



## Notice of Adoption

Office of the Secretary of State  
Rules for the Administration of the Colorado Charitable Solicitations Act  
8 CCR 1505-9

November 9, 2012

### I. Adopted Rule Amendments

As authorized by the Colorado Charitable Solicitations laws<sup>1</sup> and the State Administrative Procedure Act<sup>2</sup>, the Colorado Secretary of State gives notice that the following amendments to the rules the rules for the administration of the Colorado Charitable Solicitations Act<sup>3</sup> are adopted on a permanent basis.

The following rules were considered at the October 25, 2012 rulemaking hearing in accordance with the State Administrative Procedure Act<sup>4</sup>.

(SMALL CAPS indicate proposed additions to the current rules. ~~Stricken type~~ indicates proposed deletions from current rules. *Annotations* may be included):

#### Amendments to Rule 1:

#### Rule 1. Definitions.

As used in these rules and in the Colorado Charitable Solicitations Act.

- 1.1 ~~Accounting Period:~~—"ACCOUNTING PERIOD" MEANS the time period for keeping records and reporting income and expenses.
- 1.2 ~~Agent:—any person~~—"AGENT" MEANS AN INDIVIDUAL who, BY THE WRITTEN AUTHORITY AND ON THE ACCOUNT OF THE PRINCIPAL, transacts ~~some~~ business or manages ~~some~~ affair for another (the "principal" ), ~~by the authority and on account of the principal, under a written instrument,~~ AFFAIRS FOR THE PRINCIPAL, and who is required to render an account of ~~such~~ THE business or affair to the principal. ~~The term "aagent" shall also includes the term~~—"subcontractors."

<sup>1</sup> Article 16, Title 6 of the Colorado Revised Statutes.

<sup>2</sup> Section 24-4-103(3)(a), C.R.S. (2012).

<sup>3</sup> 8 CCR 1505-9.

<sup>4</sup> Section 24-4-103(3)(a), C.R.S. (2012).

1.3 ~~Authorized Officer:~~—“AUTHORIZED OFFICER” MEANS the officer designated by the filing entity to electronically sign ~~any~~ forms on behalf of the organization ~~pursuant to~~ IN ACCORDANCE WITH the CCSA.— This ~~person shall~~ INDIVIDUAL MUST be an officer of a nonprofit corporation, a trustee of a charitable trust, or a senior manager member of any other ~~type of~~ entity subject to the filing requirements of the CCSA.

1.4 “BONA FIDE PERSONAL EMERGENCY,” AS USED IN THESE RULES MEANS:

1.4.1 A MEDICAL EMERGENCY AFFECTING A REGISTRANT OR MEMBER OF REGISTRANT’S IMMEDIATE FAMILY, INCLUDING BUT NOT LIMITED TO, INCAPACITATION FOR MEDICAL REASONS, HOSPITALIZATION, ACCIDENT INVOLVEMENT, OR DEATH.

1.4.2 A PRACTICAL EMERGENCY INCLUDING EXTRAORDINARY OBSTACLES OUT OF THE CONTROL OF THE REGISTRANT THAT PRECLUDE TIMELY DISCLOSURE. FOR EXAMPLE:

(A) THE LOSS OR UNAVAILABILITY OF RECORDS OR A COMPUTER DUE TO FIRE, FLOOD, OR THEFT;

(B) OTHER COMPELLING REASONS BEYOND THE REGISTRANT’S CONTROL.

1.4.4 THE FOLLOWING ARE GENERALLY NOT CONSIDERED A “BONA FIDE PERSONAL EMERGENCY:”

(A) FAILURE TO TIMELY FILE REGISTRATION DOCUMENTS DUE TO FAILURE TO PLAN;

(B) ACCOUNTING DELAYS;

(C) MISUNDERSTANDING OF APPLICABLE DISCLOSURE REQUIREMENTS AND DEADLINES;

(D) MISTAKES IN ELECTRONIC FILING SUBMISSION, INCLUDING INCOMPLETE FILINGS RESULTING IN REJECTION OF THE FILED DOCUMENT;

(E) LACK OF ACCESS TO INTERNET OR PERSONAL COMPUTER; AND

(F) LACK OF CORPORATE CREDIT CARD OR OTHER MEANS FOR MAKING ONLINE PAYMENTS.

*(Current Rules 7.5 and 7.6 are amended and relocated to this New Rule 1.4).*

1.4-1.5 ~~CCSA:~~—“CCSA” MEANS Colorado Charitable Solicitations Act CODIFIED AT ARTICLE 16 OF TITLE 6, C.R.S.

1.5-1.6 ~~Directly Employed:~~—“DIRECTLY EMPLOYED”, as used in section 6-16-103(7)(d), C.R.S., means the charitable organization controls or directs the means and methods of accomplishing the result of the individual’s work, regardless of whether the individual is employed full-time or part-time, is paid a salary or on commission, or is called an employee or an agent or independent contractor.

1.7 “EMPLOYER IDENTIFICATION NUMBER” OR EIN, ALSO KNOWN AS A FEDERAL TAX IDENTIFICATION NUMBER, IS USED TO IDENTIFY A BUSINESS ENTITY.

~~1.6-1.8~~ ~~Fiscal Year:~~ ~~any~~ “FISCAL YEAR” MEANS ANNUAL accounting period ~~consisting of a year,~~ subject to ~~rule 1-15~~ RULE 1.16.

~~1.7-1.9~~ ~~Form of the Applicant’s Business:~~ ~~the legal status of the entity, such as domestic nonprofit corporation, foreign nonprofit corporation, domestic nonprofit association, foreign nonprofit association, corporation, sole proprietor, etc.~~ “FORM OF THE APPLICANT’S BUSINESS” MEANS AN ENTITY LISTED IN SECTION 7-90-102, C.R.S., OR SIMILAR BUSINESS STATUTES IN OTHER STATES. “FORM OF THE APPLICANT’S BUSINESS” DOES NOT INCLUDE THE ORGANIZATION’S TAX-EXEMPT STATUS, SUCH AS “501(c)(3),” OR THE ORGANIZATION’S PURPOSE.

1.8-1.10 **Gross Revenue:**—“GROSS REVENUE” MEANS the total amount the organization receives from all sources, regardless of geographic location, during its accounting period, without subtracting ~~any~~ costs or expenses. “Gross revenue” does not include receipt of funds merely as an agent for another, where the organization collects the funds and delivers ~~the funds~~ THEM to the principal without asserting ~~any~~ A right to use them or otherwise deriving a benefit from them.

~~1.9-1.11~~ ~~Name or Names under which Charitable Organization Intends to Solicit Contributions:~~— “NAME OR NAMES UNDER WHICH CHARITABLE ORGANIZATION INTENDS TO SOLICIT CONTRIBUTIONS” includes ~~any~~ “doing business as,” “also known as,” or trade names.— This term includes the name of ~~any~~ donor-advised fund that solicits contributions from the public using its own name, unless, in all written and oral solicitations, ~~it~~ THE FUND clearly identifies itself as a “donor-advised fund” -of a specified charitable organization that is either registered with the Secretary of State or exempt under section ~~6-16-104(6)(a)-(e)~~ 6-16-104(6)(a) THROUGH (d), C.R.S.

~~1.10-1.12~~ ~~Newly Formed Charitable Organization:~~—“NEWLY-FORMED CHARITABLE ORGANIZATION” MEANS an organization that has ~~not completed its first fiscal year or has not reached the 15th day of the fifth month since~~ FOLLOWING the close of its first fiscal year. In most cases, newly-formed charitable organizations will file an initial registration statement ~~consisting of~~ estimated financial information that must be replaced by actual financial information on or before the 15th day of the fifth month after the close of its first ~~Fiscal~~ FISCAL year.

~~1.11-1.13~~ ~~Person Responsible for Directing and Supervising the Conduct of the Campaign:~~— ~~pursuant to~~ “PERSON RESPONSIBLE FOR DIRECTING AND SUPERVISING THE CONDUCT OF THE CAMPAIGN”, IN ACCORDANCE WITH section 6-16-104.6(7)(b), C.R.S., ~~this term~~ includes ~~any~~ agents or subcontractors of the paid solicitor.

~~1.12-1.14~~ ~~Principal Place of Business:~~— ~~the bona fide physical street address of the organization or sole proprietor. This~~ “PRINCIPAL PLACE OF BUSINESS” MEANS THE STREET ADDRESS OF THE ORGANIZATION’S USUAL PLACE OF BUSINESS. “PRINCIPAL PLACE OF

BUSINESS”, AS USED IN THESE RULES, does not include a post office box or private mailbox.

~~1.13 **Registration Service Provider:** a business or individual that provides the service of registering a charity, paid solicitor, professional fundraising consultant for charitable solicitations with the Secretary of State, but is neither a bona fide volunteer nor a director, officer, or compensated employee as described in section 6-16-103(7)(e), C.R.S.~~

1.15 “REGISTERED AGENT” HAS THE SAME MEANING AS IN SECTION 7-90-701, C.R.S., EXCEPT THAT, IF A PERSON MUST REGISTER UNDER THE CHARITABLE SOLICITATIONS ACT, THE PERSON MUST APPOINT AND CONTINUOUSLY MAINTAIN A REGISTERED AGENT, EVEN IF THE PERSON IS NOT REQUIRED TO DO SO UNDER SECTION 7-90-701, C.R.S. A REGISTRATION DOCUMENT FILED IN ACCORDANCE WITH ARTICLE 16 OF TITLE 6, C.R.S., THAT REQUESTS THE NAME AND ADDRESS OF THE ORGANIZATION’S REGISTERED AGENT MUST ALSO INCLUDE A STATEMENT BY THE FILER THAT THE REGISTERED AGENT CONSENTS TO THE APPOINTMENT.

~~1.14-1.16 **Short-Period Registration and Financial Statement:** “SHORT-PERIOD REGISTRATION AND FINANCIAL STATEMENT” MEANS a registration and financial statement covering a period of less than 12 months.~~

~~1.15-1.17 **Sole Responsibility:** “SOLE RESPONSIBILITY”, with respect to section 6-16-103(7)(a), C.R.S., a person whose “sole responsibility is to print or mail fundraising literature” –is intended to exempt only employees of professional printing and copying businesses from the definition of paid solicitor.~~

1.18 “STATE ELECTIONS COMMISSION” MEANS, FOR THE PURPOSES OF SECTION 6-16-104(6)(B), C.R.S., THE SECRETARY OF STATE’S CAMPAIGN AND POLITICAL FINANCE PROGRAM.

1.19 “STREET ADDRESS” HAS THE SAME MEANING AS IN SECTION 7-90-102(62), C.R.S.

~~1.16-1.20 **Subcontractor:** any “SUBCONTRACTOR”, AS USED IN THESE RULES, INCLUDES THE agent (but not an employee) of a professional PAID solicitor who solicits under a contract or agreement on behalf of the professional PAID solicitor for the benefit of any A charitable organization with which the professional solicitor has a contract or agreement THAT CONTRACTED WITH THE PAID SOLICITOR.~~

## Amendments to Rule 2:

### Rule 2. Electronic Filing

2.1 ~~All filings with the Office of the Secretary of State that are~~ DOCUMENTS required or permitted by the CCSA ~~shall be made~~ MUST BE FILED electronically, IN THE PRESCRIBED FORMAT, through the use of the Secretary of State's internet charitable solicitation registration and reporting WEB-BASED CHARITIES system, and shall be in the format prescribed by the Secretary of State. No such filing attempted on paper will be deemed valid, nor will any paper filing tendered in connection with the CCSA be accepted by the Secretary of State. PAPER FILINGS ARE VOID AND WILL NOT BE ACCEPTED.

- 2.2 The Secretary of State will issue a unique user identification number and password to any charitable organization, paid solicitor, or professional fundraising consultant AN INDIVIDUAL who requests to COMPLETE OR file pursuant to Title 6, Article 16 A DOCUMENT IN ACCORDANCE WITH ARTICLE 16 OF TITLE 6, C.R.S., provided that such requester first furnishes any information, agreement or affirmation that the Secretary of State requires in order to establish and maintain an accurate, accessible, and secure electronic charitable solicitations filing and information system AND WHO AGREES TO THE SECRETARY'S RULES FOR USE OF THE SYSTEM. Submission of a filing FILING with the USER identification number and password described in this rule RULE 2 shall WILL constitute the filer's official signature, in accord ACCORDANCE with section 24-71.3-102(8), C.R.S., affixed under penalty of perjury, as provided by law.
- 2.2.1 AN INDIVIDUAL REGISTERING OR RENEWING A REGISTRATION UNDER ARTICLE 16 OF TITLE 6, C.R.S. MUST HAVE AN EIN FROM THE INTERNAL REVENUE SERVICE (IRS).
- 2.2.2 AN INDIVIDUAL REQUESTING A USER IDENTIFICATION AND PASSWORD UNDER RULE 2.2 MUST PROVIDE HIS OR HER NAME, DAYTIME TELEPHONE NUMBER, VALID EMAIL ADDRESS, AND EIN, AND MUST UPDATE THIS INFORMATION PROMPTLY WHEN AND IF IT CHANGES.
- 2.3 EMAIL ADDRESSES PROVIDED TO THE SECRETARY OF STATE UNDER THIS RULE 2 ARE FOR ADMINISTRATIVE PURPOSES ONLY AND ARE NOT CONSIDERED PUBLIC RECORDS FOR PURPOSES OF THE PUBLIC RECORDS LAW, PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S.

### Amendments to Rule 3:

#### Rule 3. —Expedited Hearing Deadlines

- 3.1 UPON NOTICE FROM THE SECRETARY OF STATE THAT A REGISTRATION HAS BEEN DENIED OR IS SUBJECT TO SUSPENSION OR REVOCATION, THE AGGRIEVED PARTY MAY REQUEST A HEARING WITHIN FIVE CALENDAR DAYS AFTER RECEIPT OF NOTICE.
- 3.1-3.2 Upon receipt of a request for hearing pursuant to IN ACCORDANCE WITH section 6-16-111 (6) (b) 6-16-111(6)(b), C.R.S., the Secretary of State will set and give notice of the requested hearing. — Such notice will be sent by certified mail within five business days of the Secretary of State's receipt of the hearing request and. THE SECRETARY will set the hearing on a date no sooner than ten-20 and no later than twenty-45 calendar days after the date of mailing of the notice.
- 3.2-3.3 Proceedings conducted pursuant to section 6-15-111 (6), C.R.S., and this Rule 3 may, in the discretion of the Secretary of State, be continued for good cause shown by any party to such proceedings. — Any continuance will be as brief as practicable, and no continuance will be for a period longer than ten days THE SECRETARY MAY, FOR GOOD CAUSE SHOWN, CONTINUE A PROCEEDING UNDER SECTION 6-15-111(6), C.R.S., AND THIS RULE 3 FOR A PERIOD AS BRIEF AS PRACTICABLE AND, IN NO CASE, FOR MORE THAN 15 DAYS.

~~3.3.3.4~~ The Secretary of State will ~~MUST CONDUCT AND~~ conclude all expedited hearings with reasonable dispatch, ~~IN A TIMELY MANNER and will~~ ~~MUST~~ take final agency action, including, but without limitation, issuance of all such administrative findings, decisions, and orders as the Secretary considers appropriate, within twenty calendar days from the date on which any such expedited hearing is concluded ~~NO LATER THAN THE TENTH DAY FOLLOWING THE HEARING.~~

#### Amendments to Rule 4:

#### Rule 4. — Issuing Registration Numbers

- 4.1 ~~Upon approval by~~ IF the Secretary of State ~~of~~ APPROVES an initial or renewal registration statement of a charitable organization, professional fundraising consultant, or paid solicitor, the Secretary of State will issue or update the status of a permanent registration number. — The Secretary of State will send a confirmation to the email address of the authorized officer and registered agent, reflecting CONTAINING the organization's name, and any DBAs, its permanent registration number, the FILING document number of the filing, the organization's federal employer identification number (FEIN) EIN, the PRINCIPAL address of the principal place of business, the date the document was approved DOCUMENT APPROVAL DATE, the date the subsequent renewal will be (or was) due DATE, the name of the person who signed the document's SIGNOR, and the date it was signed.
- 4.2 ~~The Secretary of State will provide an electronic “certificate of registration” in the form of a printable electronic certificate which will display the registration status of a registrant in good or delinquent status to any user of the web site upon request~~ AN INDIVIDUAL MAY VERIFY AN ORGANIZATION'S REGISTRATION STATUS AND MAY CREATE A REGISTRATION CERTIFICATE BY VISITING THE SECRETARY'S WEBSITE. — The REGISTRATION certificate will indicate whether the registrant is registered or out of compliance with the filing requirements of the CCSA and list the organization's registration number, entity REGISTRANT type (charitable organization, paid solicitor, or professional fundraising consultant), REGISTRATION status, ALONG WITH the date that status was established, and the date (INCLUDING AN EXTENSION), by which the organization must renew or should have renewed its registration or replaced REPLACE estimated financial figures with actual FINANCIAL figures.
- 4.3 ~~A registration certificate will not be provided in~~ THE SECRETARY OF STATE WILL NOT PROVIDE A REGISTRATION CERTIFICATE IF the event the registrant's status is ORGANIZATION'S REGISTRATION HAS BEEN denied, suspended, OR revoked, exempt, or expired.
- 4.3.4.4 ~~The registration of a charitable organization, professional fundraising consultant, or paid solicitor will be listed as “good” on the charitable solicitations website after the Secretary of State's office has accepted its initial or renewal registration statement, provided that the renewal is for the organization's most recent fiscal year. Initial registrations will result in a “good” status subject to rule 5.4.~~ THE SECRETARY OF STATE WILL LIST AS “GOOD” THE REGISTRATION OF A CHARITABLE ORGANIZATION, PROFESSIONAL FUNDRAISING CONSULTANT, OR PAID SOLICITOR ONCE THE SECRETARY APPROVES THE

REGISTRATION STATEMENT FOR THE MOST-RECENT FISCAL YEAR. THE SECRETARY WILL ALSO LIST ALL APPROVED INITIAL REGISTRATIONS AS “GOOD.”

~~4.4.4.5 The registration of a charitable organization, paid solicitor, or professional fundraising consultant will be listed as delinquent effective on the first day after its renewal deadline has passed. If a CHARITABLE ORGANIZATION, PROFESSIONAL FUNDRAISING CONSULTANT, OR PAID SOLICITOR MISSES A FILING DEADLINE, THE ORGANIZATION STATUS WILL CHANGE TO “DELINQUENT” THE DAY AFTER DEADLINE.~~

~~4.5-4.6 IF THE CHARITABLE ORGANIZATION HAS NOT BEEN IN EXISTENCE FOR AN ENTIRE ACCOUNTING PERIOD, CHANGES ITS ACCOUNTING PERIOD, OR MERGES OUT OF EXISTENCE OR DISSOLVES BEFORE THE END OF ITS ACCOUNTING PERIOD, IT MAY HAVE TO FILE A short-period registration and financial statement may be required if the charitable organization has not been in existence for an entire accounting period, or changes its accounting period. Similarly, a short-period final registration and financial statement may be required if the organization merges out of existence or dissolves before the end of its accounting period.~~

~~4.6-4.7 A charitable organization shall MUST use the same accounting period to file registration documents with the Secretary of State as its THAT IT uses to maintain its financial records internally and as it uses to file the federal form IRS Form 990 with the Internal Revenue Service (IRS)-IRS.~~

~~4.7 If a paid solicitor has not submitted a solicitation campaign financial report (“campaign report” ) on or before the 90th day following the campaign end date listed on the solicitation notice, the campaign report will be listed as overdue, and the paid solicitor’s registration status will be listed as delinquent.~~

4.8 THE SECRETARY OF STATE MAY REQUIRE A CHARITABLE ORGANIZATION TO PROVIDE A COPY OF THE APPROPRIATE IRS FORM 990 TO MEET COLORADO’S REPORTING REQUIREMENTS.

4.9 IF THE SECRETARY OF STATE IDENTIFIES INCONSISTENCIES, BETWEEN OR WITHIN THE STATE REGISTRATION STATEMENT AND THE IRS FORM 990, THE SECRETARY OF STATE MAY REQUEST THAT THE ORGANIZATION FILE AN AMENDED IRS FORM 990 WITH THE STATE, OR OTHERWISE CORRECT THE INCONSISTENCY, IN ORDER TO COMPLETE THE STATE FILING. IF THE ORGANIZATION DOES NOT CORRECT THE INCONSISTENCY WITH THE STATE, THE SECRETARY OF STATE MAY DENY OR SUSPEND THE REGISTRATION IN ACCORDANCE WITH SECTION 6-16-111(6), C.R.S.

## Amendments to Rule 5:

### Rule 5. —Filing Deadlines and Extension of Filing Deadlines

5.1 FILING A REGISTRATION RENEWAL AND FINANCIAL REPORT.

5.1.1 IF A CHARITABLE ORGANIZATION DOES NOT FILE A DEADLINE EXTENSION WITH THE IRS, THE CHARITABLE ORGANIZATION MUST FILE ITS REGISTRATION RENEWAL AND

A FINANCIAL REPORT FOR THE MOST RECENT FISCAL YEAR BY THE 15<sup>TH</sup> DAY OF THE FIFTH CALENDAR MONTH AFTER THE CLOSE OF EACH FISCAL YEAR IN WHICH THE CHARITABLE ORGANIZATION SOLICITED IN COLORADO.

5.1.2 IF A CHARITABLE ORGANIZATION FILES A DEADLINE EXTENSION WITH THE IRS, THE CHARITABLE ORGANIZATION MUST FILE ITS REGISTRATION RENEWAL AND FINANCIAL REPORT BY THE 15<sup>TH</sup> DAY OF THE EIGHTH CALENDAR MONTH AFTER THE CLOSE OF EACH FISCAL YEAR IN WHICH THE CHARITABLE ORGANIZATION SOLICITED IN COLORADO.

5.1.3 THE SECRETARY OF STATE MAY REQUEST EVIDENCE OF AN EXTENDED FILING DATE WITH THE IRS, SUCH AS A COPY OF THE IRS FORM 8868 OR AN IRS LETTER ADDRESSED TO THE ORGANIZATION CONFIRMING THE EXTENDED DEADLINE REQUEST.

## 5.2 FILING REGISTRATION AMENDMENTS.

5.2.1 IF A CHARITABLE ORGANIZATION DOES NOT FILE A DEADLINE EXTENSION WITH THE IRS, A CHARITABLE ORGANIZATION THAT REPORTED ESTIMATED FINANCIAL INFORMATION ON ITS INITIAL REGISTRATION MUST AMEND ITS REGISTRATION WITH ITS ACTUAL FINANCIAL INFORMATION BY THE 15<sup>TH</sup> DAY OF THE FIFTH CALENDAR MONTH AFTER THE CLOSE OF THE FISCAL YEAR REPORTED ON THE INITIAL REGISTRATION STATEMENT.

5.2.2 IF A CHARITABLE ORGANIZATION FILES A DEADLINE EXTENSION WITH THE IRS, IT MUST FILE NECESSARY AMENDMENTS TO ITS FINANCIAL INFORMATION BY THE 15<sup>TH</sup> DAY OF THE EIGHTH CALENDAR MONTH AFTER THE CLOSE OF EACH FISCAL YEAR IN WHICH THE CHARITABLE ORGANIZATION SOLICITED IN COLORADO.

5.3 A CHARITABLE ORGANIZATION MAY RENEW ITS REGISTRATION, REPLACE INITIAL ESTIMATES WITH ACTUAL FINANCIAL INFORMATION, OR REQUEST AN EXTENSION NO EARLIER THAN THE CLOSE OF THE ACCOUNTING PERIOD TO WHICH THE FILING APPLIES.

5.4 THE SECRETARY MAY IMPOSE A LATE FEE ON A CHARITABLE ORGANIZATION THAT FAILS TO TIMELY REQUEST AN EXTENSION.

5.4.1 TO AVOID INCURRING LATE FEES, CHARITABLE ORGANIZATIONS MUST:

(A) REPLACE INITIAL ESTIMATED FINANCIAL INFORMATION WITH ACTUAL FINANCIAL INFORMATION;

(B) FILE A REGISTRATION RENEWAL; OR

(C) FILE AN EXTENSION ON OR BEFORE THE FILING DEADLINE.

5.4.2 A CHARITABLE ORGANIZATION THAT FILES AN EXTENSION WITH THE IRS BUT IS UNABLE TO FILE ITS REGISTRATION RENEWAL OR AMEND ITS FINANCIAL INFORMATION BY THE 15<sup>TH</sup> DAY OF THE EIGHTH CALENDAR MONTH AFTER ITS



FISCAL YEAR MAY REQUEST AN ADDITIONAL THREE-MONTH EXTENSION ON THE SECRETARY OF STATE'S CHARITIES REGISTRATION WEBSITE.

*(Current Rule 5.1.2 is amended and relocated to this New Rule 5.4)*

- 5.5 IF A CHARITABLE ORGANIZATION, AT THE TIME OF INITIAL REGISTRATION, REPORTS FINANCIAL INFORMATION OUTSIDE OF THE MOST RECENTLY COMPLETED FISCAL YEAR, THE SECRETARY OF STATE WILL APPROVE THE INITIAL REGISTRATION BUT THE ORGANIZATION MUST FILE A RENEWAL OR EXTENSION REQUEST WITHIN FIVE DAYS FROM THE INITIAL REGISTRATION APPROVAL. IF THE ORGANIZATION FAILS TO FILE A RENEWAL OR EXTENSION WITHIN THE FIVE DAY PERIOD, THE SECRETARY WILL MARK THE ORGANIZATION'S STATUS AS "DELINQUENT" AND NOTIFY THE ORGANIZATION THAT IT MUST UPDATE THE INFORMATION OR IT WILL BE SUBJECT TO LATE FEES AND POSSIBLE SUSPENSION.

*(Current Rule 5.4 is amended and relocated to this New Rule 5.5)*

- ~~5.1-5.6~~ Only A charitable organizations ORGANIZATION may request an A DEADLINE extension of the deadline for renewing a registration OR FOR FILING AN AMENDMENT TO REPLACE ESTIMATED WITH ACTUAL FINANCIAL INFORMATION.— This option is not available to professional fundraising consultants or paid solicitors.

~~5.1.1~~ All requests THE ORGANIZATION MUST FILE THE EXTENSION REQUEST for an extension shall be filed electronically on the Secretary of State's web site by logging in and e-filing the necessary document WEBSITE. Neither filing for FILING an extension with the IRS nor OR submitting a copy of such a THE request (SUCH AS IRS form FORM 8868) to the Secretary of State is NOT sufficient to extend a filing deadline. The Secretary of State will not consider requests to waive late filing fees on the grounds that the organization filed for an extension with the IRS; but neglected to file for an AN extension with the Secretary of State.

~~5.1.2~~ To avoid incurring late fees, charitable organizations must file a registration renewal or an extension on or before the filing deadline. Charitable organizations that fail to file an extension request on time with the Secretary of State will be subject to a late fee, even if it is still within the period during which an extension would have applied if it had been timely filed.

*(Current Rule 5.1.2 is amended and relocated to New Rule 5.4)*

- 5.7 PROFESSIONAL FUNDRAISING CONSULTANT OR PAID SOLICITOR REGISTRATION IS VALID FOR ONE YEAR. THE FUNDRAISING CONSULTANT OR PAID SOLICITOR MAY ANNUALLY RENEW REGISTRATION BY FILING A REGISTRATION RENEWAL BY THE ANNIVERSARY DATE. THE ANNIVERSARY DATE EACH YEAR WILL BE THE DAY AND MONTH THE INITIAL REGISTRATION WAS APPROVED, OR THE DAY AND MONTH THE MOST RECENT REINSTATEMENT WAS APPROVED. A PROFESSIONAL FUNDRAISING CONSULTANT OR PAID SOLICITOR WHO FAILS TO RENEW A REGISTRATION ON OR BEFORE THE ANNIVERSARY DATE IS SUBJECT TO A LATE FEE.

~~5.2-5.8 A—THE RENEWAL PERIOD FOR A professional fundraising consultant or paid solicitor may BEGINS ~~renew its registration no earlier than~~ 60 days before ~~its—THE CONSULTANT’S OR SOLICITOR’S anniversary date.~~~~

5.9 A PAID SOLICITOR MUST FILE A COMPLETED SOLICITATION NOTICE NO LATER THAN 15 DAYS BEFORE A SOLICITATION CAMPAIGN STARTS. FAILURE TO FILE WILL SUBJECT THE PAID SOLICITOR TO A LATE FEE AND UP TO REVOCATION.

~~5.3-5.9.1 The range of campaign dates that may be listed on a solicitation notice is one year or less.—FOR REPORTING PURPOSES, A SOLICITATION CAMPAIGNS DURATION ON A SOLICITATION NOTICE MAY NOT EXCEED ONE YEAR.~~

5.9.2 PRIOR TO THE CAMPAIGN END DATE LISTED ON AN INITIAL SOLICITATION NOTICE, A PAID SOLICITOR MAY AMEND THE INITIAL SOLICITATION NOTICE TO EXTEND THE CAMPAIGN DURATION UP TO ONE YEAR. AFTER THE CAMPAIGN END DATE, THE PAID SOLICITOR MUST FILE A NEW SOLICITATION NOTICE.

~~5.4 Charitable organizations that register initially using information from the fiscal year prior to the organization’s most recent fiscal year, have 14 days from the date the initial registration is approved in which to file an extension of the deadline for the most recent fiscal year or a renewal covering the most recent fiscal year. Organizations failing to file for such extension will begin receiving delinquency notices on the 15th day after the file date of the initial registration.~~

*(Current Rule 5.4 is amended and relocated to New Rule 5.5)*

5.10 A PAID SOLICITOR MUST SUBMIT A SOLICITATION CAMPAIGN FINANCIAL REPORT ON OR BEFORE THE 90TH DAY FOLLOWING THE CAMPAIGN END DATE LISTED ON A SOLICITATION NOTICE. A PAID SOLICITOR WHO DOES NOT SUBMIT A CAMPAIGN REPORT ON OR BEFORE THE DEADLINE MAY NOT BEGIN A NEW SOLICITATION CAMPAIGN OR FILE A NEW SOLICITATION NOTICE UNTIL THE OVERDUE CAMPAIGN REPORT IS APPROVED BY THE SECRETARY OF STATE.

*(Current Rule 8.3 is amended and relocated to this New Rule 5.10)*

~~5.5-5.11 If the deadline for filing a document under the CCSA that is required to be filed by electronic means falls on a Saturday, Sunday, legal holiday, or any A day the Secretary of State’s physical office is closed, the ~~deadline shall be on such day~~ DEADLINE WILL STILL BE ON THAT DAY.~~

5.12 IF A REGISTRATION WAS FILED ON FEBRUARY 29, THE RENEWAL DEADLINE IS FEBRUARY 28 OF THE FOLLOWING YEAR.

**Repeal of current Rule 6:**

**~~Rule 6.—Reminder Notices and Delinquency Notices~~**

~~6.1 The Secretary of State will mail a first notice to the principal place of business and registered agent of a charitable organization, professional fundraising consultant, or paid~~

solicitor no later than 30 days prior to the due date of the organization's renewal deadline. A second notice will be mailed to the principal place of business and registered agent of the charitable organization, professional fundraising consultant, or paid solicitor one day after the deadline, if the organization has failed to renew its registration. The Secretary of State will mail a suspension letter to the principal place of business and registered agent of a charitable organization, professional fundraising consultant, or paid solicitor on the 60th day after the organization's renewal deadline.

- 6.2 If the registration statement of a charitable organization, professional fundraising consultant, or paid solicitor is not renewed by the prescribed deadline or deadline extension granted by the Secretary of State or the Secretary of State's designee, the status of its registration will be listed as delinquent effective on the first day after the deadline has passed, and suspended on the 60th day after the deadline has passed. Once an organization's registration has been suspended, it must cease soliciting contributions in Colorado, until it has cured the reason for suspension by renewing its registration for all overdue fiscal years and paying all outstanding registration fees and fines.
- 6.3 A paid solicitor must submit a solicitation campaign financial report ("campaign report") on or before the 90th day following the campaign end date listed on a solicitation notice. Delinquent notices will be sent to the principal place of business and registered agent of the paid solicitor and charitable organization one day and 15 days after the deadline. A suspension notice will be sent on the 60th day after the deadline.

Current Rule 7 is amended and renumbered as New Rule 6:

#### Rule 7-6.— Fines

~~7-1-6.1~~ Any THE SECRETARY WILL ASSESS A LATE FEE IF A charitable organization, professional fundraising consultant, or paid solicitor who, after receiving two notices by mail addressed to the organization and registered agent of the organization, professional fundraising consultant, or paid solicitor fails to properly renew or update a registration, file a solicitation notice, or file a financial report of a solicitation campaign AFTER BEING SENT AT LEAST TWO NOTICES on or before the 14th day following the issuance of the final notice, shall be assessed a late fee. THE SECRETARY WILL ASSESS THE LATE FEE FOR AN OVERDUE SOLICITATION CAMPAIGN FINANCIAL REPORT AGAINST THE PAID SOLICITOR AND NOT THE CHARITABLE ORGANIZATION IN ACCORDANCE WITH SECTION 6-16-114, C.R.S.

~~7.1.1~~ Late fees for overdue filings will increase the longer a charitable organization, professional fundraising consultant, or paid solicitor is delinquent. The maximum late fee will be imposed on the 60th day after deadline.

~~7.1.2-6.1.1~~ The late fee for a charitable organization shall be not less than \$25 and not more than IS \$100 \$60 per year OVERDUE REPORT.

~~7.1.3-6.1.2~~ The late fee for a professional fundraising consultant or paid solicitor IS shall be not less than \$50 and not more than \$200 per year OVERDUE REPORT and will apply APPLIES to an overdue renewal or an overdue financial CAMPAIGN report of a solicitation campaign.

- ~~7.1.4-6.1.3~~ ~~Once~~ If a charitable organization, professional fundraising consultant, or paid solicitor ~~has been~~ IS assessed a late fee, ~~it must pay the late fee~~ IS in addition to the regular filing fee ~~in order to achieve compliance~~.
- ~~7.1.5-6.1.4~~ To ~~come into compliance and~~ BECOME COMPLIANT, AND TO avoid additional late fees OR OTHER POSSIBLE PENALTIES, a charitable organization, professional fundraising consultant, or paid solicitor ~~shall~~ MUST file all past due documents in sequence; from oldest to newest.
- ~~7.2-6.2~~ An A CHARITABLE organization ~~which~~ THAT, after ~~sufficient~~ notification by the Secretary of State in accordance with section 6-16-114, C.R.S., continues to solicit contributions ~~without filing an initial registration statement shall~~ PRIOR TO REGISTERING WITH THE SECRETARY OF STATE WILL be ~~liable for a fine of~~ FINED \$300.
- 6.2.1 AN EXEMPT CHARITABLE ORGANIZATION, IN ACCORDANCE WITH SECTION 6-16-104(6)(A) THROUGH (D), C.R.S., WILL NOT BE FINED. THE CHARITABLE ORGANIZATION, HOWEVER, MUST RESPOND TO THE SECRETARY OF STATE'S NOTICE AND STATE THAT IT IS EXEMPT FROM THE REQUIREMENT TO REGISTER AND CITE THE BASIS FOR ITS EXEMPTION.
- 6.2.2 IF AN ORGANIZATION IS FINED FOR SOLICITING WHILE UNREGISTERED, IT MUST PAY THE FINE IN ADDITION TO THE REGULAR FILING FEE.
- 6.2.3 IF A CHARITABLE ORGANIZATION THAT IS NOT EXEMPT SOLICITS CONTRIBUTIONS IN COLORADO BEFORE FILING ITS INITIAL REGISTRATION OR REINSTATING ITS REGISTRATION, IT MUST PROVIDE FINANCIAL REPORTS FOR THE LAST TWO FISCAL YEARS OR FOR THE PERIOD OF SOLICITATION, WHICH EVER IS SHORTER.
- 6.3 PAID SOLICITORS THAT, AFTER NOTIFICATION, CONTINUE TO SOLICIT CONTRIBUTIONS PRIOR TO REGISTERING WITH THE SECRETARY OF STATE, WILL BE FINED ~~per year for charitable organizations or \$1,000 per year for paid solicitors. This fine shall not be applied to a charitable organization that is exempt from the requirement to register pursuant to section 6-16-104 (6)(a) — (e), C.R.S. In such cases, the charitable organization shall respond to the Secretary of State's notice by stating that it is exempt from the requirement to register and citing the basis for its exemption.~~
- ~~7.2.1~~ Fines for soliciting while unregistered will increase the longer an organization fails to respond to the Secretary of State's final notice of the need to register or fails to state the basis for its exemption to the registration requirement.
- ~~7.2.2~~ Once an organization has been fined for soliciting while unregistered, it must pay the fine in addition to the regular filing fee in order to achieve compliance with the CCSA and these rules.

*(Current Rule 7.2 is split into two rules. Current Rule 7.2.2 (renumbered as Rule 6.2.2) and New Rules 6.2.3 and 6.2.4 (proposed as New Rules 7.2.2 and 7.2.3 in the preliminary draft) are amended for technical edits and relocated under Rule 6.2. above.)*

~~7.3-6.4~~ Any A charitable organization, professional fundraising consultant, or paid solicitor registered with the Secretary of State or subject to registration under ~~section 6-16-104(1)~~ ARTICLE 16 OF TITLE 6, C.R.S., may ~~request~~ ASK THE SECRETARY TO REDUCE OR EXCUSE an imposed fine ~~to be excused or reduced by submitting a written request~~ by letter, email, fax ~~or hand delivery~~. The Secretary of State may consider excusing or waiving a fine only in the case of A bona fide personal ~~emergencies~~-EMERGENCY as defined below, or if a timely filing was not possible due to website OR ADMINISTRATOR errors, OR IF THE ORGANIZATION WAS NOT SUBJECT TO THE REQUIREMENT TO REGISTER AT ANY TIME DURING THE PERIOD FOR WHICH IT WAS ASSESSED A FINE, AND THE ORGANIZATION REQUESTS TO WITHDRAW ITS REGISTRATION. The request ~~shall~~-MUST include:

~~7.3.1-6.4.1~~ The name of the charitable organization, professional fundraising consultant, or paid solicitor-;

~~7.3.2-6.4.2~~ The ~~date of the~~ request DATE-;

~~7.3.3-6.4.3~~ The due date of the delinquently filed registration document(s)-;

~~7.3.4-6.4.4~~ The actual filing date of the delinquently filed registration document(s)-;

~~7.3.5-6.4.5~~ A brief summary of the reasons, circumstances, or other justification ~~of~~ FOR the bona fide personal emergency-;

~~7.3.6-6.4.6~~ Any ~~m~~Measures THAT the charitable organization, professional fundraising consultant, or paid solicitor ~~has~~-instituted or plans to institute to avoid future delinquencies, if applicable-;

6.4.7 THE BASIS FOR CLAIMING AN EXEMPTION, IF APPLICABLE; AND

~~7.3.7-6.4.8~~ Other relevant information, such as a detailed description of the website error that prevented the ~~charitable organization, professional fundraising consultant, or paid solicitor~~ from filing the registration document on time.

~~7.4-6.5~~ If the charitable organization, professional fundraising consultant, or paid solicitor ~~requests an imposed fine to be excuse or reduced~~-ASKS THE SECRETARY TO REDUCE OR EXCUSE A FINE, the ~~charities program~~ SECRETARY'S staff will conduct an investigation AND ~~to excuse or reduce imposed fines. Following that determination, staff will generate a letter to~~-NOTIFY the charitable organization, professional fundraising consultant, or paid solicitor ~~notifying the registrant of the decision.~~

6.5.1 THE SECRETARY OF STATE MUST RECEIVE WAIVER REQUESTS NO LATER THAN 30 DAYS AFTER THE DATE THE PENALTY NOTIFICATION WAS MAILED.

~~7.5~~ The Secretary of State considers a bona fide personal emergency to be a very rare exception to the commitment to fulfill the requirements of laws concerning charitable solicitations. Depending on the circumstances, the Secretary generally considers one or more of the following possible justifications a "bona fide personal emergency:"

~~7.5.1 Personal emergencies, including but not limited to, incapacitation for medical reasons, hospitalization, accident involvement, OR death of persons or to members of such persons' immediate family.~~

~~7.5.2 Practical obstacles out of the control of the registrant which preclude timely disclosure, such as the loss or unavailability of records or a computer due to fire, flood, or theft.~~

~~7.5.3 Other extraordinary reasons. These include compelling reasons beyond the registrant's control.~~

~~7.6 The following are generally **not** considered a "bona fide personal emergency:"~~

~~7.6.1 Failure to timely file registration documents as a result of lack of planning.~~

~~7.6.2 Priorities of accountant responsible for filing state registration forms and federal information returns (Forms 990, 990-EZ, 990-PF, 990-N, 990-T).~~

~~7.6.3 Misunderstanding of applicable disclosure requirements and deadlines.~~

~~7.6.4 Mistakes in electronic filing submission, including incomplete filings resulting in rejection of the filed document.~~

~~7.6.5 Lack of access to internet or personal computer.~~

~~7.6.6 Lack of corporate credit card or other means for making online payments.~~

*(Current Rules 7.5, and 7.6 are amended and relocated to New Rule 1.4).*

~~7.7-6.6 The Secretary of State will issue decisions depending on individual facts and circumstances. Although circumstances vary, the criteria that are centrally dispositive when reviewing a request to excuse or reduce imposed fines CONSIDERED are the establishment of a bona fide personal emergency as defined above or the demonstration of a website error that made it impossible to file a required registration document. If uncertain, the secretary SECRETARY may also consider the frequency of requests to excuse or reduce fines within a two-year period, and the registrant's demonstration of commitment to fulfill the requirements of Colorado's laws concerning charitable solicitations.~~

~~7.8-6.7 The rules concerning fines for soliciting while unregistered shall take effect on August 1, 2009. IF PAYMENT IS NOT RECEIVED BY THE 90<sup>TH</sup> DAY FOLLOWING THE DAY THE ORGANIZATION WAS NOTIFIED OF A PENALTY, THE SECRETARY OF STATE WILL FORWARD THE PENALTY TO THE STATE'S CENTRAL COLLECTION AGENCY.~~

**Current Rule 8 is amended and renumbered as New Rule 7:**

**Rule 8-7. —Suspensions AND REVOCATIONS**

7.1 NO CHARITABLE ORGANIZATION, PAID SOLICITOR, OR PROFESSIONAL FUNDRAISING CONSULTANT MAY SOLICIT CONTRIBUTIONS, PROVIDE CONSULTING SERVICES IN CONNECTION WITH A SOLICITATION CAMPAIGN, FILE A SOLICITATION NOTICE, OR CONDUCT A SOLICITATION CAMPAIGN IN COLORADO WHILE SUSPENDED OR REVOKED.

*(Current Rule 11 is amended and incorporated into Rule 7 as New Rule 7.1)*

~~8.1-7.2~~ If the Secretary of State ~~has~~ DOES not received an overdue registration or renewal, AN OVERDUE SOLICITATION CAMPAIGN FINANCIAL REPORT, or a request for a hearing from a delinquent charitable organization, professional fundraising consultant, or paid solicitor ~~before~~ BY the 60th day after the deadline or A deadline extension granted by Secretary of State ~~or the Secretary of State's designee~~, the registration will be suspended. ~~A suspension letter will be mailed to the principal place of business and registered agent of the charitable organization, professional fundraising consultant, or paid solicitor on the 60th day after the deadline, and the organization will incur the maximum late fee. All solicitations in Colorado must cease as of the effective date of the suspension and until any late fees and filing fees have been paid and the suspension has been cured.~~

~~8.2~~ If the Secretary of State has not received an overdue solicitation campaign financial report or a request for a hearing from a delinquent paid solicitor before the 60th day after the deadline, the paid solicitor's registration will be suspended. A suspension letter will be mailed to the principal place of business and registered agent of the paid solicitor on the 60th day after the deadline for filing the solicitation campaign financial report, and the paid solicitor will incur the maximum late fee. All solicitation activity in Colorado on behalf of any client of the paid solicitor must cease as of the effective date of the suspension and until any late fees and filing fees have been paid and the suspension has been cured.

~~8.3~~ A paid solicitor who has not submitted a solicitation campaign financial report on or before the prescribed deadline shall not be permitted to begin any new solicitation campaign or to file any new solicitation notice until the overdue campaign report has been submitted and approved by the Secretary of State.

*(Current Rule 8.3 is amended and relocated to New Rule 5.10)*

**Current Rule 9 is amended and renumbered as New Rule 8:**

### **Rule 9-8. —Withdrawing a Registration**

9-8.1 A charitable organization, professional fundraising consultant, or paid solicitor may ~~request to~~ withdraw its registration by notifying the Secretary of State. Upon approving such a request, the Secretary of State will list the registration status as withdrawn.

9-8.2 A CHARITABLE ORGANIZATION, PROFESSIONAL FUNDRAISING CONSULTANT, OR PAID SOLICITOR THAT INCURS A LATE FEE FOR FAILURE TO FILE A DOCUMENT ON TIME MUST EITHER PAY THE OUTSTANDING LATE FEE OR OBTAIN A WAIVER OF LATE FEE AS DESCRIBED IN RULE 6, BEFORE THE SECRETARY OF STATE WILL APPROVE A REGISTRATION WITHDRAWAL.

~~9.2-8.3~~ A charitable organization shall ~~MAY not be permitted to~~ withdraw its registration unless ~~and until such organization has filed~~ IT FILES a final renewal and financial report ~~to cover~~ FOR the most recent fiscal year ~~in which~~ THAT it was subject to the ~~registration requirements of the CCSA,~~ unless it is a newly-formed charitable organization.

8.3.1 IF A CHARITABLE ORGANIZATION SOLICITED CONTRIBUTIONS IN COLORADO DURING ITS FISCAL YEAR, AND IT WAS NOT EXEMPT UNDER SECTION 6-16-104(6), C.R.S., IT MUST FILE A RENEWAL AND FINANCIAL REPORT FOR THAT FISCAL YEAR BEFORE REGISTRATION WITHDRAWAL.

8.3.2 IF AN ORGANIZATION IS TERMINATING, IT MAY FILE A SHORT-PERIOD REGISTRATION RENEWAL AND FINANCIAL STATEMENT COVERING THE FINAL FISCAL YEAR UP TO THE DATE OF DISSOLUTION OR TERMINATION.

~~9.3-8.4~~ A newly-formed charitable organization may ~~request to~~ withdraw its registration unconditionally if it determines that it registered by mistake ~~in the first place.~~

~~9.4-8.5~~ A paid solicitor shall ~~MAY not be permitted to~~ withdraw its registration unless ~~and until~~ the paid solicitor ~~has filed~~ FILES a REGISTRATION RENEWAL FOR THE MOST RECENT FISCAL YEAR THAT IT WAS SUBJECT TO THE CCSA, A ~~complete, accurate~~ solicitation campaign financial report for every solicitation campaign for which the paid solicitor has filed a solicitation notice, and ~~the paid solicitor has filed a complete, accurate~~ solicitation notice for every solicitation campaign conducted by the paid solicitor in Colorado.

~~9.5-8.6~~ A professional fundraising consultant shall ~~MAY not be permitted to~~ withdraw its registration unless ~~and until~~ the professional fundraising consultant ~~has filed~~ FILES a registration renewal ~~to cover~~ FOR the most recent fiscal year in which it was subject to the ~~registration requirements of the CCSA.~~

**Current Rule 10 is amended and renumbered as New Rule 9:**

#### **Rule 109. —Reinstating a Suspended or Withdrawn Registration**

10-9.1 A charitable organization, professional fundraising consultant, or paid solicitor may reinstate a ~~registration that has been suspended;~~ or withdrawn REGISTRATION.

~~10.1-1-9.2~~ A withdrawn charity may ~~be reinstated if it notifies the Secretary of State in writing of its desire to reinstate and files either~~ REINSTATE BY FILING a registration renewal AND COMPLETING THE FOLLOWING REQUIREMENTS: ~~or an exemption form for each fiscal year since its registration was withdrawn.~~

9.2.1 IF THE ORGANIZATION WAS EXEMPT FROM REGISTRATION FOR EACH FISCAL YEAR SINCE ITS REGISTRATION WAS WITHDRAWN, IT MUST SUBMIT A STATEMENT TO THAT EFFECT TO THE SECRETARY OF STATE. IN ADDITION, ~~the organization's~~ MUST FILE A ~~registration will be fully reinstated once it has filed a registration and~~ financial statement containing actual financial information for the most recently concluded fiscal year. If it is not possible to file financial information for the most recent fiscal year at the time of reinstatement, ~~then~~ the organization shall ~~shall~~ MUST file a



registration and financial statement for the prior fiscal year and file an extension of the renewal deadline for the most recent fiscal year.

9.2.2 IF THE ORGANIZATION WAS NOT EXEMPT FROM REGISTRATION FOR ALL FISCAL YEARS SINCE ITS REGISTRATION WAS WITHDRAWN, IT MUST PAY ANY APPLICABLE LATE FEES FOR ALL YEARS DURING WHICH IT WAS DELINQUENT OR SUSPENDED AND RETROACTIVELY RENEW ITS REGISTRATION.

~~10.1.2-9.3~~ A-BEFORE REINSTATEMENT, A suspended charitable organization, professional fundraising consultant, or paid solicitor ~~shall~~ MUST correct the deficiency for which it was suspended, and, if it was subject to the registration requirements of the CCSA during the suspension period, it must retroactively renew its registration and pay ~~any~~ applicable late fees for all years during which it was delinquent or suspended, ~~before its registration will be reinstated.~~

~~10.1.3-9.4~~ ~~In addition, a~~ BEFORE REINSTATEMENT, A paid solicitor ~~shall~~ MUST file solicitation notices and campaign reports and pay all applicable late fees for ~~any~~ solicitation campaigns conducted while ~~such solicitor's~~ registration was suspended ~~before its registration will be reinstated.~~

*Repeal of Rule 11: (Current Rule 11 is amended and incorporated into Rule 7 as New Rule 7.1)*

**~~Rule 11. Effect of Revocation~~**

~~No charitable organization, paid solicitor, or professional fundraising consultant may register to solicit contributions in Colorado after its registration has been revoked.~~

*Current Rule 12 is amended and renumbered as New Rule 10:*

**~~Rule 12~~ RULE 10. —Application of Registration Requirements to Internet Solicitation**

10.1 AS USED IN THIS RULE 10:

10.1.1 “AN INTERACTIVE WEBSITE” MEANS A WEBSITE THAT PERMITS A CONTRIBUTOR TO MAKE A CONTRIBUTION OR PURCHASE A PRODUCT IN CONNECTION WITH A CHARITABLE SOLICITATION ELECTRONICALLY, SUCH AS BY SUBMITTING CREDIT CARD INFORMATION OR BY AUTHORIZING AN ELECTRONIC FUNDS TRANSFER. INTERACTIVE WEBSITES INCLUDE SITES THROUGH WHICH A DONOR MAY COMPLETE A FINANCIAL TRANSACTION ONLINE EVEN IF COMPLETION REQUIRES THE USE OF LINKED OR REDIRECTED SITES. SUCH A WEBSITE IS INTERACTIVE REGARDLESS OF WHETHER DONORS ACTUALLY USE IT.

10.1.2 “TO SPECIFICALLY TARGET PERSONS PHYSICALLY LOCATED IN COLORADO FOR SOLICITATION” MEANS EITHER:

(A) TO INCLUDE ON A WEBSITE A REFERENCE TO SOLICITING CONTRIBUTIONS FROM COLORADO; OR

- (B) TO OTHERWISE APPEAL TO RESIDENTS OF COLORADO, SUCH AS BY ADVERTISING OR SENDING MESSAGES TO PERSONS LOCATED IN COLORADO (ELECTRONICALLY OR OTHERWISE) WHEN THE ENTITY KNOWS OR REASONABLY SHOULD KNOW THE RECIPIENT IS PHYSICALLY LOCATED IN COLORADO. CHARITIES OPERATING ON A PURELY LOCAL BASIS, OR WITHIN A LIMITED GEOGRAPHIC AREA, DO NOT TARGET STATES OUTSIDE THEIR OPERATING AREA, IF THEIR WEB SITE MAKES CLEAR IN CONTEXT THAT THEIR FUNDRAISING FOCUS IS LIMITED TO THAT AREA EVEN IF THEY RECEIVE CONTRIBUTIONS FROM OUTSIDE THAT AREA ON LESS THAN A REPEATED AND ONGOING BASIS OR ON A SUBSTANTIAL BASIS.

10.1.3 "TO RECEIVE CONTRIBUTIONS FROM COLORADO ON A REPEATED AND ONGOING BASIS OR A SUBSTANTIAL BASIS" MEANS RECEIVING CONTRIBUTIONS WITHIN THE ENTITY'S FISCAL YEAR THAT ARE SUFFICIENT TO ESTABLISH THE REGULAR OR SIGNIFICANT (AS OPPOSED TO RARE, ISOLATED, OR INSUBSTANTIAL) NATURE OF THOSE CONTRIBUTIONS. AN ENTITY RECEIVES CONTRIBUTIONS ON A REPEATED AND ONGOING BASIS IF IT RECEIVES AT LEAST 50 ONLINE CONTRIBUTIONS DURING A FISCAL YEAR. AN ENTITY RECEIVES SUBSTANTIAL CONTRIBUTIONS IF IT RECEIVES THE LESSER OF \$25,000 OR 1% OF ITS TOTAL CONTRIBUTIONS IN ONLINE CONTRIBUTIONS DURING A FISCAL YEAR.

10.1.4 AN ENTITY THAT SOLICITS COLORADO RESIDENTS VIA E-MAIL WILL BE TREATED THE SAME AS ONE THAT SOLICITS COLORADO RESIDENTS VIA TELEPHONE OR DIRECT MAIL.

*(Current Rule 12.3 is amended and relocated to this New Rule 10.1)*

~~12.1-10.2~~ ~~Entities that are domiciled within Colorado.~~ An entity that is domiciled within IN Colorado and uses USING the internet to conduct charitable solicitations in Colorado must register with the Secretary of State, unless it is exempt from the registration requirements pursuant to IN ACCORDANCE WITH section 6-16-104(6), C.R.S., ~~This is true without regard to whether~~ REGARDLESS OF WHETHER the internet solicitation methods it uses are passive or interactive AND REGARDLESS OF WHETHER THE INTERNET SOLICITATION METHODS ARE maintained by itself or another entity; with which it contracts, or whether it conducts solicitations in any other manner.

~~12.1-10.2.1~~ 10.2.1 An entity is domiciled within Colorado if its principal place of business is in Colorado.

~~12.2-10.3~~ ~~Entities That Are Domiciled Outside Colorado.~~ An entity domiciled in OUTSIDE OF Colorado must register in accordance with the law of Colorado, WITH THE SECRETARY OF STATE, unless it is exempt from the registration requirements pursuant to IN ACCORDANCE WITH section 6-16-104(6), C.R.S., if:

~~12.2-10.3.1~~ 10.3.1 Its non-Internet activities alone would be ARE sufficient to require registration in Colorado, or

~~12.2.2~~10.3.2 IF the entity solicits contributions through an interactive ~~web site~~-WEBSITE and either the entity EITHER:

~~12.2.2.1~~(A) Specifically targets persons physically located in Colorado for solicitation, or

~~12.2.2.2~~(B) Receives contributions from Colorado on a repeated and ongoing basis or a substantial basis through its ~~Web site~~-WEBSITE; or

~~12.2.3~~10.3.3 The entity solicits contributions through a site that is not interactive, but either specifically invites further offline activity to complete a contribution, or establishes other contacts with Colorado, such as sending e-mail messages or other communications that promote the ~~Web site~~-WEBSITE; and

~~12.2.3.1~~(A) Specifically targets persons physically located in Colorado for solicitation, or

~~12.2.3.2~~(B) Receives contributions from Colorado on a repeated and ongoing basis ~~or~~ a substantial basis through its ~~Web site~~-WEBSITE.

~~12.3~~ For purposes of this Rule 12, each of the following terms shall have the following meanings:

~~12.3.1~~ “~~An interactive web site~~” means a Web site that permits a contributor to make a contribution, or purchase a product in connection with a charitable solicitation, by electronically completing the transaction, such as by submitting credit card information or authorizing an electronic funds transfer. ~~Interactive sites include sites through which a donor may complete a transaction online through any online mechanism processing a financial transaction even if completion requires the use of linked or redirected sites. A Web site is interactive if it has this capacity, regardless of whether donors actually use it.~~

~~12.3.2~~ “~~To specifically target persons physically located in Colorado for solicitation~~” means either:

~~12.3.2.1~~ To include on its Web site an express or implied reference to soliciting contributions from Colorado; or

~~12.3.2.2~~ To otherwise affirmatively appeal to residents of Colorado, such as by advertising or sending messages to persons located in Colorado (electronically or otherwise) when the entity knows or reasonably should know the recipient is physically located in Colorado. Charities operating on a purely local basis, or within a limited geographic area, do not target states outside their operating area, if their web site makes clear in context that their fundraising focus is limited to that area even if they receive contributions from outside that area on less than a repeated and ongoing basis or on a substantial basis.

~~12.3.3 “To receive contributions from Colorado on a repeated and ongoing basis or a substantial basis” means receiving contributions within the entity’s fiscal year, or relevant portion of a fiscal year, that are of sufficient volume to establish the regular or significant (as opposed to rare, isolated, or insubstantial) nature of those contributions. An entity receives contributions on a repeated and ongoing basis if it receives at least 50 online contributions at any time in a year, and it receives substantial contributions if it receives \$25,000 or 1% of its total contributions, whichever is less, in online contributions in a fiscal year.~~

~~12.3.4 An entity that solicits via e-mail into Colorado shall be treated the same as one that solicits via telephone or direct mail, if the soliciting party knew or reasonably should have known that the recipient was a resident of or was physically located in Colorado.~~

*(Current Rule 12.3 is amended and relocated to New Rule 10.1)*

~~12.4-10.4~~ Solicitations for the sale of a product or service that include a representation that some portion of the price shall be devoted to a charitable organization or charitable purpose (often referred to as “commercial coventuring” –or “cause marketing” –and defined in section 6-16-103(3), C.R.S., as a “charitable sales promotion”-) shall be ARE governed by the same standards as otherwise set out OUTLINED in this Rule 12-RULE 10 and pursuant to IN ACCORDANCE WITH section 6-16-104(1), C.R.S.

~~12.5-10.5~~ Nothing in this Rule 12-RULE 10 is intended to limit or expand upon the exception to the definition of a paid solicitor listed in section 6-16-103(7)(f), C.R.S., which states that a person whose only responsibility in connection with a charitable contribution is to provide a merchant account to process credit card payments using the internet IS NOT CONSIDERED A PAID SOLICITOR.

**Current Rule 13 is amended and renumbered as New Rule 11:**

**~~Rule 13~~-RULE 11. –Contact Information for Custodians of Books and Records**

~~11.1~~ Wherever a charitable solicitations IF A filing, including but not limited to A solicitation campaign financial reports, calls for the name and address of a person with custody of books and records, such THE name shall MUST be that of FOR a natural person INDIVIDUAL and such THE address shall MUST be a street address of that person’s INDIVIDUAL’S principal office or usual place of business. —For a person that has no IF THE INDIVIDUAL DOES NOT HAVE A principal office address and no OR usual place of business, such THE address shall MUST be the street address of the person’s INDIVIDUAL residence.

**Current Rule 14 is amended and renumbered as New Rule 12:**

**~~Rule 14~~-RULE 12. –Paid Solicitor Registration**

~~14.1-12.1~~ Pursuant to IN ACCORDANCE WITH section 6-16-104.6(4), C.R.S., a paid solicitor may register and pay a single fee on behalf of its agents (including any subcontractors) provided that each agent or subcontractor is listed on the paid solicitor’s registration.

~~14.2-12.2~~ For ~~any~~A specific solicitation campaign, ~~any~~ agent or subcontractor not directly under contract to the registered paid solicitor must file its own registration.

~~14.3-12.3~~ As referenced in section 6-16-104.6(2), C.R.S., and in ~~rule 15.2.1~~RULE 13.2.1, ~~any~~A copy of a contract provided to a charitable organization or the Secretary of State ~~shall~~MUST be the most recent complete version of the agreement signed by an authorized official of the charitable organization and by the paid solicitor, and it ~~shall~~MUST include the original agreement and all addenda.

Current Rule 15 is amended and renumbered as New Rule 13:

**~~Rule 15~~RULE 13. —Subcontractors**

~~15.1-13.1~~ Filing Requirements

~~15.1.1-13.1.1~~ ~~Any~~A subcontractor operating under a contract with a registered paid solicitor in connection with the paid solicitor's work on behalf of a charitable organization to solicit contributions will be treated as an agent of that paid solicitor and is not required to register. —The paid solicitor ~~shall be responsible for filing~~MUST FILE all solicitation notices and campaign reports AND ENSURE THAT THE SUBCONTRACTOR PROVIDES WRITTEN CONFIRMATION OF CONTRIBUTION STATEMENTS AND MAKES ALL THE REQUIRED ORAL DISCLOSURES THAT APPLY TO PAID SOLICITORS IN SECTIONS 6-16-105 AND 6-16-105.3, C.R.S., RESPECTIVELY.

~~15.1.2-13.1.2~~ A SUBCONTRACTOR WHO MAKES AN ORAL SOLICITATION REGARDING A CHARITABLE CONTRIBUTION TO A PERSON BY A TELEPHONE CALL RECEIVED IN COLORADO MUST STATE THEIR OWN FIRST AND LAST NAME AND STATE THAT THEY ARE CALLING ON BEHALF OF THE REGISTERED PAID SOLICITOR.

13.1.3 ~~Any~~AN agent (but not an employee) of a subcontractor operating under a contract with that subcontractor to solicit contributions ~~shall~~MUST register separately.

~~15.2-13.2~~ Authorization to Solicit

~~15.2.1-13.2.1~~ A subcontractor ~~shall~~MUST operate under a written contract with a registered paid solicitor and ~~such~~THE contract ~~shall~~MUST be provided to the Secretary of State upon request ~~pursuant to~~ IN ACCORDANCE WITH section 6-16-104.6(2), C.R.S.

~~15.2.2-13.2.2~~ A subcontractor ~~shall~~MUST keep records in accordance with section 6-16-109, C.R.S., and ~~shall~~MUST furnish the originals or copies to the paid solicitor.

**II. Basis, Purpose, and Specific Statutory Authority**

A Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

**III. Effective Date of Adopted Rules**

These new and amended rules will become permanently effective twenty days after publication in the Colorado Register.<sup>5</sup>

Dated this 9<sup>th</sup> day of November, 2012,



Suzanne Staiert  
Deputy Secretary of State

For

Scott Gessler  
Colorado Secretary of State

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<sup>5</sup> Section 24-4-103(5), C.R.S. (2012).



## **Revised Statement of Basis, Purpose, and Specific Statutory Authority**

### **Office of the Secretary of State Rules for the Administration of the Colorado Charitable Solicitations Act 8 CCR 1505-9**

**November 9, 2012**

#### **I. Basis and Purpose**

This statement is about amendments to the Colorado Secretary of State rules for the administration of the Colorado Charitable Solicitations Act.<sup>1</sup> The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Colorado Charitable Solicitations laws.<sup>2</sup> The revisions are also intended to improve the administration of charities and fundraisers in Colorado and to answer questions arising under State Colorado Charitable Solicitations laws as follows:

- Amendments to Rule 1 clarify and establish definitions:
  - New Rule 1.4 (formerly Rules 7.5 and 7.6) is the amended and relocated definition of “Bona fide personal emergency”.
  - New Rule 1.7 defines “Employer Identification Number.”
  - Amendments to Rule 1.9 (formerly Rule 1.7) clarify the meaning of “Form of Applicant’s Business” (CNA).
  - Amendments to Rule 1.14 (formerly Rule 1.12) clarify “Principal Place of Business” to mean street address. A provision for waiving this requirement is added in re-numbered Rule 6.
  - Current Rule 1.13, regarding “Registration Service Provider” is repealed.
  - New Rule 1.15 clarifies that all registrants must designate a “Registered Agent.”
  - New Rule 1.18 clarifies what “State Elections Commission” means in Colorado.
  - New Rule 1.19 clarifies that street address has the same meaning as in section 7-90-102(62), C.R.S.
- Amendments to Rule 2 require an Employer Identification Number (EIN) for each user account. Additionally, the amendments clarify that user email addresses are not public records.

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<sup>1</sup> 8 CCR 1505-9.

<sup>2</sup> Article 16, Title 6 of the Colorado Revised Statutes.

- Amendments to Rule 3 provide a timeline for suspended and revoked organizations to submit hearing requests, and allow the Secretary of State more time to prepare for suspension hearings.
- Amendments to Rule 4 allow the Secretary of State flexibility in delivery method of confirmations. Additionally, the amendments clarify the purpose and content of web-based registration certificates. They also clarify that the Secretary may request a copy of the charity's IRS Form 990. The Secretary of State may also request that the organization file an amended IRS Form 990, or otherwise correct inconsistencies between or within the state registration statement and the IRS Form 990.
- Amendments to Rule 5 implement changes made by section 2 of House Bill 12-1236. Specifically, in accordance with revisions to section 6-16-104, C.R.S., if a charity files for an extension with the IRS, the Secretary will automatically grant the charity a three-month extension for filing its initial or annual financial report with the Secretary of State. The amended rule also states when an extension may be filed and when a solicitation notice may be amended. Current Rule 8.3 is amended and relocated to new Rule 5.10; this rule provides deadlines for submitting solicitation campaign reports.
- Current Rule 6, which lays out the schedule for reminders and notices, is repealed. The Secretary of State will continue to send reminders and notices to customers, but the schedule will be posted on the department's website rather than being enumerated in rules.
- Amendments to New Rule 6 (formerly Rule 7) make changes to late fee amounts and state when the Secretary of State will send uncollected late fees to State Collections. The amended rule requires two years of returns for operational, unregistered charities that wish to register, and provides more flexibility for the Secretary to approve waiver requests by making stipulations for administrator or website errors.
- Amendments to New Rule 7 (formerly Rule 8) clarify the consequences of suspension and revocation of a registration and make minor clarifications to how the suspension and revocation will work. Current Rule 8.3 is relocated to new Rule 5.10; this rule provides deadlines for submitting solicitation campaign reports.
- Amendments to New Rule 8 (formerly Rule 9) codify internal administrative procedures regarding withdrawals.
- Amendments to New Rule 9 (formerly Rule 10) clarify the reinstatement process and what information a charity must provide to be reinstated.
- Current Rule 11 is repealed because the current language was incorporated into new Rule 7.1. Subsequent rules are renumbered accordingly.



- Amendments to New Rule 13 (formerly Rule 15) clarify that paid solicitor disclosure requirements also apply to subcontractors.
- Other changes to rules not specifically listed are entirely non-substantive. Some words and phrases are changed to simplify or clarify, but the meaning is not intended to be altered unless as described above. Cross-references in rules are also corrected or updated. Renumbering the rules is necessary for consistency with Department rulemaking format/style.

## **II. Rulemaking Authority**

The statutory and constitutional authority is as follows:

1. Section 6-16-104(3), C.R.S., (2012) which authorizes the Secretary of State to “promulgate rules concerning the acceptance of a uniform multistate registration statement, such as a unified registration statement, in lieu of the registration statement described in subsection (2) of this section. As soon as practicable, the secretary of state shall take steps to cooperate in a joint state and federal electronic filing project involving state charity offices and the internal revenue service to enable and promote electronic filing of uniform multistate registration statements and federal annual information returns.”
2. Section 6-16-110.5(3), C.R.S., (2012), which authorizes the Secretary of State “to promulgate rules as needed for the effective implementation of this section, including but not limited to:
  - (a) Providing for the extension of filing deadlines;
  - (b) Providing for the online availability of forms required to be filed pursuant to sections 6-16-104 to 6-16-104.6;
  - (c) Providing for the electronic filing of required forms, including the acceptance of electronic signatures;
  - (d) Mandating electronic filing and providing, in the secretary of state's discretion, for exceptions to mandatory electronic filing; and
  - (e) Setting fines for noncompliance with this article or rules promulgated pursuant to this article. The fine for soliciting while unregistered shall not exceed three hundred dollars per year for charities or one thousand dollars per year for paid solicitors.”
3. Section 6-16-111(6)(b), C.R.S., (2012), that requires the Secretary of State to “promulgate rules to provide for expedited deadlines to govern [hearing proceedings concerning denial, suspension, or revocation of registration]...”.
4. Section 6-16-114, C.R.S., (2012), that requires the Secretary of State to promulgate rules to establish a fine or late filing fee amount.