

STATE OF COLORADO

Department of State

1700 Broadway
Suite 250
Denver, CO 80290



Bernie Buescher

Secretary of State

William A. Hobbs

Deputy Secretary of State

NOTICE OF TEMPORARY ADOPTION

Pursuant to section 1-107(2)(a), C.R.S. (2008) and 11-1.5-104(1)(e), C.R.S., (2008), and the rulemaking provisions of the State Administrative Procedure Act, section 24-4-103, C.R.S. (2008), I, Bernie Buescher, Colorado Secretary of State, do hereby adopt and give **NOTICE** of the temporary adoption this 30th day of January, 2009 of the following new Rule 2.17 of the Colorado Secretary of State Election Rules, 8 C.C.R. 1505-1. Such new rule is effective immediately.

New Rule 2.17 of the Election Rules of the Colorado Secretary of State is adopted as follows:

2.17 WHEN A COUNTY CLERK AND RECORDER DEEMS AN APPLICANT "NOT REGISTERED" UPON RECEIPT OF AN UNDELIVERABLE NEW VOTER NOTIFICATION IN ACCORDANCE WITH SECTION 1-2-509(3), C.R.S., THE APPLICANT SHALL BE MAILED A CONFIRMATION CARD BY FORWARDABLE MAIL. THE CONFIRMATION CARD SHALL HAVE A POSTAGE PREPAID RETURNABLE PORTION THAT IS PREAMBITTERED TO THE SENDING COUNTY CLERK AND RECORDER.

2.17.1 IF THE COUNTY CLERK AND RECORDER RECEIVES A SIGNED CONFIRMATION CARD WITHIN 90 DAYS FROM AN APPLICANT WHO WAS DEEMED "NOT REGISTERED" IN ACCORDANCE WITH SECTION 1-2-509(3), C.R.S., THE APPLICANT SHALL BE DEEMED REGISTERED AS OF THE DATE OF THE ORIGINAL APPLICATION.

2.17.2 DURING THE 28 DAYS PRIOR TO AN ELECTION, IF AN APPLICANT WHO HAS BEEN DEEMED "NOT REGISTERED" IN ACCORDANCE WITH SECTION 1-2-509(3), C.R.S., COMPLETES A CERTIFICATE OF REGISTRATION AND PRESENTS IDENTIFICATION IN PERSON AT THE OFFICE OF THE COUNTY CLERK AND RECORDER, THE APPLICANT SHALL BE DEEMED REGISTERED AS OF THE DATE OF THE ORIGINAL APPLICATION.

Dated this 30th day of January, 2009.

William A. Hobbs
Deputy Secretary of State

For

Bernie Buescher
Colorado Secretary of State

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Statement of Justification and Reasons for Adoption of Temporary Rules

Office of the Secretary of State

Amended and Revised Rules

Rule 2.17

Colorado Secretary of State Election Rules

Under section 1-1-107(2)(a), C.R.S. (2008), the Secretary of State has the power "[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."

The amendment to the existing election rules is immediately necessary for the uniform and proper administration and enforcement of the election laws of the State of Colorado. The temporary adoption of this rule is necessary to clarify statutory language and to provide clear guidance regarding treatment of undeliverable new voter registration notifications pursuant to section 1-2-509(3), C.R.S., until a legislative clarification may be proposed.

The Secretary of State finds that in order to protect applicants from being possibly disenfranchised due to postal or other error, applicants who are deemed "not registered" in accordance with section 1-2-509(3), C.R.S., because their new voter notification was returned as undeliverable must be afforded an opportunity to confirm their address.

To ensure that these applicants have such an opportunity, the Secretary finds that these applicants must be sent an additional notification by forwardable mail, and be afforded a sufficient period of time to receive and return the mailing to the county clerk and recorder. The Secretary of State finds that this additional layer of protection will help ensure that eligible electors who apply for voter registration are not precluded from becoming registered because of postal or other error resulting in the new voter notification being returned as undeliverable.

The Secretary of State finds that in order to ensure the uniform and proper administration and enforcement of the election laws, the adoption of the temporary amendment to the Secretary of State Election Rules is necessary both to comply with law and to preserve the public welfare generally.

Therefore, in accordance with section 24-4-103(6), C.R.S. (2008), the Secretary of State finds that adoption of the amendment to existing election rules is "imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of this section would be contrary to the public interest."



Statements of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State Election Rules

January 30, 2009

1. Basis and Purpose

This statement pertains to the amendments to the Colorado Secretary of State Election Rules for the administration of Colorado State Constitution Article VII, and Title 1 of the Colorado Revised Statutes. The amendments are implemented to achieve the uniform and proper administration and enforcement of the election laws of the State of Colorado, including the requirements of the federal Help America Vote Act of 2002 ("HAVA"), P.L. No. 107-252. See sections 1-1.5-101 *et seq.*, C.R.S. (2008).

The amendments to these rules are necessary for the implementation of Article VII of the Colorado Constitution and Article 1, Title 1 of the Colorado Revised Statutes. Such revisions are necessary to improve the administration of elections in Colorado, and to answer questions arising under Title 1 of the Colorado Revised Statutes. These amendments are further necessary to increase the transparency and security of the election process, and to provide guidance until a legislative clarification may be proposed.

The Secretary of State finds that the adoption and enactment of these amendments is specifically necessary to provide an additional layer of protection to help ensure that eligible electors who apply for voter registration are not precluded from becoming registered because of postal or other error.

The Secretary of State therefore finds that in order to ensure the uniform and proper administration and enforcement of the election laws, the temporary adoption of the amendments to the Election Rules is necessary both to comply with law and to preserve the public welfare generally.

2. Statutory Authority

Amendments to the Colorado Secretary of State Election Rules are adopted pursuant to the following statutory provisions:

1. Section 1-1-107(2)(a), C.R.S. (2008), 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."

2. Section 1-1.5-104(1), C.R.S. (2008), which provides that:

“The secretary may exercise such powers and perform such duties as reasonably necessary to ensure that the state is compliant with all requirements imposed upon it pursuant to HAVA . . . including, without limitation, the power and duty to:

(e) Promulgate rules in accordance with the requirements of article 4 of title 24, C.R.S., as the secretary finds necessary for the proper administration, implementation, and enforcement of HAVA and of this article.”