



Notice of Temporary Adoption

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

May 16, 2018

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 2.18:

2.18 REGISTERED ELECTORS ABSENT FROM THE STATE

2.18.1 A REGISTERED ELECTOR WHO IS ABSENT FROM THE STATE BUT WHO MAINTAINS COLORADO RESIDENCY IS ELIGIBLE TO BE REGISTERED AND TO VOTE WITHOUT HOLDING A PROPERTY INTEREST IN A FIXED HABITATION IN THE STATE.

2.18.2 AN ABSENT ELECTOR'S VOTER REGISTRATION ADDRESS IS THE ELECTOR'S LAST RESIDENCE ADDRESS IN THE STATE.

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.

¹ Sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2017).

² Section 24-4-103, C.R.S. (2017).

³ 8 CCR 1505-1.

⁴ Section 24-4-103(6), C.R.S. (2017).

Dated this 16th day of May, 2018,



Suzanne Staiert
Deputy Secretary of State

For

Wayne W. Williams
Colorado Secretary of State



Statement of Basis, Purpose, and Specific Statutory Authority

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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 Federal and Colorado election laws,¹ improve elections administration in Colorado, and increase the transparency and security of the election process.

New Rule 2.18 is necessary to ensure uniform application of the law throughout the state regarding residency for voter registration purposes.

II. Rulemaking Authority

The constitutional and statutory authority is as follows:

- Section 1-1-107(2) (a), C.R.S., (2017), 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 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.



Statement of Justification and Reasons for Adoption of Temporary Rules

Office of the Secretary of State
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New Rule 2.18

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 2018 Primary Election. The Secretary of State must adopt rules to provide clear guidance regarding residency as it relates to voter registration in the state.

In *Kuhn v. Williams*², the Colorado Supreme Court held that for voter registration purposes, an elector's "stated intent to live in Colorado in the future is relevant only if he has a fixed habitation in Colorado to which he presently intends to return." On May 14, 2018, at the Secretary of State's request, the Court modified its order to reflect that its holding applied only to a person who is attempting to establish residency in Colorado, not to an elector who is already a resident of Colorado.³

The Court's modification was critical because there are many circumstances in which an elector, having properly registered to vote in Colorado, is able to maintain his or her Colorado residency and voter registration in the absence of a legal interest in a fixed habitation. Colorado residents may be absent from the state for a number of reasons, including to volunteer in the Peace Corps, to do missionary work, or to find seasonal work, to name a few. These residents remain eligible to be registered and to vote in Colorado, despite their absence and regardless of their property interests in the state.

New Rule 2.18 is consistent with the Supreme Court's holding and necessary to ensure uniform application of residency requirements in Colorado for electors who are absent from the state but who remain Colorado residents.

¹ Sections 1-1-107 (1) (c), 1-1-107(2) (a), 1-7.4-104, C.R.S. (2017).

² *Kuhn v. Williams*, 2018 CO 30, ¶ 53 (April 23, 2018).

³ *Kuhn v. Williams*, 2018 CO 30M, ¶ 53 (May 14, 2018).

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.⁴

⁴ Section 24-4-103(3) (6), C.R.S. (2017).