



RULE-MAKING ORDER

CR-103E (May 2009)
(Implements RCW 34.05.360)

Agency: Secretary of State

Emergency Rule Only

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: To remove conflicts in current rule with new federal guidelines regarding financial reporting requirements for charitable organizations.

Citation of existing rules affected by this order:

Repealed:
 Amended: 434-120-107
 Suspended:

Statutory authority for adoption: 19.09.540

Other authority :

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.
- That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding:

The immediate adoption of the amendment to the rule is necessary for the general welfare of the public because charitable organizations are currently in the process of filing statutorily required financial reports with both the IRS and the Washington State Charities Program. The conflict in the definition of terms and audit requirements could be costly to charitable organizations and ultimately the public.

Date adopted: 07/16/2010

NAME (TYPE OR PRINT)

Steve Excell

SIGNATURE

TITLE

Assistant Secretary of State

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: July 21, 2010

TIME: 8:56 AM

WSR 10-15-117

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	<u>1</u>	Repealed	_____
-----	-------	---------	----------	----------	-------

The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
-----	-------	---------	-------	----------	-------

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
-----	-------	---------	-------	----------	-------

The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	<u>1</u>	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

AMENDATORY SECTION (Amending WSR 09-22-056, filed 10/30/09, effective 11/30/09)

WAC 434-120-107 Audited financial report--Tiered reporting requirements (effective January 1, 2010). (1) Tier One: Charitable organizations (~~submitting an initial registration, shall~~) with one million dollars or less in annual gross revenue averaged over the last three accounting years must meet the financial reporting requirements(~~(7)~~) specified in RCW 19.09.075 (~~or~~) and 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) Tier Two: Charitable organizations with more than one million dollars and up to three million dollars in annual gross revenue averaged over the last three (~~fiscal~~) accounting years, (~~shall have the federal 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. 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.~~) must provide one of the following:

(a) A photocopy of the federal tax reporting form (990, 990EZ, 990PF) that has been prepared by a certified public accountant or other professional, who normally prepares or reviews federal returns in the ordinary course of their business; or

(b) A photocopy of an audited financial statement prepared by an independent certified public accountant for the preceding accounting year; or

(c) For governmental entities, a photocopy of the most recent audited financial statement prepared by the applicable government auditing agency or other independent certified public accountant.

(3) Tier Three: Charitable organizations with more than three million dollars in annual gross revenue averaged over the last three (~~fiscal~~) accounting years, (~~shall~~) must submit (~~an audited financial statement prepared by an independent certified public accountant for the year immediately following any year in which the organization 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)) one of the following:~~

~~(a) A photocopy of an audited financial statement prepared by an independent certified public accountant for the preceding accounting year; or~~

~~(b) For governmental entities, a photocopy of the most recent audited financial statement prepared by the applicable government auditing agency or other independent certified public accountant.~~

~~(4) If an organization has been in existence for less than three years, the organization must calculate its average gross revenue based on the number of years the organization has been in existence to determine which tier is applicable.~~

~~(5) Waiver of audit requirement: The secretary may waive the requirement to file audited financial statements prepared by an independent certified public accountant ~~((when the))~~ for organizations ~~((can demonstrate that they have reached a three year average of))~~ with 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)) averaged over the last three accounting years and meets (a) or (b) of this subsection.~~

~~(a) Directly or indirectly receives five hundred thousand dollars or less in cash contributions averaged over the last three accounting years. Organizations with five hundred thousand dollars or less in cash contributions averaged over the last three accounting years shall meet the financial reporting requirement 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; or~~

~~(b) The organizations can demonstrate that it has reached a three-year average of more than three million dollars in gross revenue through unusual or nonrecurring revenue received in a single year without which they would have not met the three-year annual gross average threshold.~~