

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

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) "Annual gross revenue" means, for any accounting period, the total gross ((receipts)) amounts, including cash or noncash contributions received by or on behalf of a charitable organization from all sources (~~(of revenue)~~), without subtracting any costs or expenses.

(3) "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 purpose, but does not include any commercial fund-raiser, commercial fund-raising entity, commercial coventurer, or any fund-raising counsel, as defined in this section. Churches and their integrated auxiliaries are not charitable organizations, but are subject to RCW 19.09.100 (12), (15), and (18).

(4) "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, firefighters, 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.

(5) "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.

(6) "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.

(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 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.

(8) "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.

(9) "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.

(10) "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.

(11) "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, has obtained its own federal tax exempt status separate from a related entity, is required to file a separate federal informational return, or is included in a central organization's group return.

(12) "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.

(13) "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.

(14) "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.

(15) "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.

(16) "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.

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

(18) "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.

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

(20) The "review" as used in WAC 434-120-107(2), means a review of a tax reporting form, including financial presentations included in the tax return, for state reporting purposes in accordance with chapter 19.09 RCW. "Review" does not mean a "review engagement" as defined by the American Institute of Certified Public Accountants (AICPA) Statements of Standards for Accounting and Review Services (SSARS).

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

~~((21))~~ (22) "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.

~~((22))~~ (23)(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+)~~) (18), 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 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-045 Change in status, notification. An entity required to register under chapter 19.09 RCW shall notify the charities program in writing of any changes 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 and the appropriate fee per WAC 434-120-

145. (~~The fee for information changes is ten dollars per submittal of change.~~)

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

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~~) with more than one million dollars in annual gross revenue averaged over the last three fiscal years, shall have the federal (~~financial~~) tax reporting form (990, 990EZ, 990PF or 990T) prepared or reviewed by a certified public accountant or other professional, 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 in substantially the following form:~~) If the federal tax form is not signed by a preparer who is so qualified, the charitable organization must, using a reporting form provided by the secretary, confirm that the federal tax form was reviewed by an independent third-party who normally prepares or reviews federal returns in the ordinary course of their business.

((Independent Report Form

Report For:

Organization Name _____ Charities Registration Number _____

Review of IRS Form _____ (Form Name) For Fiscal/Accounting Year Ending _____

Prepared or Reviewed By:

Name _____

Company _____

Address _____

City, State, Zip _____

Phone _____ E-mail _____

Please check one of the following:

I am a Certified Public Accountant.

I have prepared or been responsible for the preparation of such forms in the ordinary course of my business.

I am independent with respect to the affairs of this organization as described by the Internal Revenue Service. My review did not include any direct investigation of the accuracy of the information submitted using this form or of the underlying data from which it was prepared.

Based solely on the form as it was provided to me, I reviewed its completeness and internal consistency to the extent appropriate, based on my professional judgment, giving due consideration to the nature of the activities of the organization. On the basis of this review, I am satisfied that the organization has taken proper care to meet the requirement for entering information on and assembling the form for submission.

The filing organization is solely responsible for assuring the accuracy of the form and its suitability for the purposes for which it may be submitted.

Signature _____ Date _____
Printed Name _____))

(3) Charitable organizations (~~(that have)~~) with 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)~~) any year in which the organization (~~(achieved)~~) achieves a three year average of more than three million dollars. For organizations with more than three million dollars in annual gross revenue averaged over the last three fiscal years, but directly or indirectly receive five hundred thousand dollars or less in cash contributions averaged over the last three fiscal years, the audit requirement is waived. Organizations with five hundred thousand dollars or less in cash contributions averaged over the last three fiscal years shall meet the financial reporting requirements described in subsection (2) of this section. For purposes of meeting the financial requirements in this section, "cash" includes currency, checks, credit card payments, donor advised funds, and electronic fund transfers, but does not include gifts of tangible, real, or personal property or in-kind services.

(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 09-01-106, filed 12/17/08, effective 1/17/09)

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), (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 appropriate registration fee (~~(of twenty dollars)~~) per WAC 434-120-145.

(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~~) appropriate fee per WAC 434-120-145.

(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 09-01-106, filed 12/17/08, effective 1/17/09)

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) An organization shall notify the charities program of a change in organization name, mailing address, organization structure, principal officer, Washington representative, tax status, fiscal year, or any other information filed under RCW 19.09.075 or WAC 434-120-105.

(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~~)) appropriate fee per WAC 434-120-145.

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

WAC 434-120-160 Fees for late registration. (1) A charitable organization that fails to renew its registration by its renewal date shall pay a late fee of fifty dollars. The charitable organization shall pay an additional fifty dollar late fee for each year, including the current year, that it was not registered under this act, but was required to do so. If the registration has lapsed for a period of more than two years, the entity shall provide solicitation information for the previous two years, and shall reregister as a new charitable organization.

(2) The fees for late registration shall be in addition to the filing fees under WAC 434-120-145, and any other((~~7~~)) remedies that may be imposed by law, including penalties for soliciting without being registered.

(3) The charitable organization may ask the secretary to waive fees for late registration. The request must include a description of the circumstances that justify a waiver of the late fees. Under special circumstances the secretary may waive fees for late registration that are imposed by these regulations.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-220 Change in status, notification. A commercial fund-raiser shall:

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

(2) 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~~)) appropriate fee per WAC 434-120-250.

WAC 434-120-240 Contract between a commercial fund-raiser and a charitable organization. (1) A commercial fund-raiser and charitable organization entering into a contract shall register the contract by completing the contract registration form, attaching a copy of the written contract, and filing the form and contract with the secretary. The contract shall be registered before the commencement of the campaign.

(2) The charitable organization is responsible for registering the contract and paying the appropriate fee per WAC 434-120-250.

(3) (~~The fee for registering a contract under this section is ten dollars.~~

~~(4))~~ Both the contract and registration form shall be signed by the commercial fund-raiser owner or principal and the charitable organization president, treasurer, or comparable officer.

~~((5))~~ (4) In addition to the statutory requirements of RCW 19.09.097, the terms of the contract shall specify who will maintain the donor list.