



Notice of Temporary Adoption

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

October 4, 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):

New Rule 12.15:

12.15 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE FOLLOWING PROCEDURES APPLY TO DELIVERY AND RETURN OF BALLOTS TO ELECTORS AFFECTED BY A DISASTER EMERGENCY.

12.15.1 DEFINITIONS

- (A) "AFFECTED ELECTOR" MEANS AN ELECTOR WHO IS DISPLACED FROM, OR ISOLATED IN THE ELECTOR'S RESIDENCE, AS A RESULT OF A DISASTER EMERGENCY.
- (B) "AFFECTED COUNTY" MEANS A COUNTY IN WHICH A DISASTER EMERGENCY EXISTS.
- (C) "DISASTER EMERGENCY" MEANS A STATE OF DISASTER EMERGENCY DECLARED BY AN AUTHORIZED PUBLIC OFFICER UNDER APPLICABLE LAW.

12.15.2 THE COUNTY CLERK OF AN AFFECTED COUNTY MAY ISSUE AN ORIGINAL OR REPLACEMENT BALLOT TO AN AFFECTED ELECTOR IN-PERSON AT THE COUNTY CLERK'S OFFICE UNDER SECTION 1-7.5-107(2.7), C.R.S., OR BY

¹ Sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2013).

² Section 24-4-103, C.R.S. (2013).

³ 8 CCR 1505-1.

MAIL AT ANY TIME AFTER OFFICIAL BALLOTS ARE PRINTED AND IN THE POSSESSION OF THE COUNTY CLERK UNDER SECTION 1-5-403(1), C.R.S.

12.15.3 DISASTER EMERGENCY MAIL BALLOTS.

- (A) AN AFFECTED ELECTOR WHO IS UNABLE TO OBTAIN HIS OR HER BALLOT IN-PERSON OR BY MAIL BECAUSE HE OR SHE IS ISOLATED IN HIS OR HER RESIDENCE MAY APPLY FOR A DISASTER EMERGENCY MAIL BALLOT ON A FORM PROVIDED BY THE SECRETARY OF STATE.
- (B) A DISASTER EMERGENCY MAIL BALLOT MAY BE ISSUED TO AND RETURNED BY AN AFFECTED ELECTOR BY MAIL, FAX, OR EMAIL.
- (C) THE COUNTY CLERK MUST RECORD THE ISSUANCE AND RECEIPT OF DISASTER EMERGENCY MAIL BALLOTS SENT BY ELECTRONIC TRANSMISSION ON A LOG APPROVED BY THE SECRETARY OF STATE.

12.15.4 THE COUNTY CLERK OF AN AFFECTED COUNTY MUST SUBMIT TO THE SECRETARY OF STATE AN AMENDMENT TO THE COUNTY'S CONTINGENCY PLAN. THE AMENDMENT, AT A MINIMUM, MUST INCLUDE:

- (A) A GENERAL DESCRIPTION OF THE AFFECTED AREAS;
- (B) A PLAN FOR NOTIFYING AFFECTED ELECTORS OF PROCEDURES TO OBTAIN AND RETURN BALLOTS;
- (C) PROCEDURES FOR DELIVERY AND RETURN OF BALLOTS TO AND FROM AFFECTED ELECTORS; AND
- (D) ANY PROCEDURES NECESSARY TO ENSURE THE SECURITY OF BALLOTS DELIVERED TO OR RETURNED BY AFFECTED ELECTORS.

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.

⁴ Section 24-4-103(6), C.R.S. (2013).

Dated this 4th day of October, 2013,



Suzanne Staiert
Deputy Secretary of State

For

Scott Gessler
Colorado Secretary of State



Statement of Basis, Purpose, and Specific Statutory Authority

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8 CCR 1505-1

October 4, 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.

The temporary rule is necessary given the close proximity of the 2013 Coordinated Election that will be conducted by mail ballot¹ and the risk that electors may be disenfranchised as a result of the historic flooding in September, 2013. Numerous eligible electors were, and continue to be, displaced from their homes or isolated in areas with no reliable or timely mail delivery. The Secretary of State must adopt rules to provide clear guidance to affected electors and county clerks regarding the procedures for ballot delivery and return.

II. Rulemaking Authority

The constitutional and statutory authority is as follows:

1. Section 1-1-107(2)(a), C.R.S., (2013), 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.”

¹ Article 7.5 of Title 1, C.R.S., as amended by HB 13-1303.



Statement of Justification and Reasons for Adoption of Temporary Rules

**Office of the Secretary of State
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October 4, 2013

New Rule: 12.15

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 the close proximity of the 2013 Coordinated Election that will be conducted by mail ballot² and the risk that electors may be disenfranchised as a result of the historic flooding in September, 2013. Numerous eligible electors were, and continue to be, displaced from their homes or isolated in areas with no reliable or timely mail delivery. The Secretary of State must adopt rules to provide clear guidance to affected electors and county clerks regarding the procedures for ballot delivery and return.

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.³

¹ Sections 1-1-107(1)(c), 1-1-107(2)(a), 1-1.5-104(1)(e), C.R.S. (2013). 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 Article 7.5 of Title 1, C.R.S., as amended by HB 13-1303.

³ Section 24-4-103(3)(6), C.R.S. (2013).