



NOTICE OF PROPOSED RULEMAKING

**Office of the Secretary of State
Campaign and Political Finance Rules
8 CCR 1505-6**

December 30, 2009

Pursuant to the requirements of section 24-4-103(3)(a), C.R.S., (2009), notice of proposed rulemaking is hereby given by the Secretary of State. A rulemaking hearing will be held on **February 9, 2010 from 2:00 p.m. to 4:00 p.m.** in the Blue Spruce Conference Room on the second floor of the Office of the Secretary of State at 1700 Broadway, Denver, Colorado 80290. All interested persons will be afforded an opportunity to be heard on the subject of revisions and amendments to the Secretary of State's "Rules Concerning Campaign and Political Finance," 8 CCR 1505-6.

Subject of the Proposed Rulemaking

The Secretary of State will consider amendments and revisions to the Colorado Secretary of State "Rules Concerning Campaign and Political Finance" as may be necessary or appropriate to administer the provisions of Article XXVIII of the Colorado Constitution and Article 45 of Title 1, Colorado Revised Statutes. The Secretary of State shall also consider rules to implement the change to all electronic filing, clarify disclosure and reporting requirements, clarify filing and reporting timelines for recall elections, and such other rule amendments as may be necessary to answer questions arising under Article XXVIII of the Colorado Constitution and Article 45 of Title 1, Colorado Revised Statutes.

Authority for Proposed Rulemaking

Revisions and amendments to the Secretary of State's "Rules Concerning Campaign and Political Finance" [8 CCR 1505-6] are proposed pursuant to the following statutory and constitutional provisions:

1. Article XXVIII, Section 9(1)(b), Colorado Constitution, which requires the Secretary of State to "[p]romulgate such rules, in accordance with article 4 of title 24, C.R.S., or any successor section, as may be necessary to administer and enforce any provision of [Article XXVIII of the Colorado State Constitution]."

2. Section 1-1-107(2)(a), C.R.S., (2009), which authorizes the Secretary of State “[t]o promulgate, publish and distribute...such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws.”
3. Section 1-45-111.5(1), C.R.S., (2009), which requires the Secretary of State to “promulgate such rules in accordance with article 4 of title 24, C.R.S., as may be necessary to enforce and administer any provision of [article 45 of title 1, C.R.S.]”

Copies of the initial draft of the proposed rules may be obtained from the office of the Secretary of State at 1700 Broadway, Suite 200, Denver, Colorado, 80290, or by calling (303) 894-2200, extension 6329. The proposed rules are also posted on the Secretary of State website at www.sos.state.co.us.

A final copy of the proposed rules for consideration at the public rulemaking hearing will be posted on the Secretary of State website and made available to the public no later than **February 4, 2010** in accordance with section 24-4-103(4)(a), C.R.S., (2009), which states that “[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.”

The rulemaking hearing on February 9, 2010 will be held in accordance with section 24-4-103, C.R.S., (2009). Written and oral data, comments, and arguments will be received from all interested parties. Written submissions must be filed at or before the commencement of the hearing on February 9, 2010 at 2:00pm in order to be considered. Oral testimony may be limited in order to allow the proceedings to go forward with reasonable promptness and efficiency. The hearing will be audio recorded and broadcast over the Internet. The broadcast may be accessed through the Secretary of State website at www.sos.state.co.us on the “Information Center” page under “Broadcast and Recorded Meetings.” For additional information, please contact Andrea Gyger, Elections Division at andrea.gyger@sos.state.co.us or (303) 894-2200 ext. 6329.

Dated this 30th Day of December, 2009.



William A. Hobbs
Deputy Secretary of State

For

Bernie Buescher
Colorado Secretary of State



Proposed Statement of Basis, Purpose, and Specific Authority

**Office of the Secretary of State
Campaign and Political Finance Rules
8 CCR 1505-6**

December 30, 2009

1. Basis and Purpose

This statement pertains to the amendments to the Colorado Secretary of State “Rules Concerning Campaign and Political Finance.” The proposed amendments and revisions to these rules are proposed to achieve the uniform and proper administration and enforcement of the campaign and political finance laws of the State of Colorado, including Article XXVIII of the Colorado Constitution and Article 45, Title 1 of the Colorado Revised Statutes.

The proposed revisions are also necessary to implement amendments to the campaign and political finance laws made during the 2009 regular session of the 67th General Assembly and to answer questions arising under Article XXVIII of the Colorado Constitution and Article 45 of Title 1, Colorado Revised Statutes.

Specific amendments to the Campaign and Political Finance Rules are proposed as follows:

- Rules 4.2, 5.5, and 11.4 would be repealed and Rule 5.6 would be amended to reflect the change to all-electronic filing.
- The adoption of Rule 4.25 would clarify the procedure for reporting reimbursements to a committee or party when a candidate or a third party has made expenditures on behalf of the committee or party. This is necessary to provide transparency in reporting by preventing committees from using a credit card or a candidate’s own personal funds for expenditures, and then reporting only a reimbursement to the candidate or credit card company without disclosing the service provider of the original expenditure.
- The amendments to Rule 4.3 would clarify the meaning of “deposit” for the purposes of reporting campaign contributions. The revision specifies that a deposit is considered made when the committee submits funds for deposit into its account, rather than when a financial institution releases funds to the committee’s account.
- The amendments to Rule 5.10 would clarify the applicability of the reporting exemption for former officeholders or those not elected to office.

- The amendments to Rule 10.1 are proposed to clarify the election cycle for recall elections in which the recall election is not held.
- Rule 10.5 would be repealed to eliminate apparent conflicts with section 1-45-108(6), C.R.S.
- The proposed amendments to Rule 14.2 would reflect the centralization of disclosure report filing implemented by House Bill 09-1357.

2. Rulemaking Authority

Amendments to the Colorado Secretary of State “Rules Concerning Campaign and Political Finance” are adopted pursuant to the following statutory and constitutional provisions:

1. Article XXVIII, Section 9(1)(b) of the Colorado Constitution, which requires the Secretary of State to:

“Promulgate such rules, in accordance with article 4 of title 24, C.R.S., or any successor section, as may be necessary to administer and enforce any provision of [Article XVIII of the Colorado State Constitution].”

2. Section 1-1-107(2)(a), C.R.S., (2009), which authorizes the Secretary of State:

“To promulgate, publish, and distribute . . . such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws”

3. Section 1-45-111.5(1), C.R.S., (2009), which requires the Secretary of State to:

“[P]romulgate such rules in accordance with article 4 of title 24, C.R.S., as may be necessary to enforce and administer any provision of [article 45 of title 1, C.R.S.].”

COLORADO SECRETARY OF STATE

[8 CCR 1505-6]

RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE

Preliminary Draft of Proposed Rules

December 30, 2009

Disclaimer: This draft is not yet final. The proposed changes to be considered at the public rulemaking hearing may be different than the proposed changes in this draft. This draft is submitted to the Department of Regulatory Agencies for the purpose of complying with section 24-4-103(2.5), C.R.S., which requires that a draft be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.

A final copy of the proposed rule changes will be available to the public no later than February 4, 2010, and a copy will be posted on the Department of State's web site, in compliance with the requirement of section 24-4-103(4)(a), C.R.S., that "[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."

Proposed additions to the current rules are reflected in SMALL CAPS. Proposed deletions from current rules are shown in ~~stricken type~~. Annotations may be included.

1 Rule 4.2 would be repealed as follows:

2 4.2 ~~When manually filing an amended report of contributions and expenditures, a new form~~
3 ~~shall be completed that includes the cover page of the report of contributions and~~
4 ~~expenditures, the detailed summary page, and any updated schedules listing only the~~
5 ~~amended information. [C.R.S. 1-45-109(4)(b)] REPEALED.~~

6 Rule 4.3 would be amended as follows:

7 4.3 Contributions – when counted.

8 a. A contribution is considered made or received as of the date that it is accepted by
9 the committee or party. In the case of a contribution by check or credit card, the
10 date accepted is the date that the contribution is deposited BY THE COMMITTEE into
11 ~~the committee's or party's~~ ITS account. Any contribution in the form of a check
12 received by a committee or 527 political organization at least five business days
13 prior to the end of a reporting period must be deposited or returned to the
14 contributor by the close of that reporting period.

1 b. However, for purposes of section 1-45-105.5, C.R.S., concerning contributions by
2 lobbyists to certain state officers and candidates when legislation is under
3 consideration, a contribution is considered made or promised when possession of
4 the check is transferred to any person not under the control of the issuer.

5 New Rule 4.25 would be adopted as follows:

6 4.25 REIMBURSEMENT OF EXPENDITURES – PAYMENTS BY CREDIT CARD OR PAYMENT
7 INTERMEDIARY SERVICE.

8 A. WHEN REPORTING A REIMBURSEMENT TO A CANDIDATE OR TO ANY OTHER PERSON,
9 THE COMMITTEE OR PARTY SHALL SEPARATELY DISCLOSE EACH SUCH EXPENDITURE
10 OF \$20 OR MORE, INCLUDING THE PURPOSE, PAYEE, AND AMOUNT OF EACH
11 EXPENDITURE AS OF THE DATE OF THE EXPENDITURE, REGARDLESS OF THE DATE OF
12 REIMBURSEMENT.

13 B. FOR THE PURPOSE OF REPORTING AN EXPENDITURE, SIMPLY DISCLOSING THAT A
14 PAYMENT WAS MADE TO A CREDIT CARD COMPANY OR A PAYMENT INTERMEDIARY
15 SERVICE SUCH AS PAYPAL IS NOT ADEQUATE. ALL EXPENDITURES \$20 OR MORE
16 MADE BY CREDIT CARD OR PAYMENT INTERMEDIARY SERVICE MUST BE ITEMIZED,
17 INCLUDING THE NAME AND ADDRESS OF THE PAYEE, AMOUNT, ORIGINAL DATE OF
18 EXPENDITURE, AND PURPOSE OF THE EXPENDITURE.

19 C. NOTHING IN THIS RULE SHALL BE CONSTRUED TO PERMIT CONTRIBUTIONS OR
20 REIMBURSEMENTS OF CONTRIBUTIONS PROHIBITED BY ARTICLE XXVIII, SECTION
21 3(11).

22 [SECTION 1-45-108(1)(E), C.R.S.]

23 Rule 5.5 would be repealed as follows:

24 5.5 ~~Reports filed manually. All disclosure reports filed manually with the secretary of state~~
25 ~~pursuant to section 1-45-108 C.R.S., shall be filed using the provided form, or if the~~
26 ~~report is filed in another permitted format, it shall be type written and the font size shall~~
27 ~~be no less than 12 point. REPEALED.~~

28 Rule 5.6 would be amended as follows:

29 5.6 Reports filed electronically.

30 a. ~~Reports filed electronically are due on the same date as manually filed reports and~~
31 ~~are due no later than close of business pursuant to section 1-45-109(2), C.R.S.~~
32 FOR THE PURPOSE OF SECTION 1-45-109(2)(A), C.R.S., “Close of business” for ~~the~~
33 ~~purpose of~~ electronic filing shall mean 11:59 p.m.

34 e.B. If the electronic filing system is unavailable for filing for a total of more than one
35 hour after 4:00 p.m. on the due date for filing a report, the ~~secretary of state~~

1 SECRETARY OF STATE may extend the due date for an additional day for
2 electronically filed reports. [SECTIONS 1-45-108(2.3), 1-45-109(6), C.R.S.]

3 Rule 5.10 would be amended as follows:

4 5.10 REPORTS FOR FORMER OFFICEHOLDERS OR PERSONS NOT ELECTED TO OFFICE

5 A. For purposes of section 1-45-108(2)(d), C.R.S., which exempts a candidate
6 committee for a former officeholder or person not elected to office from reporting
7 if there is no change in the balance of funds maintained by such committee and if
8 certain other conditions are met, a change in the balance of funds resulting solely
9 from the accrual of interest or dividends to the account and/or the automatic
10 deduction of periodic service fees does not subject such candidate committee to
11 the reporting requirements of section 1-45-108, C.R.S., except that such candidate
12 committee shall file an annual report for each calendar year. Candidate
13 committees that choose this option must notify, in writing, the appropriate filing
14 officer of their intent. [SECTIONS 1-45-108(2)(c) and (2)(d), C.R.S.]

15 I. State candidate committees shall file such report not later than January
16 15th of the following year.

17 II. All other candidate committees shall file such report on the first day of the
18 month in which the anniversary of the major election occurs, in
19 accordance with section 1-45-108(2)(a)(II), C.R.S.

20 B. THE REPORTING EXEMPTION SET FORTH IN SECTION 1-45-108(2)(D), C.R.S., APPLIES
21 ONLY TO REPORTS FOR WHICH THE ENTIRE REPORTING PERIOD OCCURS AFTER THE
22 ELECTION IN WHICH THE CANDIDATE'S NAME APPEARED ON THE BALLOT.

23 Rule 10.1 would be amended as follows:

24 10.1 The election cycle for a recall election shall be from the date the recall petition is
25 approved for circulation by the ~~appropriate officer~~ DESIGNATED ELECTION OFFICIAL
26 through 30 ~~thirty~~ days following THE date of the recall election. IN THE EVENT THAT NO
27 RECALL ELECTION IS HELD BECAUSE THE PETITION IS DETERMINED TO BE INSUFFICIENT, THE
28 RECALL ELECTION CYCLE ENDS 30 DAYS AFTER THE FINAL DETERMINATION OF
29 INSUFFICIENCY, INCLUDING PASSAGE OF THE TIME FOR PROTEST AND FINAL DISPOSITION OF
30 ANY PROTEST OR APPEAL OF SUCH DETERMINATION. IN THE EVENT THAT NO RECALL
31 ELECTION IS HELD FOR ANY OTHER REASON, THE RECALL ELECTION CYCLE ENDS 30 DAYS
32 AFTER THE DEADLINE FOR FILING THE RECALL ELECTION PETITION.

33 Rule 10.5 would be repealed as follows:

34 10.5 ~~Notwithstanding section 1-45-108(6), C.R.S., any issue committee whose purpose is to~~
35 ~~support or oppose the recall of any elected official shall register within ten calendar days~~
36 ~~of accepting or making contributions or expenditures in excess of two hundred dollars in~~
37 ~~accordance with section 1-45-108(3.3), C.R.S. Such committee shall otherwise follow~~
38 ~~the filing calendar established in section 1-45-108 (6), C.R.S. REPEALED.~~

1 *[Note: Rule 10.5 is repealed to eliminate apparent conflicts with 1-45-108(6), C.R.S.]*

2 Rule 11.4 would be repealed as follows:

3 11.4 ~~For the purposes of this rule 11, “entry” is defined as any contribution, expenditure,~~
4 ~~returned contribution, returned expenditure, loan, loan repayment, or in connection with a~~
5 ~~political organization, spending. REPEALED.~~

6 Rule 14.2 would be amended as follows:

7 14.2 For the purposes of section 5, ARTICLE ~~article~~ XXVIII, a candidate committee, political
8 committee, small donor committee, political party, or 527 political organization that is
9 registered with the Secretary of State ~~or a county clerk and recorder~~ that obligates funds
10 exceeding \$1,000 for any single independent expenditure more than 30 days prior to a
11 primary or general election shall notify the Secretary of State by disclosing such
12 expenditure on the committee’s or organization’s regularly scheduled disclosure report
13 for that reporting period.