



Notice of Proposed Rulemaking

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

April 14, 2015

I. Hearing Notice

As required by the State Administrative Procedure Act,¹ the Secretary of State gives notice of proposed rulemaking. The hearing is scheduled for **May 18, 2015 from 2:00 p.m. - 4:00 p.m.** in the Blue Spruce Conference Room on the 2nd floor of the Secretary of State's Office at 1700 Broadway, Denver, Colorado 80290.

II. Subject

The Secretary is considering amendments to the rules for the administration of the Colorado Charitable Solicitations Act² to improve the administration and enforcement of Colorado Charitable Solicitations laws.³

Specifically, the Secretary is considering rule revisions necessary to implement House Bill 14-1206. Additional amendments clarify definitions, establish fines for paid solicitors, clarify and simplify rules, remove language duplicative of statute, correct numbering and citations, and ensure consistency with Department rulemaking standards. The Secretary may consider additional rule amendments.

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

III. Statutory authority

The Secretary proposes the rule revisions and amendments in accordance with the following statutory provision:

¹ Section 24-4-103(3)(a), C.R.S. (2014).

² 8 CCR 1505-9.

³ Article 16, Title 6 of the Colorado Revised Statutes.

- Section 6-16-110.5(3)(a) and (e), C.R.S. (2014) which provides that the Secretary of State may promulgate rules as needed for the effective implementation of the Colorado Charitable Solicitations Act (Article 16, Title 6 of the Colorado Revised Statutes), including rules providing for the extension of filing deadlines and setting fines for noncompliance.
- Section 6-16-111(6)(b), C.R.S. (2014) which authorizes the Secretary to promulgate rules to provide for expedited deadlines for hearings.
- Section 6-16-114, C.R.S. (2014) which authorizes the Secretary to set fines by rule.

IV. Copies of draft rules

A preliminary draft of the proposed rules is posted on the Secretary of State's rules and notices of rulemaking website at:

www.sos.state.co.us/pubs/rule_making/hearings/2015/CharitableRulesHearing20150518.html.

You may also contact our office to request a paper or editable electronic copy of the draft rules.

As required by the State Administrative Procedures Act,⁴ if changes are made before the hearing, revised proposed draft rules will be available to the public and posted on the website by May 13, 2015.

V. Opportunity to testify and submit written comments

The Secretary values your feedback in our rulemaking process and we would very much like to hear your thoughts on the proposed amendments. Please review and consider the attached proposed draft rules.

Everyone will have the opportunity to testify and provide written comment concerning the rule amendments. To ensure that the hearing is prompt and efficient, oral testimony may be time-limited.

You may submit written comments by mail, email, or in person to our office any time before the hearing. If you attend the hearing, you may submit written comments to the hearing panel as well. Additional opportunity to comment in writing may be announced at the conclusion of the hearing.

All written comments will be posted online at the Secretary of State website: www.sos.state.co.us/pubs/rule_making/hearings/2015/CharitableRulesHearing20150518.html. We will redact contact information, including home address, email address, and telephone

⁴ Section 24-4-103(3)(a), C.R.S. (2014). "Any proposed rule or revised proposed rule by an agency which is to be considered at the public hearing...shall be made available to any person at least five days prior to said hearing."

number(s), from submissions before posting the information online, unless otherwise directed by the contributor.

VI. Broadcast and audio recording of hearing

If you are unable to attend the hearing, you may listen to the live broadcast from the Blue Spruce Conference Room online at www.sos.state.co.us/pubs/info_center/audioBroadcasts.html. After the hearing, visit the same website and click on “archived recordings” to access an audio recording of the hearing.

VII. Office contact

If you have any questions or would like to submit written comments, please contact Andrea Gyger with the Administration Division at SoS.Rulemaking@sos.state.co.us or (303) 894-2200 ext. 6329.

Dated this 14th Day of April, 2015.



Suzanne Staiert
Deputy Secretary of State

For

Wayne W. Williams
Colorado Secretary of State



Draft 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

April 14, 2015

I. Basis and Purpose

This statement explains amendments to the Colorado Secretary of State rules for the administration of the Colorado Charitable Solicitations Act.¹ The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Colorado Charitable Solicitations laws² as follows:

- Amendments to Rule 1.2 clarify the definition of “agent”.
- The annotation to expired Rule 1.17 is repealed as unnecessary.
- Rule 1.18 is renumbered as Rule 1.1.7 and amended to clarify the definition of “State Elections Commission.”
- Rules 1.19 and 3.1 are repealed as unnecessary.
- Rule 3.2 is renumbered as Rule 3.1.
- Rule 3.3 is renumbered as Rule 3.2. Amendments to Rule 3.2 simplify language and clarify that “15 days” means “15 calendar days.”
- Rule 3.4 is renumbered as Rule 3.3. Amendments to Rule 3.3 simplify language and clarify that “the tenth day” means “the tenth calendar day.”
- Amendments to the title of Rule 5.2 clarify that it concerns amendments to financial estimates.
- Amendments to Rule 5.2.1 clarify language requiring organizations without an IRS extension to amend good faith estimates.

¹ 8 CCR 1505-9.

² Article 16, Title 6 of the Colorado Revised Statutes.

- Amendments to Rule 5.2.2 clarify language requiring organizations with an IRS extension to amend good faith estimates.
- Amendments to Rules 5.4 and 5.5 revise terminology concerning fines and clarify language.
- Amendments to Rule 5.7 clarify the possible result of a professional fundraising consultant's or paid solicitor's failure to renew a registration.
- Amendments to Rule 5.9 clarify the possible result of a paid solicitor's failure to file a solicitation notice.
- Amendments to Rule 6.1 revise terminology concerning fines and clarify when the Secretary will impose fines on professional fundraising consultants and paid solicitors.
- Rule 6.1.3 is duplicative of statute and repealed as unnecessary.
- Rule 6.1.4 is repealed as unnecessary.
- Amendments to Rule 8.2 revise terminology concerning fines and correct a rule citation.
- Amendments to Rule 9.2.2 concerning non-exempt organizations simplify language.
- Rules 9.3 and 9.4 concerning fines for suspended registrants are consolidated into Rule 9.3. Amendments simplify language and revise terminology concerning fines.
- Non-substantive revisions to simplify or clarify words and phrases, renumber rules, and other technical revisions as is necessary for consistency with Department rulemaking format and style.

II. Statutory Rulemaking Authority

- Section 6-16-110.5(3)(a) and (e), C.R.S. (2014) which provides that the Secretary of State may promulgate rules as needed for the effective implementation of the Colorado Charitable Solicitations Act (Article 16, Title 6 of the Colorado Revised Statutes), including rules providing for the extension of filing deadlines and setting fines for noncompliance.
- Section 6-16-111(6)(b), C.R.S. (2014) which authorizes the Secretary to promulgate rules to provide for expedited deadlines for hearings.
- Section 6-16-114, C.R.S. (2014) which authorizes the Secretary to set fines by rule.

Preliminary Draft of Proposed Rules

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

April 14, 2015

Disclaimer:

In accordance with the State Administrative Procedure Act, this draft is filed with the Secretary of State and submitted to the Department of Regulatory Agencies.¹

This is a preliminary draft of the proposed rules that may be revised before the May 18, 2015 rulemaking hearing. If changes are made, a revised copy of the proposed rules will be available to the public and a copy will be posted on the Department of State's website no later than **May 13, 2015**.²

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
Strikethrough	Deletions
<i>[Italic blue font text]</i>	Annotations

1 *[Current 8 CCR 1505-9 is amended as follows:]*

2 *Amendments to Rule 1.2 concerning the definition of "agent":*

3 1.2 "Agent" means an individual who, by the PRINCIPAL'S written authority, ~~and on the~~
4 ~~account of the principal,~~ transacts business or manages affairs for the principal, and ~~who~~
5 ~~is required to render an account of the business or affair~~ PROVIDES AN ACCOUNTING to the
6 principal. "agent" "AGENT" includes "subcontractors."

7 *Repeal annotation concerning expired Rule 1.17:*

8 ~~1.17~~ ~~[Expired 05/15/2014 per House Bill 14 1123]~~

9 *Renumbering and amendments to Rule 1.18 defining "State Elections Commission":*

¹ Sections 24-4-103(2.5) and (3)(a), C.R.S. (2014). A draft must be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.

² Section 24-4-103(4)(a), C.R.S. (2014). "[A]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing... shall be made available to any person at least five days prior to said hearing."

1 ~~1-18-1.17~~ "State Elections Commission" ~~means,~~ INCLUDES, for the purposes of section 6-16-
2 104(6)(b), C.R.S., the Secretary of State's Campaign and Political Finance Program.

3 *Repeal Rule 1.19 defining "street address" and renumber Rule 1.20:*

4 ~~1.19~~ "Street Address" has the same meaning as in section ~~7-90-102(62)~~, C.R.S.

5 ~~1-20-1.18~~ "Subcontractor," as used in these rules, includes the agent (but not employee) of a
6 paid solicitor who solicits on behalf of the paid solicitor for the benefit of a charitable
7 organization that contracted with the paid solicitor.

8 *Amendments to Rule 3:*

9 ~~3.1~~ Upon notice from the Secretary of State that a registration has been denied or is subject to
10 suspension or revocation, the aggrieved party may request a hearing within five calendar
11 days after receipt of notice.

12 ~~3-2-3.1~~ Upon receipt of a request for hearing in accordance with section 6-16-111(6)(b), C.R.S.,
13 the Secretary of State will set and give notice of the hearing by certified mail within five
14 business days of the receipt. The Secretary will set the hearing no sooner than 20 and no
15 later than 45 calendar days after the mailing of the notice.

16 ~~3-3-3.2~~ The Secretary may, for FOR good cause shown, THE SECRETARY OF STATE MAY continue
17 a proceeding under section ~~6-15-111(6)~~, C.R.S., and this Rule 3 for a period as brief as
18 practicable and, in no case, for NO more than 15 CALENDAR days.

19 ~~3-4-3.3~~ The Secretary ~~must~~ WILL conduct and conclude all hearings in a timely manner and ~~must~~
20 WILL take final agency action no later than the tenth CALENDAR day following the
21 hearing.

22 *Amendments to the title of Rule 5.2 concerning amending financial estimates in initial*
23 *registrations:*

24 5.2 Filing ~~registration~~ amendments TO FINANCIAL ESTIMATES.

25 *Amendments to Rule 5.2.1 concerning amending good faith estimates when organization does*
26 *not have an IRS extension:*

27 5.2.1 If aA charitable organization ~~does not~~ THAT FAILED TO file a deadline extension
28 with the IRS, ~~a charitable organization that~~ BUT reported estimated financial
29 information on its initial registration STATEMENT must amend its registration
30 STATEMENT with AND PROVIDE its actual financial information by the 15th day of
31 the fifth calendar month after the close of the fiscal year reported on the initial
32 registration statement.

33 *Amendments to Rule 5.2.2 concerning amending good faith estimates when organization has an*
34 *IRS extension:*

1 5.2.2 ~~If a~~ A charitable organization THAT files a deadline extension with the IRS AND
2 REPORTED ESTIMATED FINANCIAL INFORMATION ON ITS INITIAL REGISTRATION
3 STATEMENT, ~~it must file necessary amendments to~~ AMEND ITS REGISTRATION
4 STATEMENT AND PROVIDE its ACTUAL financial information by the 15th day of the
5 eighth calendar month after the close of ~~each~~ THE fiscal year ~~in which the~~
6 ~~charitable organization solicited in Colorado~~ REPORTED IN THE INITIAL
7 REGISTRATION STATEMENT.

8 *Amendments to Rule 5.4 and subrule 5.4.1 concerning fines:*

9 5.4 The Secretary may impose a ~~late fee~~ FINE on a charitable organization that fails to timely
10 request an extension.

11 5.4.1 To avoid incurring ~~late fees~~ FINES, charitable organizations must:

- 12 (a) Replace initial estimated financial information with actual financial
13 information;
- 14 (b) File a registration renewal; or
- 15 (c) File an extension on or before the filing deadline.

16 *Amendment to Rule 5.5 concerning fines:*

17 5.5 If a charitable organization, at the time of initial registration, reports financial information
18 outside of the most recently completed fiscal year, the Secretary of State will approve the
19 initial registration but the organization must file a renewal or extension request within
20 five days from the initial registration approval. If the organization fails to file a renewal
21 or extension within the five day period, the Secretary will mark the organization's status
22 as "delinquent" and notify the organization that it must update the information or it will
23 be subject to ~~late fees~~ FINES and possible suspension OR REVOCATION.

24 *Amendment to Rule 5.7 concerning fines for professional fundraising consultants and paid*
25 *solicitors:*

26 5.7 Professional fundraising consultant or paid solicitor registration is valid for one year. The
27 fundraising consultant or paid solicitor ~~may~~ MUST annually ~~renew registration by filing~~
28 FILE a registration renewal by the anniversary date. The anniversary date ~~each year will~~
29 ~~be~~ IS the day and month the initial registration was approved, or the day and month the
30 most recent reinstatement was approved. ~~A professional fundraising consultant or paid~~
31 ~~solicitor who fails~~ FAILURE to renew a registration on or before the anniversary date is
32 ~~subject to a late fee~~ WILL RESULT IN A FINE AND POSSIBLE SUSPENSION OR REVOCATION.

33 *Amendments to Rule 5.9 concerning paid solicitors:*

34 5.9 A paid solicitor must file a ~~completed~~ solicitation notice no later than 15 days before a
35 solicitation campaign starts. Failure to file will ~~subject the paid solicitor to a late fee and~~
36 ~~up to~~ RESULT IN A FINE AND POSSIBLE SUSPENSION OR revocation.

1 *Amendments to Rule 6.1 and its subrules 6.1.1 and 6.1.2 concerning fines for registrants:*

2 6.1 The Secretary will assess a late fee if a charitable organization, professional fundraising
3 consultant, or paid solicitor who fails to properly renew or update a registration, file a
4 solicitation notice, or file a financial report of a solicitation campaign after being sent at
5 least two notices. The Secretary will assess the late fee for an overdue solicitation
6 campaign financial report against the paid solicitor and not the charitable organization in
7 accordance with section 6-16-114, C.R.S. THE FOLLOWING FINES:

8 6.1.1 The late fee FINE for a charitable organization is \$60 per overdue report.

9 6.1.2 The late fee FINE for a professional fundraising consultant or paid solicitor is \$200
10 per overdue report and applies to an overdue renewal or, OVERDUE SOLICITATION
11 NOTICE, AND overdue campaign report.

12 *Repeal Rule 6.1.3:*

13 ~~6.1.3 If a charitable organization, professional fundraising consultant, or paid solicitor~~
14 ~~is assessed a late fee, the late fee is in addition to the regular filing fee.~~

15 *Repeal Rule 6.1.4:*

16 ~~6.1.4 To become compliant, and to avoid additional late fees or other possible penalties,~~
17 ~~a charitable organization, professional fundraising consultant, or paid solicitor~~
18 ~~must file all past due documents in sequence from oldest to newest.~~

19 *Amendments to Rule 8.2 concerning fines and waivers for registrants:*

20 8.2 A charitable organization, professional fundraising consultant, or paid solicitor that incurs
21 a late fee for failure FAILS to TIMELY file a document on time must either pay the
22 outstanding late fee FINE or obtain a waiver of late fee as described in Rule 6, 6.5 before
23 the Secretary of State will approve a registration withdrawal.

24 *Amendments to Rule 9.2.2 concerning fines for organizations not exemption from registration:*

25 9.2.2 ~~If the~~ A NON-EXEMPT organization was not exempt from registration for all fiscal
26 years since its registration was withdrawn, it must pay any applicable late fees for
27 all years during which it was delinquent or suspended and MUST retroactively
28 renew its registration AND PAY ALL APPLICABLE FINES FOR EACH FISCAL YEAR THAT
29 IT WAS DELINQUENT OR SUSPENDED.

30 *Rules 9.3 and 9.4 concerning fines for suspended registrants are consolidated into Rule 9.3 and*
31 *amended:*

32 9.3 REINSTATEMENT REQUIREMENTS

33 9.3.1 Before reinstatement, a A suspended charitable organization, professional
34 fundraising consultant, or paid solicitor must:

- 1 (A) ~~correct~~ CURE the deficiency for which it was suspended,; and,
2 (B) ~~if it was subject to the registration requirements of the CCSA during the~~
3 ~~suspension period, it must retroactively renew its registration and pay~~ PAY
4 ALL applicable ~~late fees~~ FINES for all years ~~during which~~ THAT it was
5 ~~delinquent or~~ suspended AND SUBJECT TO CCSA REGISTRATION
6 REQUIREMENTS.

7 9.49.3.2 ~~Before reinstatement, a~~ A paid solicitor must file solicitation notices and
8 campaign reports and pay all applicable ~~late fees~~ FINES for solicitation campaigns
9 conducted ~~while registration was suspended~~ DURING SUSPENSION.

