



August 23, 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 these proposed changes to 8 CCR 1505-09, Rules for the Administration of the Colorado Charitable Solicitations Act. 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 related webpages, FAQs, and other resources on your website 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 how to find this information. Having clear descriptions to go with any hyperlinks to these resources is helpful for navigation by web visitors generally and those with sight impairments.

Our comments on selected rules are as follows:

RULE 1. DEFINITIONS

In general, it would be helpful if definitions of the various types of registration statuses are included in these rules, especially since registrations are now allowed to expire. The significant differences between an expired, suspended, or revoked registration are not clearly explained in these rules without these definitions.

- 1.3 *Authorized Officer.* An authorized officer 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 CCSA. The rule does not seem to allow executive staff of the charity to sign the report. Because these staff are most likely responsible for completing the report and understanding the content, we recommend allowing them to sign the report on behalf of nonprofits as authorized officers.
- 1.4 *Bona Fide Personal Emergency.* Nonprofits could request fine waivers 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. Certainly, any waivers granted on this basis should be consistent with the spirit of this rule.
- 1.8 *Email address.* 6-16-114(1)(B)(II) requires sending at least two emails to the charitable organization if an email address is provided. This rule indicates that the email address belongs to an authorized officer. The current form also allows email addresses to be entered for the organization, the custodian of financial records, and officers, directors, and trustees.

It would help nonprofits comply with CCSA more easily if email notices can also be sent to the custodian and the organization if their email addresses have been provided. The registration and renewal forms should allow the filer to clearly designate which email addresses are designated to receive email notices.



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. Effective October 1, 2018, 6-16-104(4)(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(4)(c). In particular, a change of EIN appears to affect the identity of a nonprofit organization.

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 It would be helpful if this rule could be updated after October 1 to indicate that parties also have thirty days to request a hearing after the date of notice per 6-16-111(6)(b).

RULE 4. REGISTRATION

4.2.4 6-16-104(2)(f) requires the registration statement to contain a financial statement for the most recent fiscal year or, at the Secretary's discretion, a copy of Form 990 for the most recent fiscal year. 6-16-111 authorizes the Secretary to deny, suspend, or revoke registrations for false statements, material omissions, or failing to meet registration requirements.

Requiring a charity to amend its financial statement for material inconsistencies with IRS Form 990 seems to follow from these provisions. But these provisions do not require a charity to file an amended IRS Form 990, or any federal form, for any inconsistency with the financial statement. The purpose of this rule is unclear because Form 990 is the basis of filing the financial report and inconsistencies are more likely to result from errors in completing the state registration and financial report. Requiring charities to file an amended IRS Form 990 due to any inconsistency requires considerable time and energy that could be better spent on their mission-related work.

RULE 5. FILING DEADLINES AND EXTENSION OF FILING DEADLINES

5.1.2 We welcome further discussion of how to amend the CCSA statutes to align CCSA extensions with the IRS' 6-month extensions. This change would reduce confusion for charities, especially those who may have to file Form 990-T for the first-time due to the Tax Cuts and Jobs Act.

RULE 6. FINES

6.1.1 We appreciate that the fine amount is not being increased in these updated rules.

6.1.2 We recommend keeping the reference to 6-16-114 which explains required notices

6.4.2 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 pertain to situations where timely filing was not possible due to an error or malfunction of the registration system.

6.4.4 It's reasonable to consider frequency of requests to excuse or reduce fines and past violations.



- 6.4.5 Reducing the amount of time to pay an overdue fine from 90 days to 60 days could have a negative impact on some charities. It can take more time for smaller charities to figure out how to comply with reporting requirements or pay fines if they have limited cash flow.

RULE 7. SUSPENSIONS AND REVOCATIONS

- 7.2 It appears this rule is meant to refer to all registrants, but it only refers to suspending the registration of a paid solicitor.

RULE 8. WITHDRAWING AND REINSTATING A REGISTRATION

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

RULE 9. APPLICATION OF REGISTRATION REQUIREMENTS TO INTERNET SOLICITATION

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

We recommend clarifying this rule to indicate that the charity must solicit and receive contributions from either 50 different donors or 50 separate donations. A weekly or monthly recurring donation could be treated as separate donations under this rule. The significance of the number 50 is also unclear as it could be more than some nonprofits receive in a year and less than some nonprofits raise in a month or a quarter.

Rather than the lesser of \$25,000 or 1 percent, setting a clear dollar amount such as \$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 raise in total contributions until the end of the year, it is difficult to calculate when contributions by Coloradans exceeds 1 percent.

- 9.1.3 The application of this rule should be limited to Colorado residents. While they are temporarily located in Colorado, tourists and second home owners could make donations even though they may not be specifically targeted for solicitation. These donations make it more likely that the charity is required to register. Websites should also have a specific reference to soliciting contributions from Colorado residents.
- 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 presumably benefits, those activities should not be attributed to that charity when determining if the charity must register in Colorado.

Sincerely,

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

Mark Turner,
Senior Director of Public Policy