

**STATE OF COLORADO**  
**Department of State**

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**Statement of Justification and Reasons for Adoption of Emergency Rules**

December 6, 2007

**New Rules 37.3.3 and 37.3.4**  
**Secretary of State Election Rules**

Under section 1-1-107(2)(a), C.R.S. (2007), 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.” In addition, section 1-1.5-104(1)(e), C.R.S. (2007), authorizes the Secretary of State “to promulgate rules...as the secretary finds necessary for the proper administration, implementation, and enforcement of [the “Help America Vote Act of 2002”, 42 U.S.C. 15301-15545]....”

Certain amendments to the existing election rules are immediately necessary for the uniform and proper administration and enforcement of the election laws of the State of Colorado. New Rules 37.3.3 and 37.3.4 address questions from county clerk and recorders about what kind of voting systems and equipment may be purchased after new federal standards take effect on December 13, 2007, in connection with existing rule and sections 1-5-601.5, 1-5-612 (2), and 1-5-613 (2), C.R.S.

The Election Assistance Commission (EAC) adopted the 2005 Voluntary Voting System Standards in 2005, and stated that they would take effect 24 months later, on December 13, 2007. Section 1-5-601.5, C.R.S. states that voting systems “offered for sale” must meet the standards promulgated in 2002 by the EAC “and that may thereafter be promulgated by the federal election assistance commission”. Some county clerks have interpreted this to mean that, when the 2005 standards take effect on December 13, 2007, all systems offered for sale in Colorado must meet the 2005 standards. In other words, beginning December 13, clerks can only purchase systems that meet the 2005 standards. However, there are no systems that have been certified to the 2005 standards, and it is expected that no systems will be certified to the 2005 standards for many months. Under this interpretation, therefore, clerks must make their purchases prior to December 13, in order to be ready for the 2008 elections.

However, the Secretary of State, based on advice from the Attorney General’s Office, believes that this interpretation is incorrect; and that county clerks may continue to purchase systems meeting the 2002 standards after December 13. New rules 37.3.3 and 37.3.4 will resolve this issue by providing the correct interpretation and expressly permitting the purchase of voting machines.

A public Rulemaking hearing was conducted pursuant to section 24-4-103(4)(a), C.R.S. (2007), on November 30, 2007 to receive comment and testimony on these and other proposed rules. The Secretary of State finds that New Rules 37.3.3 and 37.3.4 must be adopted and effective immediately in order to provide guidance to county clerks prior to December 13, 2007 when the new federal standards take effect.

The Secretary of State finds that, in order to ensure the uniform and proper administration and enforcement of the election laws in accordance with section 1-1-107 (1)(c), C.R.S., the adoption of these amendments 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. (2007), the Secretary of State finds that adoption of the amendments 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.”