



NOTICE OF PROPOSED RULEMAKING

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

March 11, 2011

Pursuant to the requirements of section 24-4-103(3)(a), C.R.S., (2010), notice of proposed rulemaking is hereby given by the Secretary of State. A rulemaking hearing will be held on **April 19, 2011 from 2:00 p.m. to 5:00 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. Specifically, the Secretary of State will consider rules to formalize the Secretary of State's policy for processing requests for waiver of campaign finance penalties imposed under Article XXVIII, Section 10(2)(a) of the Colorado Constitution. The Secretary of State will also consider rules 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., (2010), 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., (2010), 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.]”

Paper or editable electronic 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 April 14, 2011 in accordance with section 24-4-103(4)(a), C.R.S., (2010), 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 April 19, 2011 will be held in accordance with section 24-4-103, C.R.S., (2010). 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 April 19 at 2:00 p.m. 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 11th Day of March, 2011.



William A. Hobbs
Deputy Secretary of State

For

Scott Gessler
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**

March 11, 2011

I. Basis and Purpose

This proposed statement pertains to the amendments to the Colorado Secretary of State “Rules Concerning Campaign and Political Finance.” The 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 Secretary of State will also consider 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.

- The adoption of specific amendments to the Campaign and Political Finance Rules is necessary as follows: Rule 15 would be adopted to formalize the Secretary of State’s policy for processing requests for waiver of campaign finance penalties imposed under Article XXVIII, Section 10(2)(a) of the Colorado Constitution.

II. Statutory Authority

Amendments to the Colorado Secretary of State “Rules Concerning Campaign and Political Finance” would be 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 “[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 XVIII of the Colorado State Constitution].”
2. Section 1-1-107(2)(a), C.R.S., (2010), 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., (2010), 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.].”

COLORADO SECRETARY OF STATE

[8 CCR 1505-6]

RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE

Preliminary Draft of Proposed Rules

March 11, 2011

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.

*If revisions to this draft are made prior to the rulemaking hearing, a revised copy of the proposed rule changes will be available to the public no later than **April 14, 2011**, 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 New Rule 15 would be adopted as follows:

2 **15. REQUESTS FOR WAIVER OR REDUCTION OF CAMPAIGN FINANCE PENALTIES**

3 A. REQUESTS FOR WAIVER OR REDUCTION OF CAMPAIGN FINANCE PENALTIES IMPOSED
4 BY THE SECRETARY OF STATE UNDER ARTICLE XXVIII, SECTION 10(2)(B)(I) SHALL
5 BE CONSIDERED ACCORDING TO THE FOLLOWING GUIDELINES:

SCENARIO - APPLIED IN NUMERICAL ORDER (I.E. IF #1 DOESN'T APPLY, MOVE TO #2)	RESULT
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#1	<p>A WAIVER IS REQUESTED AND ESTABLISHES GOOD CAUSE THAT MADE TIMELY FILING IMPRACTICABLE (E.G. I WAS IN THE HOSPITAL, MY SISTER GOT IN A CAR ACCIDENT, I WAS STRANDED BY A BLIZZARD, ETC.). THE EVENT OR EVENTS THAT MADE TIMELY FILING IMPRACTICABLE MUST OCCUR WITHIN A REASONABLE TIME OF THE DATE ON WHICH THE REPORT WAS FILED.</p>	<p>WAIVE PENALTY IN FULL. A WAIVER SHALL BE GRANTED WITHOUT CONSIDERATION OF PREVIOUS DELINQUENCIES.</p>
#2	<p>A WAIVER IS REQUESTED BUT DOES NOT PRESENT CIRCUMSTANCES THAT MADE TIMELY FILING IMPRACTICABLE (I FORGOT, I WAS OUT OF TOWN, MY CALENDAR CRASHED), AND:</p> <p>(A) CANDIDATE OR COMMITTEE HAD CONTRIBUTIONS AND/OR EXPENDITURES DURING THE REPORTING PERIOD.</p>	<p>THIS SCENARIO #2 SHALL APPLY ONLY TO PENALTIES OF \$100 OR MORE.</p> <p>FIRST DELINQUENCY IN 24 MONTHS: THE PENALTY SHALL BE REDUCED TO \$50.</p> <p>SECOND DELINQUENCY IN 24 MONTHS: THE PENALTY SHALL BE REDUCED BY 50%.</p> <p>THIRD (OR SUBSEQUENT) DELINQUENCY IN 24 MONTHS: A REDUCTION IN PENALTY SHALL NOT BE GRANTED.</p> <p>PENALTIES IMPOSED UNDER THIS SECTION SHALL BE CAPPED AT THE HIGHER OF THE CONTRIBUTIONS OR EXPENDITURES MADE DURING THE REPORTING PERIOD.</p> <p>FOR PURPOSES OF THIS ANALYSIS, PREVIOUS DELINQUENCIES INCLUDES ONLY THOSE FOR WHICH A WAIVER UNDER SCENARIO #1 WAS NOT GRANTED.</p>

	(B) CANDIDATE OR COMMITTEE HAS NO ACTIVITY (CONTRIBUTIONS OR EXPENDITURES) DURING THE REPORTING PERIOD AND THE COMMITTEE BALANCE IS ZERO.	THE PENALTY SHALL BE REDUCED TO \$50.
	(C) CANDIDATE OR COMMITTEE HAS A FUND BALANCE GREATER THAN ZERO AND CANDIDATE OR COMMITTEE HAS NO ACTIVITY (CONTRIBUTIONS OR EXPENDITURES) DURING THE REPORTING PERIOD.	FIRST DELINQUENCY IN 24 MONTHS: THE PENALTY SHALL BE REDUCED TO \$50. SECOND DELINQUENCY IN 24 MONTHS: THE PENALTY SHALL BE REDUCED BY 50%, SUBJECT TO A CAP OF 10% OF THE FUND BALANCE AS OF THE DATE OF THE VIOLATION. THIRD (OR SUBSEQUENT) DELINQUENCY IN 24 MONTHS: THE PENALTY IS CAPPED AT 10% OF THE FUND BALANCE AS OF THE DATE OF THE VIOLATION, AND A MINIMUM PENALTY OF \$100 SHALL BE IMPOSED. FOR PURPOSES OF THIS ANALYSIS, PREVIOUS DELINQUENCIES INCLUDES ONLY THOSE FOR WHICH A WAIVER UNDER SCENARIO #1 WAS NOT GRANTED.
#3	A WAIVER IS REQUESTED, BUT SUBMITTED MORE THAN 30 DAYS AFTER THE DATE OF PENALTY IMPOSITION.	A REQUEST SHALL NOT BE CONSIDERED UNLESS GOOD CAUSE HAS BEEN SHOWN FOR FAILURE TO MEET THE 30-DAY WAIVER FILING REQUIREMENT.

- 1 B. FOR WAIVER REQUESTS THAT APPLY TO MORE THAN ONE PENALTY, THE GUIDELINES
- 2 SHALL BE APPLIED SEPARATELY TO EACH PENALTY IN CHRONOLOGICAL ORDER
- 3 USING THE SINGLE REQUEST AS THE BASIS FOR EACH.
- 4 C. PENALTY CAPS SHALL NOT APPLY TO ANY WILLFUL DELINQUENCY.