



Notice of Temporary Adoption

Office of the Secretary of State Election Rules 8 CCR 1505-1

August 29, 2013

I. Adopted Rule Amendments

As authorized by Colorado Elections Law¹ and the State Administrative Procedure Act², the Colorado Secretary of State gives notice that the following amendments to the Election Rules³ are adopted on a temporary basis and immediately effective. (SMALL CAPS indicate proposed additions to the current rules. Stricken type indicates proposed deletions from current rules. *Annotations* may be included):

Repeal Temporary Rule 32.7.3(d):

- (d) ~~An elector must establish a residence before registering to vote or changing his or her residence in accordance with section 1-2-102, C.R.S. An elector's residence is his or her primary home to which he or she, whenever absent, has the present intent of returning. An elector establishes a residence either by maintaining a residence as his or her primary home or by physically moving to a new residence with the intent to maintain that residence as a primary home. Intent to move, in and of itself, does not establish residence. And neither a business nor a temporary hotel room is a valid residence. Upon establishing a new residence the elector must update his or her voter registration record with the county clerk and recorder of the county to which the elector moved.~~
- ~~(1) An elector and a county clerk and recorder must consider the following factors in determining the elector's primary residence:~~
- ~~(A) Which address the elector uses for income tax purposes;~~
- ~~(B) Which address the elector uses for motor vehicle registration;~~

¹ Sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2012).

² Section 24-4-103, C.R.S. (2012).

³ 8 CCR 1505-1.

- ~~(C) Whether the elector is registered to vote in another state;~~
 - ~~(D) Whether the elector shares his or her Colorado address with family members;~~
 - ~~(E) Whether the elector works in or has business pursuits in Colorado; and~~
 - ~~(F) Whether the elector has residences in any other state.~~
- ~~(2) Applying the factors contained in paragraph (1) of this rule, a person is likely a resident if:~~
- ~~(A) He or she is a military member or family of a military member who has the present intent to make the district his or her permanent home after completing military service; or~~
 - ~~(B) He or she is a student attending college in Colorado but has the present intent to make the district his or her home after completing school.~~
- ~~(3) Applying the factors contained in paragraph (1) of this rule, a person is likely not a resident if:~~
- ~~(A) He or she is a military member or family of a military member who is stationed in Colorado but who maintains a primary residence in another state; or~~
 - ~~(B) He or she is an out-of-state student attending college in Colorado but has no intent to make the district his or her permanent home. REPEALED.~~

Repeal Temporary Rule 32.7.4(a):

32.7.4 Limited mail ballot procedures.

- (a) Mail ballots for the recall elections may be issued only to:
 - ~~(1) Military and overseas electors as specified in Article 8.3 of Title 1, C.R.S.;~~
 - ~~(2) Address Confidentiality Program electors as specified in Part 21 of Article 30 of Title 24, C.R.S.;~~
 - ~~(3) Eligible electors who complete and timely submit to the county an emergency mail ballot application, as outlined by section 1-7.5-115, C.R.S., and Rule 42; and~~
 - ~~(4) Electors at a healthcare facility as defined in section 1-1-104(18.5), C.R.S. REPEALED.~~

Repeal Temporary Rules 32.7.4(d) through (f):

(d) ~~Emergency mail ballots.~~

~~(1) An eligible elector may apply for an emergency mail ballot as outlined in section 1-7.5-115, C.R.S, and Rule 42. An elector who has no access to fax, email, or an authorized representative, may request delivery of his or her ballot by a bipartisan team of judges. The team of judges will deliver and return the elector's ballot following the HCF procedures in section 1-7.5-113, C.R.S.~~

~~(2) Repealed.~~

~~(3) Repealed.~~

~~(4) Unless expressly prohibited by statute, an elector's emergency mail ballot application is an open record that the county may release subject to redaction. REPEALED.~~

(e) ~~Healthcare facility (HCF) residents~~

~~(1) The county must deliver ballots to HCF residents in accordance with section 1-7.5-113, C.R.S.~~

~~(2) The county may deliver ballots to HCF residents where the facility has individual mail boxes or does not meet the minimum number of ballots outlined in section 1-7.5-113, C.R.S. REPEALED.~~

(f) ~~An elector who cannot vote in person because the elector is absent from his or her county of residence during the period when polling locations are open may apply for an absentee ballot.~~

~~(1) The elector may request to receive the ballot by mail or electronic transmission.~~

~~(2) The elector must return the absentee ballot by regular mail, and the ballot must be post marked by 7:00pm on election day. The county clerk will process and count all timely post marked absentee ballots that are received within eight days after election day. REPEALED.~~

II. Basis, Purpose, and Specific Statutory Authority

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

III. Statement of Justification and Reasons for Adoption of Temporary Rules

A statement of the Secretary of State's findings to justify the immediate adoption of this new rule on a temporary basis follows this notice and is incorporated by reference.⁴

IV. Effective Date of Adopted Rules

This new rule is immediately effective on a temporary basis.

Dated this 29th day of August, 2013,



Suzanne Staiert
Deputy Secretary of State

For

Scott Gessler
Colorado Secretary of State

⁴ Section 24-4-103(6), C.R.S. (2012).



Statement of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State Election Rules 8 CCR 1505-1

August 29, 2013

I. Basis and Purpose

This statement explains amendments to the Colorado Secretary of State Election Rules. The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Colorado election laws. The revision is also intended to improve elections administration in Colorado.

Temporary adoption is necessary both to comply with law and to preserve the public welfare given that two recall elections: one for senate district 11 in El Paso County and one for senate district 3 in Pueblo County, are set for September 10, 2013. The amendments to Rule 32.7 are necessary to comply with the Denver District Court ruling in Case No. 2013 CV 433491 on August 29, 2013. As a result of these amendments, election officials in the affected counties must resolve the subject matters of the repealed rules by reference to existing provisions of Title 1, C.R.S., as amended, and the Election Rules, to the extent applicable.

II. Rulemaking Authority

The constitutional and statutory authority is as follows:

1. Article XXI of the Colorado Constitution which prescribes recall procedures.
2. Section 1-1-107(2)(a), C.R.S., (2012), which authorizes the Secretary of State “[t]o promulgate, publish and distribute...such rules as the secretary finds necessary for the proper administration and enforcement of the election laws.”



Statement of Justification and Reasons for Adoption of Temporary Rules

Office of the Secretary of State
Election Rules
8 CCR 1505-1

August 29, 2013

Repeal Temporary Rules 32.7.3(d), 32.7.4(a), 32.7.4(d) through (f)

In accordance with Colorado election law,¹ the Secretary of State finds that certain amendments to the existing election rules must be adopted and effective immediately to ensure the uniform and proper administration and enforcement of Colorado election laws.

Temporary adoption is necessary both to comply with law and to preserve the public welfare given that two recall elections: one for senate district 11 in El Paso County and one for senate district 3 in Pueblo County, are set for September 10, 2013. The amendments to Rule 32.7 are necessary to comply with the Denver District Court ruling in Case No. 2013 CV 433491 on August 29, 2013. As a result of these amendments, election officials in the affected counties must resolve the subject matters of the repealed rules by reference to existing provisions of Title 1, C.R.S., as amended, and the Election Rules, to the extent applicable.

For these reasons, and in accordance with the State Administrative Procedure Act, the Secretary of State finds that adoption and immediate effect of the amendments to existing election rules is imperatively necessary to comply with state and federal law and to promote public interests.²

¹ Sections 1-1-107(1)(c), 1-1-107(2)(a), 1-1.5-104(1)(e), C.R.S. (2012). The Secretary of State has the power “[t]o promulgate, publish, and distribute...such rules as [the Secretary] finds necessary for the proper administration and enforcement of the election laws” and “...[the “Help America Vote Act of 2002”, 42 U.S.C. 15301-15545]....”

² Section 24-4-103(3)(6), C.R.S. (2012).

