



Notice of Proposed Permanent Rulemaking

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

October 15, 2018

I. Hearing Notice

As required by the State Administrative Procedure Act,¹ the Secretary of State gives notice of proposed rulemaking. The hearing is scheduled for **November 14, 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 finance² to improve the administration and enforcement of Colorado campaign finance law.³

Specifically, the Secretary proposes revisions necessary to establish uniformity in the administration of current law regarding the use of unexpended campaign funds; eliminate obsolete provisions; simplify the language of existing rules; and ensure consistency with Department rulemaking standards. The Secretary may consider additional rule amendments.

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

III. Rulemaking authority

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

- 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."

¹ Section 24-4-103(3)(a), C.R.S. (2018).

² 8 CCR 1505-CCR 6.

³ Article 45 of Title 1, C.R.S. (2018).

- 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., (2018), 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/CPFRulesHearing20181114.html

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

As required by the State Administrative Procedures Act,⁴ if changes are made before the hearing, revised proposed draft rules will be available to the public and posted on the website by **November 9, 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/CPFRulesHearing20181014.html.

We will redact contact information, including home address, email address, and telephone number(s), from submissions before posting the information online, unless otherwise directed by the contributor.

⁴ Section 24-4-103(3)(a), C.R.S. (2018). “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.”

VI. Broadcast and audio recording of hearing

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

VII. Office contact

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

Dated this 15th Day of October, 2018.



Suzanne Staiert
Deputy Secretary of State

For

Wayne W. Williams
Colorado Secretary of State

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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

October 15, 2018

I. Basis and Purpose

This statement explains amendments to the Colorado Secretary of State rules concerning campaign and political finance.¹ The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Colorado campaign finance law² as follows:

- To provide clarity concerning the use of unexpended campaign funds at the conclusion of the election cycle.
- Amendments to 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.

On October 4, 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/CPFRuleComments.html and are incorporated into the official rulemaking record.

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

¹ 8 CCR 1505-CCR 6.

² Article 45 of Title 1, C.R.S. (2018).

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., (2018), 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.”

Preliminary Draft of Proposed Rules

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

October 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.¹

This is a preliminary draft of the proposed rules that may be revised before the November 14, 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 **November 9, 2018**.²

Please note the following formatting key:

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

1 *Amendments to 8 CCR 1505-6:*

2 *Amendments to Rule 2.2.4 concerning candidate committees:*

3 2.2.4 Managing unexpended campaign contributions

4 (a) A candidate committee must report its unexpended balance as the ending balance
5 ~~throughout~~ AT THE END OF the election cycle. A candidate committee must report
6 its unexpended balance from the report filed 30 days after the major election as
7 the beginning balance in the next election cycle. THE CANDIDATE COMMITTEE'S
8 BEGINNING BALANCE MUST REFLECT WHAT AMOUNT IS RETAINED FOR USE IN A
9 SUBSEQUENT ELECTION CYCLE AND WHAT AMOUNT IS RETAINED FOR USE AS
10 UNEXPENDED FUNDS.

11 (b) Candidates seeking re-election to the same office

¹ Sections 24-4-103(2.5) and (3)(a), C.R.S. (2018). A draft must be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.

² Section 24-4-103(4)(a), C.R.S. (2018). "[A]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing...shall be made available to any person at least five days prior to said hearing."

- 1 (1) A candidate committee may retain contributions to use in a subsequent
2 election cycle for the same public office, in an amount not to exceed the
3 POLITICAL PARTY CONTRIBUTION limit in Colo. Const. Article XXVIII,
4 Section 3(3) (as adjusted by Rule 10.16).
- 5 (2) If a candidate committee retains contributions to use in a subsequent
6 election cycle for the same office, the amount retained counts toward the
7 limit on contributions from a political party. ~~A candidate committee must
8 return contributions it receives in excess of the political party limit
9 within ten days.~~
- 10 (3) IF A CANDIDATE COMMITTEE RETAINS CONTRIBUTIONS FROM A PRIOR
11 ELECTION CYCLE IN EXCESS OF THE POLITICAL PARTY CONTRIBUTION
12 LIMIT, THE CANDIDATE COMMITTEE MAY NOT USE THOSE FUNDS FOR
13 ANY SUBSEQUENT ELECTION CYCLE BUT MAY RETAIN THEM FOR USE IN
14 ACCORDANCE WITH SECTION 1-45-106(1)(B), C.R.S., IF APPLICABLE.
15 THE COMMITTEE MAY ALSO CONTRIBUTE THE FUNDS TO A POLITICAL
16 PARTY, DONATE THE FUNDS TO A CHARITABLE ORGANIZATION
17 RECOGNIZED BY THE INTERNAL REVENUE SERVICE, OR RETURN THE
18 FUNDS TO CONTRIBUTORS.
- 19 (c) Candidates seeking election to a different office
- 20 (1) A candidate committee may transfer funds to a candidate committee
21 established by the same candidate for a different public office, subject to
22 the political party contribution limit for the new office sought. [Colo.
23 Const. Article XXVIII, Section 3]
- 24 (2) Contributions from persons or committees made to the prior candidate
25 committee do not apply toward the contribution limits for the new
26 candidate committee.
- 27 (3) A candidate committee transferring funds to a candidate committee for a
28 different office must terminate within ten days of registering the new
29 candidate committee.
- 30 (4) A candidate seeking election to a state, county, or local office may not
31 transfer funds from a federal candidate committee to a Colorado
32 candidate committee that is subject to the provisions of the Fair
33 Campaign Practices Act.
- 34 (5) IF A CANDIDATE COMMITTEE TRANSFERS FUNDS IN EXCESS OF THE
35 POLITICAL PARTY CONTRIBUTION LIMIT, THE CANDIDATE COMMITTEE
36 MAY ONLY RETAIN THEM FOR USE IN ACCORDANCE WITH SECTION 1-45-
37 106(1)(B), C.R.S. IF APPLICABLE. THE COMMITTEE MAY ALSO
38 CONTRIBUTE THE FUNDS TO A POLITICAL PARTY, DONATE THE FUNDS TO
39 A CHARITABLE ORGANIZATION RECOGNIZED BY THE INTERNAL
40 REVENUE SERVICE, OR RETURN THE FUNDS TO CONTRIBUTORS.
- 41 (d) ~~Not~~ CANDIDATES NOT seeking re-election or election to a new office

1 (1) A candidate committee that wishes to terminate and will not transfer
2 funds to a new candidate committee may give remaining contributions
3 to:

4 (A) A political party, in an amount not to exceed the limit in Colo.
5 Const. Article XXVIII Section 3(3) (as adjusted by Rule 10.17);

6 (B) A charitable organization recognized by the I.R.S.;

7 (C) ~~the~~THE original contributors; or

8 (D) If elected to office, the candidate may use the remaining
9 contributions for voter registration, political issue education,
10 postsecondary educational scholarships, communication with
11 constituents, or for expenses directly related to the officeholder's
12 official duties.

13 [Section 1-45-106(1)(a)(I) and (b), C.R.S.]

14 *Amendments to Rule 18.2 concerning complaints:*

15 *Amendments to Rule 18.2.6(b)(1):*

16 18.2.6 Initial review

17 (b) Within 10 business days of receiving the complaint, the elections division must
18 take one OR MORE of the following actions:

19 (1) If the elections division determines that the complaint was not timely
20 filed, has not specifically identified one or more violations, or that the
21 complainant did not assert facts sufficient to support the alleged
22 violations, the elections division will ~~dismiss the complaint~~ FILE A
23 MOTION TO DISMISS AND RECOMMENDED ORDER WITH THE SECRETARY
24 OF STATE'S DESIGNATED HEARING OFFICER FOR REVIEW UNDER SECTION
25 24-4-105, C.R.S. ~~and notify the complainant and respondent of the~~
26 ~~reasons for dismissal. The dismissal is a final agency action, and subject~~
27 ~~to review under section 24-4-106, C.R.S.~~

28 *Amendments to Rule 18.2.7(e)(1) and repeal of Rule 18.2.7(e)(3):*

29 18.2.7 Curing violations

30 (e) After the period for cure, the elections division will determine whether the
31 respondent cured the violations, and if so, whether the respondent substantially
32 complied or acted in good faith under Rules 18.2.7(f) and 18.2.7(g).

33 (1) If the elections division determines that the respondent substantially
34 complied or acted in good faith, the elections division will ~~dismiss the~~
35 ~~complaint~~ FILE A MOTION TO DISMISS AND RECOMMENDED ORDER WITH
36 THE SECRETARY OF STATE'S DESIGNATED HEARING OFFICER FOR
37 REVIEW UNDER SECTION 24-4-105, C.R.S.

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