



May 6, 2016

The Honorable Wayne Williams,
Colorado Secretary of State
1700 Broadway Street, Suite 250
Denver, CO 80290-1705

Dear Secretary Williams:

The Colorado Nonprofit Association welcomes the opportunity to comment on 8 CCR 1505-09, Rules for the Administration of the Colorado Charitable Solicitations Act (CCSA). We are grateful for ongoing opportunities to work with your office to improve these rules.

It is important to ensure CCSA's rules focus on stopping bad actors from committing fraud without imposing undue burdens on legitimate charities that provide many benefits to our communities. We appreciate that the Secretary of State's office has been receptive to some changes to these rules that we have recommended in the past. This rule review allows us to take a fresh look at the rules and our past commentary. We have identified a few areas where changes would help strengthen the rules and enable increased compliance by nonprofits:

- Adding definitions to Rule 1 for terms that refer to loss or denial of registration status.
- Recommending that notices of expedited hearings under Rule 3 be sent by email and that this rule informs nonprofits of their status and rights while a hearing is pending.
- Under Rule 4, clarifying that the Secretary may require a charity to provide a copy of Form 990 in lieu of a financial report and may request that a charity file an amended Form 990 if inconsistencies are material or make compliance with CCSA requirements impossible.
- Providing notice that a charity that reports financial information outside of its fiscal year must update this information or file an extension within five days under Rule 5.
- Under Rule 6, adding information about the number of reminder notices, bases of exemption, administrator errors considered when a fine waiver is requested, and providing information about the state collections process.
- Providing information about how to request an expedited hearing on the website and in suspension and revocation notices under Rule 7.
- Clarifying how CCSA applies to internet solicitations under Rule 10.

We are happy to provide additional feedback and have encouraged nonprofits to submit their own comments.

Sincerely,

A handwritten signature in black ink that reads "Renny Fagan".

Renny Fagan, President and CEO

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Comments on Charitable Solicitations Rules

Rule 1 - Definitions

We suggest adding definitions for the various terms that refer to loss or denial of registration status. These include: “suspension,” “revocation,” “denial of registration,” and “expired registration.” Nonprofits would benefit from knowing what these terms mean specifically rather than having a general understanding of their plain meaning.

Also, it would be helpful to include a reference in this section to the statutory language of CCSA so that readers can peruse the statute. Since the statutes are already posed on the website, a hyperlink to the statute would also be helpful for persons reading the rules online.

Rule 3 - Expedited Hearing Deadlines

- 3.1- In addition to sending notices of an expedited hearing by certified mail, we recommend that notices be sent by email to the registered agent for the entity.
- Per 6-16-III (6)(b), we suggest adding rules to indicate that the status quo regarding soliciting contributions will be maintained pending the results of a hearing and that judicial review is available. By having this language in the rules too, this will inform nonprofits of their status and their rights when a hearing is pending.

Rule 4 - Registration

- 4.8- Under 6-16-104 (5), a charitable organization shall file a financial report for the fiscal year or, at the discretion of the Secretary of State, provide a copy of a Form 990 for that fiscal year. This rule should indicate that the Secretary may require the nonprofit to provide a copy of the appropriate Form 990 in lieu of filing a financial report to meet the reporting requirement.
- 4.9- IRS Form 990 instructions indicate that state law may require an organization to send a copy of an amended 990 to meet the state’s reporting requirements and may require an organization to file an amended Form 990 to satisfy state reporting requirements even if the IRS accepted the original return. A nonprofit may be required to file an amended return with the IRS if the original return is incomplete or contains incorrect information.
- If there are inconsistencies between Form 990 and the registration statement that are material in nature per 6-16-III (6) or make it impossible for the charity to meet CCSA reporting requirements, then it’s appropriate for the Secretary to request that the charity file an amended Form 990. However, we are unaware of any requirement in CCSA that a charity file an amended

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990 with the IRS at the request of the Secretary of State.

Rule 5 - Filing Deadlines and Extensions of Filing Deadlines

- 5.5 – If this does not happen already, a charity who files an initial registration with financial information outside of its fiscal year should be notified that it must provide updated information or request an extension within five days of approval of the initial registration.
- 5.6 – This rule refers to an additional three month extension that a charity may request if it has already requested an extension with the IRS. In this case, the filing deadline for the charity is 11 months and 15 days after the close of the charity's most recent fiscal year.
- Because the filing deadline is not specified in this rule, 5.6 appears to contradict 5.1.2 where filing an IRS extension is sufficient for a later CCSA registration deadline. This should be clarified so that a charity is not liable for fines for failing to request a CCSA extension.

Rule 6 - Fines

We recommend adding a rule indicating that a charity, paid solicitor, or professional fundraising consultant shall receive at least two notices prior to being liable for a fine per 6-16-114. Although this is already indicated in statute, including this in the rules would inform nonprofits about how many reminder notices they should expect before a fine is assessed.

- 6.2..1 – We recommend listing the bases for exemption in the rules so that charities know they have to respond to the Secretary's notices and state their basis of exemption.
- 6.4 – "bona fide personal emergency" is included in the definitions but this rule suggests that the definition appears under this rule.
- 6.6- This rule should indicate that criteria considered by the Secretary should include administrator or website errors that made it impossible for filing to be completed on time or at all. Also, it's not clear what is meant by "demonstration of commitment."
- 6.7- The SOS website should include links to information about the State Central Collection Agency, any payment plans that can be arranged, and the consequences of an unpaid fee referred to the Collection Agency.

Rule 7 - Suspensions and Revocations

If they do not already, suspension and revocation notices and website FAQ should contain information on how an expedited hearing may be requested.

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Rule 10 - Application of Registration Requirements to Internet Solicitation

10.1.2 – We recommend changing the language about persons physically located in Colorado to residents of Colorado. If a person has a second home in Colorado or has come here to visit, it may be difficult to determine if a fundraiser intended to solicit a donation from that person as a Coloradan. We don't believe that a nonprofit soliciting a contribution from a donor who happens to be located in Colorado temporarily should register unless there is other fundraising activity that triggers registration.

10.1.2 (a) - We recommend that a website should have a "specific" reference to soliciting contributions from Colorado in order to be considered to be targeting Colorado residents.

10.1.3 – We recommend several changes to this rule:

- First, we recommend changing the word "substantial" to "significant." The amounts listed in this rule may constitute most of a small organization's fundraising activity but may be minimal for a larger organization. "Significant" suggests that the amount of fundraising activity should be sufficient to trigger registration requirements but need not be a major part.
- Second, to trigger registration by an out of state charity, the charity should receive significant contributions from Colorado residents on a repeated and ongoing basis. A charity may receive a contribution once a week and exceed 50 contributions per year but this does not mean that the contribution amounts are significant.
- Third, it's difficult for a charity to know how much it will receive in total contributions until the end of its fiscal year. During the year, it makes it difficult to calculate whether or not the amount of contributions received by Colorado residents exceeds 1 percent.
- Fourth, we recommend defining significant contributions as a clear dollar amount such as \$10,000. An organization with \$1 million in revenues would have to raise 1 percent of these revenues in Colorado and smaller organizations would have to raise a higher percentage of their revenues in Colorado to trigger CCSA reporting requirements.

10.4 – If a charitable sales promotion is conducted that targets or receives significant contributions from Colorado residents without notifying the out of state charity who benefits from the promotion, then those activities should not be attributed to the charity when determining if the charity has to register in Colorado.

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