



June 27, 2018

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

Dear Secretary Williams,

Colorado Nonprofit Association is pleased to have the opportunity to comment on the working draft of proposed changes to 8 CCR 1505-09, Rules for the Administration of the Colorado Charitable Solicitations Act (CCSA). We are also grateful for our ongoing work with your office to strengthen the CCSA registration program.

In general, we encourage your team to update any webpage, FAQs, and other resources to help registrants understand the content of these rules. If key registration topics are not covered in these rules, it's important that registrants know where to find these resources. Having clear descriptions to go with the hyperlinks to these resources is really helpful for navigation by registrants generally and any website visitors with sight impairments.

Our comments on selected rules are as follows:

#### **RULE 1. DEFINITIONS**

- 1.4 *Bona Fide Personal Emergency.* Nonprofits could request a fine waiver for situations not identified in 1.4. We recommend adding a paragraph clarifying that the Secretary has discretion to grant waivers for any emergencies that are not clearly included or excluded by 1.4 as amended. Any waivers granted on this basis should be consistent with the spirit of this rule.
- 1.11 *Gross Revenue.* Consider defining “pass-through agent” so this phrase is clear to readers.
- 1.14 *Person.* It's not clear why naming the Colorado Combined Campaign (CCC) is necessary in this definition. As defined in Colorado Revised Statutes (CRS) 6-16-103(8), person includes “any other entity however organized” which gives broad authority to require registration from entities that do not clearly fit the categories in 6-16-103(8). Our understanding is that CCC is registered currently and in good standing.

#### **RULE 2. ELECTRONIC FILING**

- 2.2 This rule asks for prompt updates of changes to an individual's name, email address, and an EIN when accessing the online system. 6-16-104(c) gives up to thirty days for charities to make changes that materially affect their business identity. The Secretary may consider clarifying the difference between changes subject to this rule and 6-16-104(c). In particular, a change of EIN appears to affect a business' identity.

#### **RULE 3. EXPEDITED HEARING DEADLINES**

This rule does not explain how an expedited hearing can be requested and the rights nonprofits have when a hearing is pending. We suggest including this in a website FAQ if not in these rules.



- 3.1 We recommend that this rule continue to refer to 6-16-111(b) to indicate that these hearings are governed by the State Administrative Procedure Act. Also, it would be helpful if this rule could be updated after October 1 to indicate that parties have thirty days to request a hearing after the date of notice.

#### **RULE 4. CHARITABLE ORGANIZATION**

- 4.2.4 A state rule requiring leaders of a charity to file an amended federal Form 990 due to any inconsistency requires considerable time and energy that could be better spent on mission related work. We advise amending this rule to be consistent with authority in the statute.

For example, “If the Secretary of State identifies material inconsistencies between a charitable organization’s registration statement and the IRS Form 990 indicative of a false statement or material omission per 6-16-111(6), then the Secretary of State may require that the organization file an amended Form 990 with the Secretary of State or otherwise correct the inconsistency to complete the state filing...”

#### **RULE 6. FINES**

- 6.1.1 This rule proposes a \$40 increase in the fine per overdue report and brings the fine amount up to the \$100 maximum authorized in 6-16-114(c). We recognize that the \$60 fine amount has not been increased in several years and has not been adjusted for inflation. In October, the amended version of 6-16-114(c) appears to clarify that separate fines are not assessed for failing to timely file a renewal and a financial report. Can you explain why this significant fine increase has been proposed?
- 6.1.2 We recommend keeping the references to 6-16-114 because this explains the email and postal notices the Secretary is required to provide.
- 6.4.2 We agree that thirty days is a reasonable deadline for the Secretary to receive a written request for a fine waiver.
- 6.4.3 It’s unclear what is meant by an emergency error. This rule appears to cover situations where timing filing was not possible due to an error or malfunction of the registration system.
- 6.4.4 We agree that it’s reasonable for the Secretary to consider frequency of requests to excuse or reduce fines as well as past violations

#### **RULE 7. SUSPENSION AND REVOCATIONS**

- 7.2 Under 6-16-111(6)(b), an aggrieved party may request a hearing within thirty days after the date of a notice of a denied registration or suspension or revocation. Proceedings for denial, suspension, or revocation must be governed by the State Administrative Procedure Act. From reading these rules, the difference between a suspension proceeding and a hearing requested by a delinquent registrant is not clear.

#### **RULE 8. WITHDRAWING AND REINSTATING A REGISTRATION**



- 8.2.1 Limiting financial reports to the past three years for expired or withdrawn charities is an improvement of this rule from our perspective. Previously, there was no time limit on past financial reports an expired or withdrawn charity had to file.

## **RULE 9. APPLICATION OF REGISTRATION REQUIREMENTS TO INTERNET SOLICITATION**

- 9.1.2 It's confusing that substantial and significant appear to be used synonymously in this rule. 1 percent is not a substantial percentage for any charity. \$25,000 could be a small percentage of a large nonprofit's budget or the entire budget of the smallest nonprofits required to register under CCSA.

We also recommend clarifying this rule to indicate that the charity must solicit and receive contributions from either 50 different donors or 50 separate donations. Under this rule, a weekly or monthly recurring donation could be treated as separate donations. Regardless, 50 contributions could be more than some nonprofits raise in a year and less than some nonprofits raise in a month or quarter.

Rather than the lesser of \$25,000 or 1 percent, setting a clear dollar amount such as \$10,000 or \$25,000, would make these thresholds clearer for out-of-state charities. \$25,000 would be consistent with the revenue that Colorado charities must raise to register generally. Because a charity may not know how much it will receive in total contributions until the end of the year, it is difficult to calculate when contributions by Colorado residents exceeds 1 percent.

Because a donation can be given in Colorado by individuals who are visiting or have a second home, this rule should be limited to Colorado residents for the purpose of determining whether Coloradans are specifically targeted by a solicitation or contributions are received from Coloradans. Websites should have a specific reference to soliciting contributions from residents of Colorado.

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

We are happy to provide additional feedback and have encouraged nonprofits to submit their own comments if they choose. Thanks again for the opportunity to submit comments on these rules.

Sincerely,

A handwritten signature in blue ink that reads "Mark Turner".

Mark Turner,  
Senior Director of Public Policy