



## **Notice of Proposed Permanent Rulemaking**

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

**August 15, 2018**

#### **I. Hearing Notice**

As required by the State Administrative Procedure Act,<sup>1</sup> the Secretary of State gives notice of proposed rulemaking. The hearing is scheduled for **Wednesday September 19, 2018 from 1:00 p.m. – 3:00 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 concerning campaign and political finance<sup>2</sup> to improve the administration and enforcement of Colorado campaign finance law.<sup>3</sup>

On June 19, 2018, the Secretary temporarily adopted amendments to Rule 18.2 concerning complaints. The Secretary proposes additional amendments and permanent adoption of new Rule 18.2. The Secretary may consider additional rule amendments include revisions necessary to ensure proper administration of legislation recently passed by the Colorado General Assembly; establish uniformity in the administration of current law; eliminate obsolete provisions; remove rules stricken by the courts; remove references to repealed statutory provisions; simplify the language of existing rules; remove language that is duplicative of statute or constitutional provisions; and ensure consistency with Department rulemaking standards.

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

#### **III. Rulemaking authority**

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

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<sup>1</sup> Section 24-4-103(3)(a), C.R.S. (2017).

<sup>2</sup> 8 CCR 1505-CCR 6.

<sup>3</sup> Article 45 of Title 1, C.R.S. (2017).

- Article XXVIII, Section 8 of the Colorado Constitution, which requires the Secretary of State to “promulgate rules related to filing in accordance with article 4 of title 24, C.R.S.”
- 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].”
- Section 1-1-107(2)(a), C.R.S., (2017), 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.”

#### **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:

[http://www.sos.state.co.us/pubs/rule\\_making/hearings/2018/CPFRulesHearing20180919.html](http://www.sos.state.co.us/pubs/rule_making/hearings/2018/CPFRulesHearing20180919.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,<sup>4</sup> if changes are made before the hearing, revised proposed draft rules will be available to the public and posted on the website by September 14, 2018.

#### **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 at: [http://www.sos.state.co.us/pubs/rule\\_making/hearings/2018/CPFRulesHearing20180919.html](http://www.sos.state.co.us/pubs/rule_making/hearings/2018/CPFRulesHearing20180919.html). We will redact contact information, including home address, email address, and telephone

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<sup>4</sup> Section 24-4-103(3)(a), C.R.S. (2017). “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 Aspen Conference Room online at [www.sos.state.co.us/pubs/info\\_center/audioBroadcasts.html](http://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](mailto:SoS.Rulemaking@sos.state.co.us) or (303) 894-2200 ext. 6329.

Dated this 15th day of August, 2018.



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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 Concerning Campaign and Political Finance 8 CCR 1505-6**

**August 15, 2018**

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

This statement explains amendments to the Colorado Secretary of State rules concerning campaign and political finance.<sup>1</sup> The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Colorado campaign finance law<sup>2</sup> as follows:

- On June 19, 2018, the Secretary temporarily adopted amendments to Rule 18.2. New Rule 18.2 concerning written complaints is necessary to ensure enforcement of Colorado's campaign finance laws and uniform application of the law throughout the state.

Other changes to rules not specifically listed are non-substantive and necessary for consistency with Department rulemaking format and style. Cross-references in rules are also corrected or updated.

#### **II. Rulemaking Authority**

- Article XXVIII, Section 8 of the Colorado Constitution, which requires the Secretary of State to “promulgate rules related to filing in accordance with article 4 of title 24, C.R.S.”
- 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].”
- Section 1-1-107(2)(a), C.R.S., (2017), 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.”

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<sup>1</sup> 8 CCR 1505-CCR 6.

<sup>2</sup> Article 45 of Title 1, C.R.S. (2017).

**Preliminary Draft of Proposed Rules**

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

August 15, 2018

**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.<sup>1</sup>

This is a preliminary draft of the proposed rules that may be revised before the September 19, 2018 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 **September 14, 2018**.<sup>2</sup>

Please note the following formatting key:

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

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1 *Amendments to 8 CCR 1505-6:*

2 *[The following proposed New Rule 18.2 will replace current Rule 18.2, temporarily adopted on*  
3 *June 19, 2018 under CCR# 2018-00275, in its entirety.]*

4 **Rule 18. Penalties, Violations, and Complaints**

5 18.2 Complaints.

6 18.2.1 Any person who believes that a violation of Article XXVIII of the Colorado  
7 Constitution, the Fair Campaign Practices Act, or the Secretary of State’s rules  
8 concerning campaign and political finance has occurred may file a complaint with  
9 the Secretary of State.

10 18.2.2 Complaints must be filed no later than 90 days after the complainant knew or  
11 should have known by the exercise of reasonable diligence of the alleged  
12 violation.

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<sup>1</sup> Sections 24-4-103(2.5) and (3)(a), C.R.S. (2017). A draft must be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.

<sup>2</sup> Section 24-4-103(4)(a), C.R.S. (2017). “[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 18.2.3 Complaints must be filed in writing and signed by the complainant on the form  
2 provided by the Secretary of State. The complaint must identify the respondent or  
3 respondents and the complainant must provide the information required on the  
4 form.
- 5 18.2.4 UPON RECEIPT OF A COMPLAINT, THE SECRETARY OF STATE'S ELECTIONS DIVISION  
6 MUST NOTIFY THE RESPONDENT OF THE COMPLAINT BY EMAIL, OR BY MAIL IF EMAIL IS  
7 UNAVAILABLE.
- 8 18.2.5 COMPLAINTS MADE AGAINST ANY CANDIDATE FOR SECRETARY OF STATE WILL BE  
9 FORWARDED TO THE ATTORNEY GENERAL'S OFFICE FOR REVIEW IN ACCORDANCE  
10 WITH THIS RULE 18.2.
- 11 ~~18.2.4~~ 18.2.6 Initial review
- 12 (a) ~~Upon receipt of a complaint, the Secretary of State's elections division~~  
13 ~~must notify the respondent of the complaint by email, or by mail if email is~~  
14 ~~unavailable, and~~ THE ELECTIONS DIVISION will review THE COMPLAINT TO  
15 DETERMINE:
- 16 (1) WHETHER THE COMPLAINT WAS TIMELY FILED UNDER RULE 18.2.2,
- 17 (2) Whether the complainant has specifically identified one or more  
18 violations of Colorado Constitution Article XXVIII, the Fair  
19 Campaign Practices Act, or the Secretary of State's rules  
20 concerning campaign and political finance, and
- 21 ~~(2)~~-(3) Whether the complainant has alleged sufficient facts to support a  
22 legal and factual basis for the complaint.
- 23 (b) Within 10 business days of receiving the complaint, the elections division  
24 must take one OR MORE of the following actions:
- 25 (1) If the elections division determines that the complaint WAS NOT  
26 TIMELY FILED, has not specifically identified one or more violations,  
27 or that the complainant did not assert facts sufficient to support  
28 the alleged violations, the elections division will dismiss the  
29 complaint and notify the complainant and respondent of the  
30 reasons for dismissal. The dismissal is a final agency action, and  
31 subject to review under section 24-4-106, C.R.S.
- 32 (2) If the elections division determines that the complaint alleges one  
33 or more curable violations as described in Rule ~~18.2.5~~ 18.2.7, the  
34 elections division will notify the respondent and provide an  
35 opportunity to cure.
- 36 (3) If the elections division determines that the complaint alleges one  
37 or more violations that require a factual finding or legal  
38 interpretation, the elections division will conduct additional review  
39 under Rule ~~18.2.6~~ 18.2.8 to determine whether to file a complaint  
40 with a hearing officer.

1           ~~18.2.5~~18.2.7 Curing violations

2           (a)     Upon the election division's determination that a complaint alleges a  
3 failure to file or otherwise disclose required information, or other curable  
4 violation, the elections division will notify the respondent by email, or by  
5 mail if email is unavailable, of the curable deficiencies alleged in the  
6 complaint.

7           (b)     The respondent has 10 business days from the date the notice is mailed  
8 to file an amendment to the relevant report or reports that cures any  
9 deficiencies specified in the notice.

10          (c)     THE ELECTIONS DIVISION MAY ASK THE RESPONDENT TO PROVIDE ADDITIONAL  
11 INFORMATION, AND MAY GRANT AN EXTENSION OF THE TIME FOR FILING A  
12 NOTICE OF INTENT IN ORDER TO RESPOND TO SUCH A REQUEST.

13          ~~(c)~~(D) The respondent must provide the elections division with notice of its intent  
14 to cure on the form provided by the Secretary of State and include a copy  
15 of any amendments.

16          ~~(d)~~(E) After the period for cure, the elections division will determine whether the  
17 respondent cured the violations, and if so, whether the respondent  
18 substantially complied or acted in good faith under Rules ~~18.2.8~~18.2.7(F)  
19 and ~~18.2.9~~18.2.7(G).

20                 (1)     IF THE ELECTIONS DIVISION DETERMINES THAT THE RESPONDENT  
21 SUBSTANTIALLY COMPLIED OR ACTED IN GOOD FAITH, THE ELECTIONS  
22 DIVISION WILL DISMISS THE COMPLAINT.

23                 (2)     IF THE ELECTIONS DIVISION DETERMINES THAT THE RESPONDENT  
24 NEITHER SUBSTANTIALLY COMPLIED OR ACTED IN GOOD FAITH, THE  
25 ELECTIONS DIVISION WILL CONDUCT ADDITIONAL REVIEW UNDER RULE  
26 18.2.6 TO DETERMINE WHETHER TO FILE THE COMPLAINT WITH A  
27 HEARING OFFICER.

28                 (3)     The election division's determination under this subsection is a  
29 final agency action, subject to review under section 24-4-106,  
30 C.R.S.

31          ~~18.2.8~~(F)     IN DETERMINING WHETHER AN ENTITY SUBSTANTIALLY COMPLIED AS  
32 THAT TERM IS USED IN RULE 18.2.7, THE ELECTIONS DIVISION MUST  
33 CONSIDER:

34                 (1)     THE EXTENT OF THE RESPONDENT'S NONCOMPLIANCE;

35                 (2)     THE PURPOSE OF THE PROVISION VIOLATED AND WHETHER THAT  
36 PURPOSE WAS SUBSTANTIALLY ACHIEVED DESPITE THE  
37 NONCOMPLIANCE; AND



1 (3) WHETHER THE NONCOMPLIANCE CAN PROPERLY BE VIEWED AS AN  
2 INTENTIONAL ATTEMPT TO MISLEAD THE ELECTORATE OR ELECTION  
3 OFFICIALS.

4 ~~18.2.9~~(G) IN DETERMINING WHETHER AN ENTITY REGISTERED OR DISCLOSED IN  
5 "GOOD FAITH" AS THAT TERM IS USED IN RULE 18.2.7, THE ELECTIONS  
6 DIVISION MAY CONSIDER WHETHER TEN PERCENT OR LESS OF EITHER THE  
7 ENTITY'S DISCLOSURES OR, ALTERNATIVELY, THE REPORTED DOLLAR  
8 AMOUNTS REQUIRED ON THE REPORT OR APPEARING ON THE FILED REPORTS  
9 AT ISSUE IN THE COMPLAINT ARE OUT OF COMPLIANCE.

10 (e)-(H) If the respondent fails to cure any alleged deficiency, the elections  
11 division will conduct additional review under Rule ~~18.2.6~~18.2.8 to  
12 determine whether to file the complaint with a hearing officer.

13 ~~18.2.6~~18.2.8 Investigation and enforcement

14 (a) The elections division must investigate each unresolved or uncured  
15 complaint to determine whether to file a complaint with the hearing officer  
16 described in Rule ~~18.2.7(b)~~18.2.9(B).

17 (1) If the elections division determines that it will not file a complaint  
18 with a hearing officer because there is not sufficient information to  
19 support the allegations or for any other reason, it must dismiss the  
20 complaint within 30 days of the election division's initial  
21 determination under Rule ~~18.2.4(b)~~18.2.6(B).

22 (2) If the elections division files a complaint with a hearing officer, it  
23 must send notice, including a copy of the filing, by certified mail,  
24 return receipt requested, to the complainant, and the respondent  
25 within one business day of referral.

26 (b) If the elections division files a complaint with a hearing officer under this  
27 rule, it is responsible for conducting such discovery as may be necessary  
28 for effectively prosecuting the complaint, supplementing or amending the  
29 complaint with such additional or alternate allegations as may be justified  
30 by the evidence, amending the complaint to strike allegations that are not  
31 justified by the evidence, and in all other respects, prosecuting the  
32 complaint.

33 (c) The complainant or any other non-respondent is not a party to the review,  
34 except that a complainant may seek permission from the hearing officer  
35 to file written legal arguments or factual documentation, or both, as a  
36 friend-of-the-court. A person's status as a complainant is not sufficient to  
37 establish that he or she may be affected or aggrieved by the Secretary's  
38 action on the complaint. A complainant may also seek review of a final  
39 agency action under Rules ~~18.2.4(b)(1)~~18.2.6(B)(1) and ~~18.2.7(d)~~  
40 18.2.9(c) under section 24-4-106, C.R.S.

1 (d) If the election division fails to file a complaint with the hearing officer  
2 within 30 days as outlined in ~~18.2.6(a)(1)~~ RULE 18.2.8(A)(1), the complaint  
3 is deemed dismissed under Rule ~~18.2.4(b)(1)~~ 18.2.6(B)(1).

4 ~~18.2.7~~ 18.2.9 Hearings

5 (a) The hearing officer must be an individual authorized under section 24-4-  
6 105(3), C.R.S.

7 (b) Hearings conducted by a hearing officer under Rule 18.2 must be in  
8 accordance with the provisions of section 24-4-105, C.R.S., except that A  
9 hearing officer must hold a hearing within 15 business days of the filing of  
10 the complaint, and must make a determination within 15 days of the  
11 hearing. The respondent must be granted an extension of up to 30 days  
12 upon respondent's motion, or longer upon a showing of good cause.

13 (c) Determinations made by the hearing officer must be made under section  
14 24-4-105, C.R.S., and are subject to review under section 24-4-106,  
15 C.R.S.

16 *[Content of Temporary Rule 18.2.8 is amended and relocated under Rule 18.2.7(f) as shown*  
17 *above]*

18 *[Content of Temporary Rule 18.2.9 is amended and relocated under Rule 18.2.7(g) as shown*  
19 *above]*

20 18.2.10 Any person seeking guidance on the application of Article XXVIII of the  
21 Colorado Constitution, the Fair Campaign Practices Act, or the Secretary of  
22 State's rules concerning campaign and political finance may request that the  
23 Secretary of State issue an advisory opinion regarding their specific activities.

24 (A) THE SECRETARY OF STATE WILL DETERMINE, AT HIS OR HER DISCRETION,  
25 WHETHER TO ISSUE AN ADVISORY OPINION. IN MAKING THE DETERMINATION,  
26 THE SECRETARY WILL CONSIDER:

27 (1) WHETHER THE ADVISORY OPINION WILL TERMINATE A CONTROVERSY  
28 OR REMOVE UNCERTAINTIES AS TO THE APPLICATION OF THE  
29 REQUESTOR OF ANY LAW;

30 (2) WHETHER THE REQUEST INVOLVES A SUBJECT, QUESTION, OR ISSUE  
31 THAT CONCERNS A FORMAL OR INFORMAL MATTER OR INVESTIGATION  
32 CURRENTLY PENDING BEFORE THE SECRETARY OF STATE OR A  
33 COURT; AND

34 (3) WHETHER THE REQUEST SEEKS A RULING ON A MOOT OR  
35 HYPOTHETICAL QUESTION.

36 (B) A person may rely on the Secretary of State's advisory opinion as an  
37 affirmative defense to any complaint filed under this Rule.

1           18.2.11           The Office of Administrative Courts must remand back to the Secretary of  
2                           State all pending complaints that were filed with the Secretary of State before  
3                           June 19, 2018. Those complaints may be re-filed under this Rule 18.2 WITHIN 180  
4                           DAYS OF REMAND, even if the alleged violations fall outside the period for filing set  
5                           forth in Rule 18.2.2.