governing instrument creating the trust shall not be deemed sufficient to meet the requirements of this section.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-120-355 Change in status, notification.** A charitable trust shall notify the charities program in writing of a change in trust instrument, trustee, principal officer, tax status, fiscal year, or any other information filed under RCW 11.110.060 or WAC 434-120-310 within four months after the change. Organizations filing changes of information described in RCW 11.110.060 or WAC 434-120-310 shall pay a fee of ten dollars for each submittal of change.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-120-125	Record retention.
WAC 434-120-212	Registration by commercial coventurers.
WAC 434-120-265	Exemption from surety bond.