



## Notice of Permanent & Temporary Adoption

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

September 21, 2018

#### I. Adopted Rule Amendments

As authorized by 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 for the administration of the Colorado Charitable Solicitations Act are adopted on a temporary and permanent basis.

The Secretary of State considered the amendments at the August 23, 2018 rulemaking hearing in accordance with the State Administrative Procedure Act<sup>3</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 and publication notes

*8 CCR 1505-9 is re-codified as follows:*

#### Rule 1. Definitions.

As used in these rules and in the Colorado Charitable Solicitations Act:-

- 1.1 “Accounting ~~Period~~ PERIOD” means the time period for keeping records and reporting income and expenses.
- 1.2 “Agent” means an individual who, by the principal’s written authority, transacts business or manages affairs for the principal, and provides an accounting to the principal. “Agent” includes “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. (2017).

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

- 1.3 ~~“Authorized Officer-OFFICER”~~ means the ~~officer-INDIVIDUAL~~ designated by the filing entity to electronically sign forms on behalf of the organization in accordance with the CCSA. This ~~Individual-INDIVIDUAL~~ must be an officer of a nonprofit corporation, a trustee of a charitable trust, or a senior manager member of any other entity subject to the filing requirements of the CCSA.
- 1.4 ~~“Bona fide personal emergency;” as used in these rules means:~~
- 1.4.1 INCLUDES:
- (A) 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(B)~~ A practical emergency including extraordinary obstacles out of the REGISTRANT’S control ~~of the registrant that preclude~~ PREVENTS timely disclosure. ~~For example: SUCH AS~~
- (a) ~~The~~ THE loss or unavailability of records or a computer due to fire, flood, or theft;.
- (b) ~~Other compelling reasons beyond the registrant’s control.~~
- ~~1.4.3-1.4.2~~ The following are generally not considered a ~~“bona fide personal emergency;”~~ EXCLUDES:
- (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~~ OF making online payments.
- 1.5 “CCSA” means THE Colorado Charitable Solicitations Act codified at Article 16 of Title 6, C.R.S.
- 1.6 ~~“Directly Employed-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 “EIN,”~~ AN EMPLOYER IDENTIFICATION NUMBER, MEANS THE Federal Tax Identification Number; ~~is~~ used to identify a business entity.

1.8 “E-MAIL ADDRESS” IN SECTION 6-16-114(1)(B)(II), C.R.S., MEANS THE E-MAIL ADDRESS PROVIDED BY AND BELONGING TO AN AUTHORIZED OFFICER DURING THE CREATION OF A REGISTRANT’S ONLINE ACCOUNT.

~~1.8-1.9~~ “Fiscal Year-YEAR” means annual accounting period, ~~subject to Rule 1.16.~~

~~1.9-1.10~~ “Form of the Applicant’s Business-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 BUT EXCLUDES the organization’s PURPOSE AND tax-exempt status, such as “501(c)(3),” or the organization’s purpose.~~

~~1.10-1.11~~ “Gross Revenue-REVENUE” means ~~the total amount the organization receives from all sources, regardless of geographic location, during its accounting period, without subtracting 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 them to the principal without asserting a right to use them or otherwise deriving a benefit from them.~~ ALL REVENUE RECEIVED FROM ANY SOURCE DURING THE ORGANIZATION’S ACCOUNTING PERIOD, WITHOUT SUBTRACTING COSTS OR EXPENSES. “GROSS REVENUE” EXCLUDES RECEIPT OF FUNDS BY A PASS-THROUGH AGENT THAT LACKS THE RIGHT TO USE OR BENEFIT FROM THEM.

~~1.11-1.12~~ “Name or Names under which Charitable Organization Intends to Solicit Contributions” includes ~~“doing business as,” “also known as,” or trade names. This term includes the name of donor advised fund that solicits contributions from the public using its own name, unless, in all written and oral solicitations, 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) through (d), C.R.S.~~

“NAME OR NAMES,” AS USED IN SECTION 6-16-104(2)(A), C.R.S., INCLUDES:

1.12.1 “DOING BUSINESS AS,” “ALSO KNOWN AS,” OR TRADE NAMES; AND

1.12.2 THE NAME OF ANY DONOR-ADVISED FUND THAT SOLICITS CONTRIBUTIONS FROM THE PUBLIC USING ITS OWN NAME, UNLESS, IN ALL WRITTEN AND ORAL SOLICITATIONS, 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) THROUGH (D), C.R.S.

~~1.12-1.13~~ “Newly-Formed Charitable Organization” means an organization that has not reached the 15th day of the fifth month following the close of its first fiscal year. ~~In most cases, newly-formed charitable organizations will file an initial registration statement 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 year.~~

~~1.13-1.14~~ “Person Responsible for Directing and Supervising the Conduct of the Campaign”, in accordance with section 6-16-104.6(7)(b), C.R.S., includes agents or subcontractors of the paid solicitor.

~~1.14-1.15~~ “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.

*Current Rules 1.15 is repealed:*

~~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.~~

1.16 “REGISTRANT,” AS USED IN THESE RULES, REFERS COLLECTIVELY TO CHARITABLE ORGANIZATIONS, PROFESSIONAL FUNDRAISING CONSULTANTS, AND PAID SOLICITORS SUBJECT TO CCSA REQUIREMENTS.

~~1.16-1.17 “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.

~~1.17-1.18~~ “State Elections Commission” includes, for purposes of section 6-16-104(6)(b), C.R.S., the Secretary of State’s Campaign and Political Finance Program.

~~1.18-1.19~~ “Subcontractor,” ~~as used in these rules,~~ includes the agent but not employee of a paid solicitor who solicits on behalf of the paid solicitor for the benefit of a charitable organization that contracted with the paid solicitor.

## **Rule 2. Electronic Filing**

2.1 ~~Documents required or permitted by the CCSA must be filed electronically, in the prescribed format, through the Secretary of State’s web-based charities system. Paper filings are void and will not be accepted.~~ REGISTRANTS MUST FILE ALL DOCUMENTS ELECTRONICALLY USING THE SECRETARY OF STATE’S ONLINE SYSTEM.

2.2 The Secretary of State will issue a unique user identification and password ~~to an individual who requests to complete or file a document in accordance with Article 16 of Title 6, C.R.S., and who agrees to the Secretary’s rules~~ for use of the ONLINE system. TO RECEIVE ACCESS, AN INDIVIDUAL MUST PROVIDE THEIR NAME, VALID EMAIL ADDRESS AND EIN. REGISTRANTS MUST UPDATE THIS INFORMATION PROMPTLY IF IT CHANGES. Filing with the user identification and password ~~described in this Rule 2~~ will constitute the filer’s official signature, in accordance with section 24-71.3-102(8), C.R.S.

*Current Rules 2.2.1, 2.2.2, and 2.3 are repealed:*

~~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.~~

## **Rule 3. Expedited Hearing Deadlines**

- 3.1 ~~Upon receipt of a request for hearing in accordance with section 6-16-111(6)(b), C.R.S., the~~ THE Secretary of State will set and give notice of the hearing ~~by certified mail within five business~~ SEVEN days of ~~the receipt~~ RECEIVING A REQUEST FOR HEARING PER SECTION 6-16-111(6)(B), C.R.S. The Secretary will set the hearing ~~no sooner than~~ BETWEEN 20 and ~~no later than~~ 45 days after the mailing of the notice.
- 3.2 For good cause shown, the Secretary of State may continue a proceeding for ~~no more than~~ UP TO 15 days.
- 3.3 The Secretary will ~~conduct and conclude all hearings in a timely manner and will take final~~ agency action ~~no later than the tenth day~~ WITHIN TEN DAYS following the hearing.

#### **Rule 4. Registration**

##### 4.1 ALL REGISTRANTS

~~4.1.4.1.1~~ If the Secretary of State approves an initial or renewal registration statement ~~of a charitable organization, professional fundraising consultant, or paid solicitor,~~ the Secretary will issue ~~or update the status of a~~ permanent registration number OR UPDATE THE REGISTRANT'S STATUS AND SEND CONFIRMATION TO THE REGISTRANT'S AUTHORIZED OFFICER VIA EMAIL. ~~The Secretary will send confirmation to the authorized officer and registered agent containing the organization's name, DBAs, permanent registration number, filing document number, EIN, principal address, document approval date, subsequent renewal due date, the document's signor, and the date it was signed.~~

*Current Rule 4.3 is amended and recodified as New Rule 4.1.2:*

~~4.3.4.1.2~~ ~~The Secretary of State will not provide a registration certificate if the organization's registration~~ A REGISTRANT THAT HAS NOT BEEN DENIED, SUSPENDED, OR REVOKED, WITHDRAWN, OR EXPIRED MAY OBTAIN A REGISTRATION CERTIFICATE VERIFYING THAT STATUS.

*Current Rules 4.2 is repealed:*

~~4.2~~ ~~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 list the organization's registration number, 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 its registration or replace estimated financial figures with actual financial figures.~~

*Current Rule 4.3 is amended and recodified as New Rule 4.1.2 as shown above.*

*Current Rules 4.4 and 4.5 are repealed:*

~~4.4~~ ~~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."~~

~~4.5~~ ~~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.~~

*New Rule 4.2:*

4.2 CHARITABLE ORGANIZATIONS

*Current Rules 4.6 through 4.9 are amended and recodified as New Rules 4.2.1 through 4.2.4:*

~~4.6~~4.2.1 ~~if~~IF the charitable organization ~~has~~WAS 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~~MUST file a short-period registration and financial statement.

~~4.7~~4.2.2 A charitable organization must use the same accounting period to file registration documents with the Secretary of State that it uses to maintain financial records internally and to file IRS Form 990 with the IRS.

~~4.8~~4.2.3 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~~4.2.4 If the Secretary of State identifies inconsistencies, ~~between or within the state~~A CHARITABLE ORGANIZATION'S registration statement and the IRS Form 990, the Secretary of State may ~~request that~~ REQUIRE the organization TO file an amended IRS Form 990 with the ~~state~~SECRETARY OF STATE, or otherwise correct the inconsistency, ~~in order to complete the state filing. If the organization does not~~FAILURE TO correct the inconsistency ~~with the state, the Secretary of State may deny or suspend the~~MAY RESULT IN DENIAL OR SUSPENSION OF registration in accordance with section 6-16-111(6), C.R.S.

*New Rule 4.3:*

*[Current Rules 12.1 and 12.2 are recodified as New Rules 4.3.1 and 4.3.2.]*

4.3 PAID SOLICITORS

~~12.1~~4.3.1 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 subcontractors) listed on the paid solicitor's registration.

~~12.2~~4.3.2 For a specific solicitation campaign, an agent or subcontractor not directly under contract to the registered paid solicitor must file its own registration. SEE RULE 10 FOR ADDITIONAL SUBCONTRACTOR REQUIREMENTS.

**Rule 5. Filing Deadlines and Extension of Filing Deadlines**

*New Rule 5.1:*

5.1 CHARITABLE ORGANIZATIONS.

*Current Rule 5.5 is amended and recodified as New Rules 5.1.1(a) and (b):*

~~5.5~~(A) 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~~MAY approve the initial registration but the organization must file a

renewal or extension request within five days from the initial registration approval.

- (B) 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~~ THE ORGANIZATION'S REGISTRATION WILL EXPIRE AND THE ORGANIZATION MAY be subject to fines and possible suspension or revocation.

*Current Rule 5.1 is amended and recodified as New Rule 5.1.2:*

~~5.1-5.1.2~~ Filing a registration-REGISTRATION renewal and financial report.

~~5.1.1(A)~~ 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 15th day of the fifth calendar month after the close of each fiscal year in which the charitable organization solicited in Colorado.

~~5.1.2(B)~~ If a charitable organization files a deadline extension with the IRS, the charitable organization must file its registration renewal and financial report by the 15th day of the eighth calendar month after the close of each fiscal year in which the charitable organization solicited in Colorado.

*Current Rule 5.1.3 is repealed. Current Rule 5.3 is amended and recodified as New Rule 5.1.3:*

~~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.

~~5.3-5.1.3~~ A charitable organization may renew its registration; OR 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.

*Current Rule 5.2 is repealed:*

~~5.2~~ Filing amendments to financial estimates.

~~5.2.1~~ A charitable organization that failed to file a deadline extension with the IRS but reported estimated financial information on its initial registration statement must amend its registration statement and provide its actual financial information by the 15th day of the fifth calendar month after the close of the fiscal year reported on the initial registration statement.

~~5.2.2~~ A charitable organization that files a deadline extension with the IRS and reported estimated financial information on its initial registration statement must amend its registration statement and provide its actual financial information by the 15th day of the eighth calendar month after the close of the fiscal year reported in the initial registration statement.

*Current Rule 5.8 is amended and recodified as New Rule 5.2*

~~5.8-5.2~~ ~~THE~~ FOR A PROFESSIONAL FUNDRAISING CONSULTANT OR PAID SOLICITOR, THE renewal period for a professional fundraising consultant or paid solicitor begins 60 days before the EXPIRATION DATE OF THE consultant's or solicitor's anniversary date. REGISTRATION, WHICH IS EITHER:

5.2.1 THE DAY AND MONTH THE INITIAL REGISTRATION WAS APPROVED; OR

5.2.2 THE DAY AND MONTH THE MOST RECENT REINSTATEMENT WAS APPROVED.

*Current Rule 5.3 is amended and recodified as New Rule 5.1.3 as shown above.*

*Current Rule 5.9 is repealed. Current Rules 5.9.1, 5.9.2, and 5.10 are amended and recodified under New Rule 5.3:*

~~5.9~~ A paid solicitor must file a solicitation notice no later than 15 days before a solicitation campaign starts. Failure to file will result in a fine and possible suspension or revocation.

### 5.3 PAID SOLICITORS

~~5.9.1-5.3.1~~ For reporting purposes, a solicitation ~~campaigns~~ CAMPAIGN duration on a solicitation notice may not exceed one year.

~~5.9.2-5.3.2~~ ~~Prior to~~ BEFORE 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.

~~5.10-5.3.3~~ 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 SECRETARY OF STATE APPROVES THE overdue campaign report is approved by the Secretary of State.

*Current Rule 5.4 is repealed:*

~~5.4~~ The Secretary may impose a fine on a charitable organization that fails to timely request an extension.

~~5.4.1~~ To avoid incurring fines, 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 15th 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 11.1 is amended and recodified as New Rule 5.4:*



*New Rule 5.4:*

**Rule 11. — Contact Information for Custodians of Books and Records**

~~11.1-5.4~~ If a filing, including a solicitation campaign financial report, calls for the name and address of a person with custody of books and records, the name must be for a individual and the address must be a street address of that individual's principal office or usual place of business. If the individual does not have a principal office address or usual place of business, the address must be the street address of the individual residence. FOR ANY FILING, INCLUDING REGISTRATION, THAT REQUIRES THE NAME AND ADDRESS OF A PERSON WITH CUSTODY OF A REGISTRANT'S RECORDS, THE REGISTRANT MUST INCLUDE:

5.4.1 THE NAME OF AN INDIVIDUAL; AND

5.4.2 THE INDIVIDUAL'S PRINCIPAL PLACE OF BUSINESS OR, IF THE INDIVIDUAL LACKS A PRINCIPAL PLACE OF BUSINESS, THE INDIVIDUAL'S RESIDENTIAL STREET ADDRESS.

*Current Rule 5.5 is amended and recodified as New Rules 5.1.1(a) and (b) as shown above.*

*Current Rules 5.6 and 5.7 are repealed:*

~~5.6~~ A charitable organization may request a deadline extension for renewing a registration or for filing an amendment to replace estimated with actual financial information. Filing an extension with the IRS or submitting a copy of the request (such as IRS 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 fines on the grounds that the organization filed for an extension with the IRS but neglected to file an extension with the Secretary of State.

~~5.7~~ Professional fundraising consultant or paid solicitor registration is valid for one year. The fundraising consultant or paid solicitor must annually file a registration renewal by the anniversary date. The anniversary date is the day and month the initial registration was approved, or the day and month the most recent reinstatement was approved. Failure to renew a registration on or before the anniversary date will result in a fine and possible suspension or revocation.

*Current Rule 5.8 is amended and recodified as New Rule 5.2 as shown above.*

*Current Rules 5.9 and 5.10 are amended and recodified under New Rule 5.3 as shown above.*

*Current Rules 5.11 and 5.12 are amended and recodified as New Rules 5.5 and 5.6:*

~~5.11-5.5~~If the deadline for filing a REGISTRANT'S document under the CCSA that is required to be filed by electronic means falls on a Saturday, Sunday, legal holiday, or a day the Secretary of State's physical office is closed, WEEKEND OR HOLIDAY, the deadline will still be on that day.

~~5.12-5.6~~If a registration was filed on February 29, the renewal deadline is February 28 of the following year.

**Rule 6. Fines**

6.1 The Secretary will assess the following fines: CHARITABLE ORGANIZATION

6.1.1 The fine for a charitable organization is \$60 per overdue report ~~and applies to,~~ INCLUDING an overdue ~~renewal and overdue~~ update of estimated financial information.

*Current Rule 6.1.2 is amended and recodified as Rule 6.3.1.*

~~6.2-6.1.2~~ A ~~THE FINE FOR A~~ charitable organization that, after notification ~~in accordance with section 6-16-114, C.R.S.,~~ continues to solicit contributions ~~prior to~~ BEFORE registering ~~with the Secretary of State will be fined~~ IS \$300.

~~6.2-1-6.1.3~~ An ~~IN RESPONSE TO A SECRETARY OF STATE INQUIRY, 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~~ MUST INDICATE that it is exempt from ~~the requirement to register~~ REGISTRATION and cite the basis for its exemption.

~~6.2.2-6.1.4~~ If an ~~AN~~ organization is fined for soliciting while unregistered, ~~it~~ must pay BOTH the fine ~~in addition to~~ AND the regular filing fee.

~~6.2.3~~ 6.1.5 If a NONEXEMPT 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~~ THREE fiscal years or for the period of solicitation, ~~which ever~~ WHICHEVER is shorter.

## 6.2 PAID SOLICITOR

6.2.1 THE FINE FOR A PAID SOLICITOR IS \$200 PER OVERDUE RENEWAL, SOLICITATION NOTICE, AND CAMPAIGN FINANCIAL REPORT.

~~6.3-6.2.2~~ ~~Paid solicitors~~ THE FINE FOR A PAID SOLICITOR that, after notification, ~~continue~~ CONTINUES to solicit contributions ~~prior to~~ BEFORE registering ~~with the Secretary of State, will be fined~~ IS \$1,000.

## 6.3 PROFESSIONAL FUNDRAISING CONSULTANT

~~6.1.2-6.3.1~~ The fine for a professional fundraising consultant ~~or paid solicitor~~ is \$200 per overdue report ~~and applies to an overdue renewal, overdue solicitation notice, and overdue campaign report~~ RENEWAL.

6.3.2 THE FINE FOR A PROFESSIONAL FUNDRAISING CONSULTANT THAT IS REQUIRED TO REGISTER AND, AFTER NOTIFICATION, CONTINUES TO PROVIDE CONSULTING SERVICES BEFORE REGISTERING IS \$1,000.

## 6.4 WAIVER OF FINE

~~6.4-6.4.1~~ A ~~charitable organization, professional fundraising consultant, or paid solicitor~~ registered with the Secretary of State or subject to registration under Article 16 of Title 6, C.R.S., A REGISTRANT may ask the Secretary OF STATE to reduce or excuse an imposed fine by SUBMITTING A WRITTEN REQUEST BY letter, email, fax. ~~The Secretary of State may consider excusing or waiving a fine only in the case of a bona fide personal 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 must include:~~

6.4.2 THE SECRETARY MUST RECEIVE THE REQUEST WITHIN THIRTY DAYS OF THE MAILING DATE OF THE FINE NOTICE.

6.4.3 THE REQUEST MUST INCLUDE:

6.4.1(A) The name of the charitable organization, professional fundraising consultant, or paid solicitor;

6.4.2(B) The request date;

6.4.3(C) The due date of the delinquently filed registration document(s);

6.4.4(D) The actual filing date of the delinquently filed registration document(s);

*Current Rules 6.4.5 and 6.4.6 are amended and recodified as New Rule 6.4.3(f) 6.4.3(e) as follows:*

6.4.6(E) Measures that the charitable organization, professional fundraising consultant, or paid solicitor instituted or plan to institute to avoid future delinquencies, if applicable;

6.4.5(F) A ~~brief summary~~-DETAILED EXPLANATION of the reason, circumstance, or other justification ~~for the bona fide personal emergency~~; SUCH AS:

(1) A BONA FIDE EMERGENCY AS DEFINED IN RULE 1.4;

(2) A TIMELY FILING WAS NOT POSSIBLE DUE TO WEBSITE OR EMERGENCY ERRORS; OR

(3) THE ORGANIZATION WAS NOT REQUIRED TO REGISTER DURING THE TIME PERIOD OF FINE ASSESSMENT.

6.4.7(G) The basis for claiming an exemption, if applicable; and

6.4.8(H) ~~Other~~-ANY OTHER relevant information, ~~such as a detailed description of the website error that prevented filing the registration document on time.~~

~~6.5 If the charitable organization, professional fundraising consultant, or paid solicitor asks the Secretary to reduce or excuse a fine, the Secretary's staff will conduct an investigation and notify the charitable organization, professional fundraising consultant, or paid solicitor 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.~~

~~6.6.6.4.4 The Secretary of State will issue decisions depending on individual facts and circumstances. The criteria considered are the establishment of a bona fide personal emergency or the demonstration of a website error that made it impossible to file a required registration document. If uncertain, the 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.~~ THE SECRETARY OF STATE MAY ALSO CONSIDER THE FREQUENCY OF REQUESTS TO EXCUSE OR REDUCE FINES WITHIN A THREE-YEAR PERIOD AND ANY PAST CCSA VIOLATIONS.

~~6.7-6.4.5 If payment is not received~~ IF THE SECRETARY OF STATE DOES NOT RECEIVE PAYMENT by the ~~90<sup>th</sup>-60<sup>th</sup>~~ day following the ~~day the organization was notified of a penalty~~ DATE OF THE FINE NOTICE, the Secretary of State will forward the penalty to the State's Central Collection Agency.

## **Rule 7. Suspensions and Revocations**

- 7.1 ~~No charitable organization, paid solicitor, or professional fundraising consultant~~ A REGISTRANT may NOT 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.
- 7.2 If the Secretary of State does not receive 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~~ REGISTRANT by the ~~60<sup>th</sup>-63<sup>rd</sup>~~ day after the deadline or a deadline extension granted by Secretary of State, ~~the registration will be suspended~~ THE SECRETARY OF STATE WILL SUSPEND THE PAID SOLICITOR'S REGISTRATION.

## **Rule 8. Withdrawing AND REINSTATING a Registration**

### 8.1 WITHDRAWAL

~~8.1-8.1.1 A charitable organization, professional fundraising consultant, or paid solicitor~~ REGISTRANT 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.~~

*Current Rule 8.4 is recodified as New Rule 8.1.2:*

~~8.4-8.1.2~~ A newly-formed charitable organization may withdraw its registration unconditionally if it determines that it registered by mistake.

8.1.3 THE SECRETARY OF STATE WILL NOT APPROVE A WITHDRAWAL REQUEST UNLESS AND UNTIL:

~~8.2(A) A charitable organization, professional fundraising consultant, or paid solicitor that fails to timely file a document must either pay the outstanding fine or obtain a waiver as described in Rule 6.5 before the Secretary of State will approve a registration withdrawal.~~ REGISTRANT PAYS ANY AND ALL OUTSTANDING FINES OR OBTAINS A WAIVER UNDER RULE 6.4;

~~8.3(B) A charitable organization may not withdraw its registration unless it files a final renewal and~~ FILES ITS FINAL financial report for the most recent fiscal year that it was subject to the CCSA, ~~unless it is a newly formed charitable organization.~~

(C) A PAID SOLICITOR FILES A SOLICITATION CAMPAIGN FINANCIAL REPORT FOR EVERY SOLICITATION CAMPAIGN FOR WHICH THE PAID SOLICITOR FILED A

SOLICITATION NOTICE AND A SOLICITATION NOTICE FOR EVERY SOLICITATION CAMPAIGN CONDUCTED IN COLORADO.

~~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~~ 8.1.4 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.

*Current Rule 8.4 is recodified as New Rule 8.1.2 as shown above.*

~~8.5~~ A paid solicitor may not withdraw its registration unless the paid solicitor files a registration renewal for the most recent fiscal year that it was subject to the CCSA, a solicitation campaign financial report for every solicitation campaign for which the paid solicitor has filed a solicitation notice, and solicitation notice for every solicitation campaign conducted by the paid solicitor in Colorado.

~~8.6~~ A professional fundraising consultant may not withdraw its registration unless the professional fundraising consultant files a registration renewal for the most recent fiscal year in which it was subject to the CCSA.

*Current Rule 9 is amended and recodified under New Rule 8.*

**Rule 9. Reinstating a Suspended or Withdrawn Registration**

~~9.1~~ A charitable organization, professional fundraising consultant, or paid solicitor may reinstate a suspended or withdrawn registration.

8.2 REINSTATEMENT

~~9.2~~ 8.2.1 A withdrawn charity may reinstate by filing a registration renewal and completing the following requirements: CHARITABLE ORGANIZATION

~~9.2.1(A)~~ 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 must file a 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, the organization 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. IF A CHARITY WAS EXEMPT FROM REGISTERING FOR EACH FISCAL YEAR SINCE ITS REGISTRATION ENDED, IT MUST COMPLETE THE FOLLOWING REQUIREMENTS TO REINSTATE ITS REGISTRATION:

- (1) FILE A REINSTATEMENT FORM;
- (2) FILE A FINANCIAL FORM FOR THE MOST RECENT FISCAL YEAR; AND
- (3) WITH RESPECT TO EACH FISCAL YEAR SINCE THE CHARITY'S REGISTRATION EXPIRED OR WAS WITHDRAWN, CERTIFY THAT THE

CHARITY WAS EXEMPT FROM REGISTRATION REQUIREMENTS UNDER THE CCSA.

~~9.2.2(B) An organization that was not exempt from registration for all fiscal years since its registration was withdrawn must file a renewal for each fiscal year that it was subject to the CCSA registration requirement and pay all applicable fines. AN EXPIRED OR WITHDRAWN CHARITY THAT WAS NOT EXEMPT FROM REGISTRATION REQUIREMENTS FOR EACH FISCAL YEAR SINCE ITS REGISTRATION ENDED MUST COMPLETE THE FOLLOWING REQUIREMENTS TO REINSTATE ITS REGISTRATION:~~

- (1) FILE A REINSTATEMENT FORM;
- (2) FILE A FINANCIAL FORM FOR THE MOST RECENT FISCAL YEAR;
- (3) FILE A FINANCIAL FORM FOR EACH FISCAL YEAR THE CHARITY SHOULD HAVE BEEN REGISTERED UNDER THE CCSA, UP TO A MAXIMUM OF THE PAST THREE CONSECUTIVE FISCAL YEARS; AND
- (4) PAY ALL APPLICABLE FEES AND FINES.

~~9.3 Reinstatement requirements.~~

*[Current Rule 9.3.1 is amended and recodified as New Rule 8.2.4. The requirements stated in Current Rules 9.3.2 and 9.4 are recodified in New Rule 8.2.2(b)(2).]*

~~9.3.2 A paid solicitor must file solicitation notices and campaign reports and pay all applicable fines for solicitation campaigns conducted during suspension.~~

~~9.4 Before reinstatement, a paid solicitor must file solicitation notices and campaign reports and pay all applicable late fees for solicitation campaigns conducted while registration was suspended.~~

8.2.2 PAID SOLICITOR

(A) IF A PAID SOLICITOR WAS EXEMPT FROM REGISTERING FOR EACH FISCAL YEAR SINCE ITS REGISTRATION ENDED, IT MUST COMPLETE THE FOLLOWING REQUIREMENTS TO REINSTATE ITS REGISTRATION:

- (1) FILE A REINSTATEMENT FORM; AND
- (2) WITH RESPECT TO EACH YEAR SINCE THE PAID SOLICITOR'S REGISTRATION EXPIRED OR WAS WITHDRAWN, CERTIFY THAT IT WAS EXEMPT FROM REGISTRATION REQUIREMENTS UNDER THE CCSA.

(B) IF A PAID SOLICITOR WAS NOT EXEMPT FROM REGISTRATION REQUIREMENTS FOR EACH YEAR SINCE ITS REGISTRATION ENDED, IT MUST COMPLETE THE FOLLOWING REQUIREMENTS TO REINSTATE ITS REGISTRATION:

- (1) FILE A REINSTATEMENT FORM;

- (2) FILE SOLICITATION NOTICES AND CAMPAIGN REPORTS FOR SOLICITATION CAMPAIGNS CONDUCTED IN COLORADO WHILE ITS REGISTRATION WAS EXPIRED, WITHDRAWN, OR SUSPENDED; AND
- (3) PAY ALL APPLICABLE FEES AND FINES.

8.2.3 PROFESSIONAL FUNDRAISING CONSULTANT

- (A) IF A PROFESSIONAL FUNDRAISING CONSULTANT WAS EXEMPT FROM REGISTERING FOR EACH YEAR SINCE ITS REGISTRATION ENDED, IT MUST COMPLETE THE FOLLOWING REQUIREMENTS TO REINSTATE ITS REGISTRATION:
  - (1) FILE A REINSTATEMENT FORM; AND
  - (2) WITH RESPECT TO EACH YEAR SINCE THE PROFESSIONAL FUNDRAISING CONSULTANT’S REGISTRATION EXPIRED OR WAS WITHDRAWN, CERTIFY THAT IT WAS EXEMPT FROM REGISTRATION REQUIREMENTS UNDER THE CCSA.
- (B) IF A PROFESSIONAL FUNDRAISING CONSULTANT WAS NOT EXEMPT FROM REGISTRATION REQUIREMENTS FOR EACH SINCE ITS REGISTRATION ENDED, IT MUST COMPLETE THE FOLLOWING REQUIREMENTS TO REINSTATE ITS REGISTRATION:
  - (1) FILE A REINSTATEMENT FORM; AND
  - (2) PAY ALL APPLICABLE FEES AND FINES.

*Current Rule 9.3.1 is amended and recodified as New Rule 8.2.4:*

~~9.3.1-8.2.4~~ A ~~suspended charitable organization, professional fundraising consultant, or paid solicitor~~ must: (a) ~~Cure the deficiency;~~ and (b) ~~Pay all applicable fines for all years that it was suspended and subject to CCSA registration requirements.~~ ALL SUSPENDED OR DENIED REGISTRANTS MUST CURE ALL DEFICIENCIES, PAY ALL APPLICABLE FINES, AND SATISFY ANY OTHER OBLIGATIONS THAT MAY BE REQUIRED.

~~Rule 10-~~ **RULE 9. Application of Registration Requirements to Internet Solicitation**

~~10.1-9.1~~ As used in this Rule ~~10-9~~:

- ~~10.1-1-9.1.1~~ “~~An interactive~~ 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.
- ~~10.1-3-9.1.2~~ “~~To receive~~ RECEIVES 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.

- (A) An entity receives contributions on a repeated and ongoing basis if it receives at least 50 online contributions during a fiscal year.
- (B) 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.

~~10.1.2-9.1.3~~ “~~To specifically target~~ SPECIFICALLY TARGETS 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.

~~10.1.4-9.2~~ 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.

~~10.2-9.3~~ An entity domiciled WITH A PRINCIPAL PLACE OF BUSINESS in Colorado and using THAT USES the internet to conduct charitable solicitations in Colorado must register with the Secretary of State, unless it is exempt from the registration requirements in accordance with PER section 6-16-104(6), C.R.S., regardless of whether the solicitation methods 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.

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

~~10.3-9.4~~ An entity domiciled WITH A PRINCIPAL PLACE OF BUSINESS outside of Colorado must register with the Secretary of State, unless it is exempt in accordance with PER section 6-16-104(6), C.R.S., if:

~~10.3.1-9.4.1~~ Its ~~non-Internet~~ NON-INTERNET activities are sufficient to require registration in Colorado, or

~~10.3.2-9.4.2~~ If ~~the~~ THE entity solicits contributions through an interactive website and the entity either:

- (a) Specifically targets persons physically located in Colorado for solicitation, or
- (b) Receives contributions from Colorado on a repeated and ongoing basis or a substantial basis through its website; or

~~10.3.3-9.4.3~~ The entity solicits contributions through a ~~site that is not interactive~~ NON-INTERACTIVE SITE, 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 website; and



- (a) Specifically targets persons physically located in Colorado for solicitation, or
- (b) Receives contributions from Colorado on a repeated and ongoing basis or a substantial basis through its website.

~~10.4-9.5~~ Solicitations for the sale of a product or service that include a representation that some portion of the price is devoted to a charitable organization or charitable purpose (~~often referred to as “commercial coventuring” or “cause marketing” and~~ ALSO CALLED “CAUSE MARKETING” OR “COMMERCIAL COVENTURING,” AS defined in section 6-16-103(3), C.R.S., as a “charitable sales promotion”) are governed by the same standards outlined in this Rule ~~10-9~~ and in accordance with section 6-16-104(1), C.R.S.

~~10.5-9.6~~ Nothing in this Rule ~~10-9~~ is intended to limit or expand upon the exception to the definition of a ~~paid solicitor~~ “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 11 is amended and recodified in New Rule 5.4 as shown above.*

*Current Rules 12.1 and 12.2 are recodified in New Rule 4.3. The remainder of Current Rule 12.3 is repealed:*

**Rule 12. — Paid Solicitor Registration**

*[Current Rules 12.1 and 12.2 are recodified as New Rules 4.3.1 and 4.3.2.]*

~~12.3~~ As referenced in section 6-16-104.6(2), C.R.S., and in Rule ~~13.2.1~~, a copy of a contract provided to a charitable organization or the Secretary of State 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 must include the original agreement and all addenda.

**Rule 13. RULE 10. Subcontractors TO PAID SOLICITORS**

~~13.1-10.1~~ Filing Requirements

~~13.1.1-10.1.1~~ A ~~THE SECRETARY OF STATE WILL TREAT THE~~ 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 CHARITABLE contributions ~~will be treated as~~ an agent of that paid solicitor and THE SUBCONTRACTOR is not required to register. The paid solicitor 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.

~~13.1.2-10.1.2~~ 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.

~~13.1.3-10.1.3~~ An agent (but not an employee) of a subcontractor operating under a contract with that subcontractor to solicit contributions must register separately.

~~13.2-10.2~~ Authorization to Solicit

~~13.2.1~~10.2.1 A subcontractor must operate under a written contract with a registered paid solicitor and the contract must be provided to the Secretary of State upon request in accordance with section 6-16-104.6(2), C.R.S.

~~13.2.2~~10.2.2 A subcontractor must keep records in accordance with section 6-16-109, C.R.S., and must furnish the originals or copies to the paid solicitor AND, UPON REQUEST, TO THE SECRETARY OF STATE.

**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 temporarily effective on October 1, 2018. The rules will become permanently effective twenty days after publication in the Colorado Register.<sup>4</sup>

Dated this 21st day of September, 2018,



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Suzanne Staiert  
Deputy Secretary of State

For

Wayne W. Williams  
Colorado Secretary of State

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<sup>4</sup> Section 24-4-103(5), C.R.S. (2017).



## **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**

**September 21, 2018**

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

This statement explains amendments to the Colorado Secretary of State rules for the administration of the Colorado Charitable Solicitations Act (CCSA).<sup>1</sup> The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Colorado Charitable Solicitations laws.<sup>2</sup>

On June 21, 2018, the Secretary issued a request for public comment to help our office develop preliminary draft rules. The comments we received in anticipation of rulemaking are available online at: [www.sos.state.co.us/pubs/rule\\_making/CCSARuleComments.html](http://www.sos.state.co.us/pubs/rule_making/CCSARuleComments.html) and are incorporated into the official rulemaking record.

Specific proposed changes include:

#### **Rule 1:**

- Amended Current Rule 1.3 to clarify language.
- Amended Current Rule 1.4 to reorganize structure and clarify language.
- Amended to Current Rule 1.7 to clarify language.
- Added New Rule 1.8 to define term added to the CCSA by HB 17-1158.
- Recodified Current Rule 1.8 as New Rule 1.9 and repealed unnecessary language.
- Recodified Current Rule 1.9 as New Rule 1.10 and amended to clarify language.
- Recodified Current Rule 1.10 as New Rule 1.11 and amended to clarify language.
- Recodified Current Rule 1.11 as New Rule 1.12 and amended to simplify language.
- Recodified Current Rule 1.12 as New Rule 1.13 and repealed unnecessary language.
- Recodified Current Rule 1.13 as New Rule 1.14.
- Recodified Current Rule 1.14 as New Rule 1.15.
- Repealed Current Rule 1.15 as unnecessary because HB 17-1158 repealed the “registered agent” provisions in section 6-16-113, C.R.S., of the CCSA.

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

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

- New Rule 1.16 to define term “registrant,” which refers collectively to charitable organizations, professional fundraising consultants, and paid solicitors subject to CCSA requirements.
- Recodified Current Rule 1.16 as New Rule 1.17.
- Recodified Current Rule 1.17 as New Rule 1.18.
- Recodified Current Rule 1.18 as New Rule 1.19 and repealed unnecessary language.

**Rule 2:**

- Amended Current Rule 2.1 to simplify language.
- Amended Current Rule 2.2 to simplify language.
- Repealed Current Rules 2.2.1, 2.2.2, and 2.3 as unnecessary.

**Rule 3:**

- Amended Current Rule 3.1 to revise the time within which the Secretary must give notice of a hearing under the State Administrative Procedure Act (Article 4, Title 24 of the Colorado Revised Statutes) after receiving a hearing request. The amendment changes this time from “five business days” to “seven [calendar] days” to afford the Secretary a reasonable amount of additional time while adhering to the CCSA’s requirement that the Secretary promulgate “rules to provide for expedited deadlines to govern . . . [APA] proceedings.” Section 6-16-111(6)(b), C.R.S.
- Amended Current Rule 3.2 to simplify language.
- Amended Current Rule 3.3 to simplify language and repealed unnecessary language.

**Rule 4:**

- Added New Rule 4.1 to add the title “All registrants”.
- Recodified Current Rule 4.1 as New Rule 4.1.1 and amended to clarify language and repeal unnecessary language.
- Added New Rule 4.2 to add the title “Charitable organizations”.
- Repealed Current Rule 4.2 as unnecessary for inclusion in the Rules. However, the Secretary of State’s system will continue to allow registrants to verify their status online and print registration certificates.
- New Rule 4.3 to add the title “Paid solicitors”.
- Recodified Current Rule 4.3 as New Rule 4.1.2 and amended to clarify language.
- Repealed Current Rule 4.4 as unnecessary for inclusion in the Rules although the Secretary of State will continue to list a registrant’s status as good after approving registrations.
- Repealed Current Rule 4.5 as unnecessary for inclusion in the Rules although the Secretary of State will continue to list a registrant’s status as delinquent if a registrant misses a filing deadline.
- Recodified Current Rules 4.6 through 4.9 as New Rules 4.2.1 through 4.2.4 and amended them to clarify language.
- Recodified Current Rule 12.1 as New Rule 4.3.1.
- Recodified Current Rule 12.2 as New Rule 4.3.2.

**Rule 5:**

- Added New Rule 5.1 to add the title “Charitable organizations”.

- Recodified Current Rule 5.5 as New Rules 5.1.1(a) and (b), amended to clarify language, and removed language referencing suspension and revocation to be consistent with HB 17-1158.
- Recodified Current Rule 5.1 as New Rule 5.1.2.
- Repealed Current Rule 5.1.3 and recodified Current Rule 5.3 as New Rule 5.1.3. Additional amendments simplify the rule given section 6-16-104(5), C.R.S. and the filing system sufficiently outline and facilitate the requirements concerning an extension of the filing deadline.
- Repealed 5.2 as duplicative of statute.
- Repealed Current Rules 5.4, 5.6, and 5.7.
- Recodified Current Rule 5.8 as New Rule 5.2 and amended to clarify the renewal period for professional fundraising consultants and paid solicitors.
- Repealed Current Rule 5.9 as duplicative of statute.
- Recodified Current Rules 5.9.1 and 5.9.2 as New Rules 5.3.1 and 5.3.2 and amended to clarify language.
- Recodified Current Rule 5.10 as New Rules 5.3.3 and simplified language.
- Recodified Current Rule 11.1 as New Rule 5.4 and amended to simplify and clarify language.
- Recodified Current Rules 5.11 and 5.12 as New Rules 5.5 and 5.6 and amended New Rule 5.5 to simplify language.

**Rule 6:**

- Amended Current Rule 6.1 to add the title “Charitable organization”.
- Amended Current Rule 6.1.1 to raise the fine from \$60 to \$100 per overdue report to encourage compliance and ensure that charitable contribution donors receive timely and transparent information from charitable organizations.
- Recodified Current Rule 6.1.2 as New Rule 6.3.1 and amended to remove reference to paid solicitors. Part of Current Rule 6.1.2 is recodified as New Rule 6.2.1 regarding the \$200 fine for a paid solicitor per overdue renewal solicitation and campaign financial reports.
- Recodified Current Rule 6.2 as New Rule 6.1.2 and amended to remove unnecessary language and to simplify language.
- Recodified Current Rule 6.2.1 as New Rule 6.1.3 and amended to remove unnecessary language and to simplify language.
- Recodified Current Rule 6.2.2 as New Rule 6.1.4 and amended to simplify language.
- Recodified Current Rule 6.2.3 as New Rule 6.1.5 and amended to simplify language. Amended also to require nonexempt charitable organizations to provide financial reports for three years instead of two years when they have solicited contributions before either filing its initial registration or reinstating its registration. The purpose of this amendment is to ensure that donors have a reasonable and sufficient information to assess trends for a charitable organization.
- Recodified Current Rule 6.3 as New Rule 6.2.2 and amended to simplify language.
- New Rule 6.3.2 provided that the fine for a professional fundraising consultant that, after notification, continues to provide consulting services before registering is \$1,000. The purpose of the rule is encourage compliance and ensure that donors receive timely and

transparent information from entities that solicit on behalf of charitable organizations. This rule expressly implements section 6-16-114(1)(d), C.R.S., which authorizes the Secretary of State to impose a fine “for soliciting before registering . . . not [to] exceed . . . one thousand dollars per year for paid solicitors.”

- Added New Rule 6.4 to add the title “Waiver of fine”.
- Amended Current Rule 6.4 to remove unnecessary language and simplify language.
- Recodified Current Rule 6.5.1 as New Rule 6.4.2 and clarified language.
- Recodified Current Rules 6.4.1 through 6.4.8 and part of Current Rule 6.6 as New Rule 6.4.3 and clarified language.
- Repealed Current Rule 6.5 in its entirety as unnecessary. The State Administrative Procedure Act already requires an agency to conduct an investigation before revoking, suspending, or otherwise limiting a license (which would include a registrant’s registration under the CCSA).
- Recodified Current Rule 6.5.1 as New Rule 6.4.2.
- Recodified Current Rule 6.6 as New Rule 6.4.4. Repealed first sentence as unnecessary. Moved part of the second sentence concerning a registrant’s inability to file due to website error to New Rule 6.4.3. Amended the remaining provisions to clarify and simplify language.
- Recodified Current Rule 6.7 as New Rule 6.4.5. Amended the time within which the Secretary of State must receive a fine from 90 days following the date of the notice to 60 days to comply.

**Rule 7:**

- Amended Current Rule 7.1 to use the newly defined collective term “registrant” (New Rule 1.16) and simplified language.
- Amended Current Rule 7.2 to make compliant with HB 17-1158, to use the newly defined collective term “registrant” (New Rule 1.16), and to clarify language. Also amended Current Rule 7.2 to change the time within which the Secretary of State must receive an overdue solicitation campaign financial report or request for a hearing from 60 to 63 days after a deadline or deadline extension before the Secretary of State will send the fine to the Colorado Central State Collections agency.

**Rule 8:**

- Recodified Current Rule 8.1 as New Rule 8.1.1, amended to use the newly defined collective term “registrant” (New Rule 1.16), and repealed unnecessary language.
- Recodified Current Rule 8.4 as New Rule 8.1.2.
- Recodified Current Rule 8.2 as New Rule 8.1.3(a), amended to simplify language, and corrected rule citation.
- Recodified Current Rule 8.3 as New Rule 8.1.3(b), amended to clarify language, and repealed unnecessary language.
- Recodified Current Rules 8.5 as New Rule 8.1.3(c) which provides that the Secretary of State will not approve a paid solicitor’s withdrawal request unless the paid solicitor files a solicitation campaign financial report for every solicitation campaign for every solicitation campaign for which the paid solicitor filed a solicitation notice and a solicitation notice for every solicitation campaign conducted in Colorado. This rule

implements newly enacted section 6-16-110.5(f), C.R.S., which provides that the “secretary of state may promulgate rules as needed for the effective implementation of this article 16, including . . . [p]roviding for the withdrawal of an active registration by a charitable organization, professional fundraising consultant, or paid solicitor.”

- Repealed Current Rule 8.3.1 as it is no longer the proper procedure for withdrawal of a charitable organization’s registration.
- Recodified Current Rule 8.3.2 as New Rule 8.1.4 and repealed unnecessary language that no longer describes the proper procedure for a charitable organization that is terminating existence and withdrawing registration.
- Repealed Current Rule 8.6 as inconsistent with HB 17-1158 and it no longer describes the proper procedure for a professional fundraising consultant that is withdrawing registration.
- Added New Rule 8.2 to add the title “Reinstatement”.
- Recodified Current Rule 9.2 as New Rule 8.2.1, added the requirements for a charitable organization to reinstate its registration, and simplified language.
- New Rule 8.2.2 provides the reinstatement requirements for expired, withdrawn, and suspended paid solicitors
- New Rule 8.2.3 provides the reinstatement requirements for expired and withdrawn professional fundraising consultants
- Recodified the requirements stated in Current Rules 9.3.2 and 9.4 in New Rule 8.2.2(b)(2).
- Recodified Current Rule 9.3.1 as New Rule 8.2.4 and amended to clarify language.

#### **Rule 9:**

- Amended Current Rule 9 and recodified under New Rule 8.
- Repealed Current Rules 9.2.1 and 9.2.2 as unnecessary since the requirements for reinstatement for exempt and non-exempt organizations have changed.
- Repealed Current Rule 9.3 as unnecessary.
  
- Recodified Current Rule 10 as New Rule 9.
- Recodified Current Rule 10.1 as New Rule 9.1 and corrected rule citation.
- Recodified Current Rule 10.1.1 as New Rule 9.1.1.
- Recodified Current Rule 10.1.3 as New Rule 9.1.2 and amended to simplify language.
- Recodified Current Rule 10.1.2 as New Rule 9.1.3 and amended to clarify language.
- Recodified Current Rule 10.1.4 as New Rule 9.2.
- Recodified Current Rule 10.2 as New Rule 9.3 and amended to clarify language.
- Repealed Current Rule 10.2.1 as unnecessary.
- Recodified Current Rule 10.3 as New Rule 9.4, repealed unnecessary language, and amended to clarify language.
- Recodified Current Rule 10.3.1 as New Rule 9.4.1.
- Recodified Current Rule 10.3.2 as New Rule 9.4.2 and amended to simplify language.
- Recodified Current Rule 10.3.3 as New Rule 9.4.3 and amended to simplify language.
- Recodified Current Rule 10.4 as New Rule 9.5 and amended to simplify language.
- Recodified Current Rule 10.5 as New Rule 9.6 and amended to clarify language.



**Rule 10:**

- Recodified Current Rule 10 in part as Rule 9 and amended.
- Recodified Current Rule 13 as New Rule 10.
- Recodified Current Rule 13.1 as New Rule 10.1.
- Recodified Current Rule 13.1.1 as New Rule 10.1.1 and amended to simplify language.
- Recodified Current Rule 13.1.2 as New Rule 10.1.1 and amended to simplify language.
- Recodified Current Rule 13.1.3 as New Rule 10.1.3.
- Recodified Current Rule 13.2 as New Rule 10.2.
- Recodified Current Rule 13.2.1 as New Rule 10.2.1.
- Recodified Current Rule 13.2.2 as New Rule 10.2.2 and amended to require a paid solicitor's subcontractor to furnish records to Secretary of State upon request. The purpose of this amendment is to ensure transparency and that the Secretary of State has access to relevant documents during an investigation or other inquiry purposes.

**Rule 11:**

- Recodified Current Rule 11 as New Rule 5.4 and amended.

**Rule 12:**

- Repealed Current Rule 12 as duplicative of statute.

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**

The statutory and constitutional authority is as follows:

- Section 6-16-110.5(3)(a), (e), and (f) C.R.S., (2017) 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, setting fines for noncompliance, and the withdrawal of an active registration by a charitable organization, professional fundraising consultant, or paid solicitor.
- Section 6-16-114, C.R.S. (2017) which authorizes the Secretary to set fines by rule.



## **Statement of Justification and Reasons for Adoption of Temporary Rules**

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

**September 21, 2018**

In accordance with Colorado Charitable Solicitations laws,<sup>1</sup> the Secretary of State finds that recodification of the existing rules for the administration of the Colorado Charitable Solicitations Act, including amendments necessary to implement HB 17-1158, must be temporarily effective on October 1, 2018 to ensure the uniform and proper administration and enforcement of Colorado Charitable Solicitations laws. Temporary adoption is necessary to comply with law, preserve the public welfare generally, and synchronize the effective dates of both the statutory amendments and related rule updates.

For these reasons, and in accordance with the State Administrative Procedure Act, the Secretary of State finds that adoption and more immediate effect of the amendments to existing rules for the administration of the Colorado Charitable Solicitations Act is imperatively necessary to comply with state and federal law and to promote public interests.<sup>2</sup>

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

<sup>2</sup> Section 24-4-103(3)(6), C.R.S. (2017).