



Notice of Temporary Adoption

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

August 23, 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.

(Additions to the current rules are reflected in SMALL CAPS and deletions from current rules are shown in ~~stricken type~~. *Annotations* may be included):

Repeal Temporary Rules 32.7.4(d)(2) and (3):

- (2) ~~In addition to the reasons outlined in section 1-7.5-115, C.R.S., an elector who cannot vote in person because the elector is absent from his or her county of residence may also apply for an emergency mail ballot. REPEALED~~
- (3) ~~Under sections 1-9-201 and 1-9-207, C.R.S., the reason an elector requests an emergency mail ballot is not subject to challenge. REPEALED~~

New Rule 32.7.4(f):

- (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

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

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

³ 8 CCR 1505-1.

TIMELY POST MARKED ABSENTEE BALLOTS THAT ARE RECEIVED
WITHIN EIGHT DAYS AFTER ELECTION DAY.

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 these new and amended rules on a temporary basis follows this notice and is incorporated by reference.⁴

⁴ Section 24-4-103(6), C.R.S. (2012).

IV. Effective Date of Adopted Rules

These new and amended rules are immediately effective on a temporary basis.⁵

Dated this 23rd day of August, 2013,



Suzanne Staiert
Deputy Secretary of State

For

Scott Gessler
Colorado Secretary of State

⁵ 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 23, 2013

I. Basis and Purpose

This statement explains amendments to the Colorado Secretary of State Election Rules. The amendments ensure uniform and proper administration, implementation, and enforcement of Federal and Colorado election laws.¹ The revisions provide clear and uniform guidance on conducting the September 10, 2013, recall elections in Senate Districts 3 and 11.

On August 16, 2013, the Secretary of State issued a notice of temporary adoption of Rule 37.2. It requires the September 10, 2013, recall election in Senate Districts 3 and 11 to be conducted as polling place rather than mail ballot elections. Among other things:

- Rule 32.7.4(d)(2) authorizes electors who cannot vote in person because they are absent from their county of residence to apply for emergency mail ballots under section 1-7.5-115, C.R.S., and Rule 42;
- Existing Rule 42 authorizes emergency mail ballot applicants to receive and return their ballots by electronic transfer;
- Rule 32.7.4(d)(3) states that the reason an elector requests an emergency mail ballot is not subject to challenge.

Upon consideration of input by members of the public during and after the public hearing on August 16, 2013, the Secretary of State has determined that Rule 37.2.4 should be amended in the following respects:

- The emergency mail ballot procedures of existing law will be applied according to the provisions of section 1-7.5-115, C.R.S., and Rule 42;
- Rule 32.7.4(d)(2) is repealed. Electors who cannot vote in person because they are absent from their county of residence during the period of time in which Voter Service and Polling Centers are open cannot apply for an emergency mail ballot unless they otherwise satisfy the qualifications under existing law;
- New subsection 32.7.4(f) is added, authorizing electors who cannot vote in person because they are absent from their county of residence during the period of time in which Voter Service and

¹ Article VII of the Colorado Constitution, Title 1 of the Colorado Revised Statutes, and the Help America Vote Act of 2002 ("HAVA"), P.L. No. 107-252.

Polling Centers are open to apply for an excuse absentee ballot, subject to the following requirements:

- An application for an excuse absentee ballot must be on a form approved by the Secretary of State, and may be submitted to the county clerk in person, by U.S. mail, or by email or fax;
 - Absentee ballots must be returned by U.S. mail;
 - To be counted, the ballot must be postmarked on or before 7:00pm on Election Day, and received by county clerk and recorder by close of business on the eighth day after Election Day.
- Rule 32.7.4(d)(3) is repealed. Challenges to all ballots cast by mail, including emergency mail ballots and excuse absentee ballots, must be asserted and resolved as provided by existing law under part 2 of article 9 of Title 1.

II. Rulemaking Authority

The statutory and constitutional authority is as follows:

1. 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.”
2. Section 1-1.5-104(1)(e), C.R.S., (2011), which authorizes the Secretary of State to “[p]romulgate rules in accordance with article 4 of title 24, C.R.S., as the secretary finds necessary for proper administration and implementation of [the “Help America Vote Act of 2002”, 42 U.S.C. 15301-15545].”



Statement of Justification and Reasons for Adoption of Temporary Rules

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

August 23, 2013

Repealed Rules: 32.7.4(d)(2) and (3), new Rule 32.7.4(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 during the September 10, 2013, recall elections in Senate Districts 3 and 11. Temporary adoption is necessary both to comply with law and to preserve the public welfare generally.

On August 16, 2013, the Secretary of State issued a notice of temporary adoption of Rule 37.2. It requires the September 10, 2013, recall election in Senate Districts 3 and 11 to be conducted as polling place rather than mail ballot elections. Among other things:

- Rule 32.7.4(d)(2) authorizes electors who cannot vote in person because they are absent from their county of residence to apply for emergency mail ballots under section 1-7.5-115, C.R.S., and Rule 42;
- Existing Rule 42 authorizes emergency mail ballot applicants to receive and return their ballots by electronic transfer;
- Rule 32.7.4(d)(3) states that the reason an elector requests an emergency mail ballot is not subject to challenge.

Upon consideration of input by members of the public during and after the public hearing on August 16, 2013, the Secretary of State has determined that Rule 37.2.4 should be amended in the following respects:

- The emergency mail ballot procedures of existing law will be applied according to the provisions of section 1-7.5-115, C.R.S., and Rule 42;
- Rule 32.7.4(d)(2) is repealed. Electors who cannot vote in person because they are absent from their county of residence during the period of time in which Voter Service and Polling Centers are open cannot apply for an emergency mail ballot unless they otherwise satisfy the qualifications under existing law;

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]...”

- New subsection 32.7.4(f) is added, authorizing electors who cannot vote in person because they are absent from their county of residence during the period of time in which Voter Service and Polling Centers are open to apply for an excuse absentee ballot, subject to the following requirements:
 - An application for an excuse absentee ballot must be on a form approved by the Secretary of State, and may be submitted to the county clerk in person, by U.S. mail, or by email or fax;
 - The deadline to apply for a special absentee ballot is:
 - 5:00 p.m. on Tuesday, September 3, 2013, if the special absentee ballot is sent by U.S. mail;
 - 5:00 p.m. on Election Day, if the special absentee ballot is sent by email or fax.
 - Absentee ballots and the voter affidavit, must be returned by U.S. mail;
 - To be counted, the ballot must be postmarked on or before 7:00pm on Election Day, and received by county clerk and recorder by close of business on the eighth day after Election Day.
- Rule 32.7.4(d)(3) is repealed. Challenges to all ballots cast by mail, including emergency mail ballots and excuse absentee ballots, must be asserted and resolved as provided by existing law under part 2 of article 9 of Title 1.

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

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