



OFFICE OF THE SECRETARY OF STATE

Statement of Need and Reasonableness

Proposed Amendment to Permanent Rules Relating to Voter Registration, Petitions, Absentee Ballots, Optical Scan Voting Systems, Recounts, Election Judge Training Program and Ballot Preparation, *Minnesota Rules*, Chapters 8200, 8205, 8210, 8230, 8235, 8240 and 8250.

Introduction

In his role as the chief elections official in Minnesota, the Secretary of State partners with local election professionals to administer elections. In 2013, significant changes were made to the statutes governing elections and election administration. The Secretary is proposing relatively minor changes to the rules to reflect these statutory changes. One of the more significant changes adopted by the Legislature in 2013 was the reduction in the number of people for whom one registered voter could swear under penalty of perjury that they had personal knowledge lived in the precinct (“vouching”). In light of the reduction of vouching as a form of proof of residence for same-day registration and in light of gaps in the current proofs of residence identified by election officials and citizen groups, the proposed rules include additional authorized proofs of residence that can be used to help reduce the number of individuals who would have to use vouching as their only option for providing of proof of residence. The Secretary selected the proposed additions to the list of authorized proofs of residence based on feedback from local elections officials, citizens and stakeholders.

The Secretary is also proposing changes to the absentee and mail ballot materials that the Secretary believes will provide voters with clearer instructions and assist voters in making fewer mistakes that result in the rejection of absentee ballots. The proposed rules include clarifications to some rules, as well as the repeal of burdensome and obsolete rules. In addition, the Secretary is proposing rules that will clarify the process for Major and Minor Political Party petitions, and rules that will clarify the procedures used to administer mail ballot elections. Finally, the Secretary is proposing a consolidation of certain rules to prevent administrative confusion and to comport to the requirements of the new statutory language.

A Request for Comments was published in the State Register on June 24, 2013, and a number of responses were received. The Request for Comments was also sent to a broad spectrum of interested parties pursuant to a Notice plan similar to that described on page

13-16 of this Statement of Need and Reasonableness (“SONAR”). The Secretary’s staff used these comments as well as input from local election officials to draft the proposed rules.

Alternative Format

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or audio file. To make a request, contact Julie Strother at the Office of the Secretary of State, 180 State Office Building, 100 Rev. Dr. Martin Luther King, Jr. Boulevard, Saint Paul MN 55155, Julie.Strother@state.mn.us, 651-201-1342, 651-215-0682 (fax). TTY users may call the Minnesota Relay Service at 1-800-627-3529.

Statutory Authority

Minnesota Statutes, sections 201.022, 201.061, 201.071, 201.091, 201. 221, 203B.04, 203B.08, 203B.09, 203B.125, 204B.071, 204B.25, 204B.45, 204C.361, 204D.08, 204D.11, 205.17, 205A.08, and 206.84, authorize the Office: to adopt rules for the administration of the statewide voter registrations system; to define documentation sufficient for election day registration; to define the form of the voter registration application and the voter certificate of eligibility; to provide for public information list or statewide information system requests; governing the general administration of voter registration and the format and use of polling place rosters; governing absentee ballot procedures for persons permanently unable to go to the polling place due to illness or disability; providing procedures for the accurate and timely return of absentee ballots; establishing methods and procedures for issuing ballot cards and related absentee ballot forms; establishing the form, content and type size and style for the printing of blank applications for absentee ballots, absentee voter lists, return envelopes, certificates of eligibility to vote by absentee ballot, ballot envelopes and directions for casting an absentee ballot; governing the manner in which petitions required for any election are circulated, signed, filed and inspected; establishing programs for the training of county auditors, local election officials and election judges; providing for the conduct of mail balloting, including instructions to voters, procedures for the challenge of voters, public observation of the counting of ballots, and procedures for the proper handling and safeguarding of ballots to ensure the integrity of the election; adopting uniform recount procedures; providing for the format and preparation of the state primary ballot and the state general election ballot as well as municipal and school district ballots; and providing for procedures to instruct election judges and voters in the use of electronic voting systems and electronic ballot markers, as well as standard ballot formats for electronic voting systems; governing the rotation of candidate names.

The Secretary’s statutory authority to adopt rules governing voting is set forth in:

Minnesota Statutes, section 201.022, subd. 2, which provides:

The secretary of state shall make permanent rules necessary to administer the system required in subdivision 1.

Minnesota Statutes, section 201.061, subd. 3, which provides:

(a) An individual who is eligible to vote may register on election day by appearing in person at the polling place for the precinct in which the individual maintains residence, by completing a registration application, making an oath in the form prescribed by the secretary of state and providing proof of residence. An individual may prove residence for purposes of registering by:

(1) presenting a driver's license or Minnesota identification card issued pursuant to section 171.07;

(2) presenting any document approved by the secretary of state as proper identification;

(3) presenting one of the following:

(i) a current valid student identification card from a postsecondary educational institution in Minnesota, if a list of students from that institution has been prepared under section 135A.17 and certified to the county auditor in the manner provided in rules of the secretary of state; or

(ii) a current student fee statement that contains the student's valid address in the precinct together with a picture identification card; or

(4) having a voter who is registered to vote in the precinct, or who is an employee employed by and working in a residential facility in the precinct and vouching for a resident in the facility, sign an oath in the presence of the election judge vouching that the voter or employee personally knows that the individual is a resident of the precinct. A voter who has been vouched for on election day may not sign a proof of residence oath vouching for any other individual on that election day. A voter who is registered to vote in the precinct may sign up to 15 proof-of-residence oaths on any election day. This limitation does not apply to an employee of a residential facility described in this clause. The secretary of state shall provide a form for election judges to use in recording the number of individuals for whom a voter signs proof-of-residence oaths on election day. The form must include space for the maximum number of individuals for whom a voter may sign proof-of-residence oaths. For each proof-of-residence oath, the form must include a statement that the voter is registered to vote in the precinct, personally knows that the individual is a resident of the precinct, and is making the statement on oath. The form must

include a space for the voter's printed name, signature, telephone number, and address.

The oath required by this subdivision and Minnesota Rules, part 8200.9939, must be attached to the voter registration application.

(b) The operator of a residential facility shall prepare a list of the names of its employees currently working in the residential facility and the address of the residential facility. The operator shall certify the list and provide it to the appropriate county auditor no less than 20 days before each election for use in election day registration.

(c) "Residential facility" means transitional housing as defined in section 256E.33, subdivision 1; a supervised living facility licensed by the commissioner of health under section 144.50, subdivision 6; a nursing home as defined in section 144A.01, subdivision 5; a residence registered with the commissioner of health as a housing with services establishment as defined in section 144D.01, subdivision 4; a veterans home operated by the board of directors of the Minnesota Veterans Homes under chapter 198; a residence licensed by the commissioner of human services to provide a residential program as defined in section 245A.02, subdivision 14; a residential facility for persons with a developmental disability licensed by the commissioner of human services under section 252.28; group residential housing as defined in section 256I.03, subdivision 3; a shelter for battered women as defined in section 611A.37, subdivision 4; or a supervised publicly or privately operated shelter or dwelling designed to provide temporary living accommodations for the homeless.

(d) For tribal band members, an individual may prove residence for purposes of registering by:

(1) presenting an identification card issued by the tribal government of a tribe recognized by the Bureau of Indian Affairs, United States Department of the Interior, that contains the name, address, signature, and picture of the individual; or

(2) presenting an identification card issued by the tribal government of a tribe recognized by the Bureau of Indian Affairs, United States Department of the Interior, that contains the name, signature, and picture of the individual and also presenting one of the documents listed in Minnesota Rules, part 8200.5100, subpart 2, item B.

(e) A county, school district, or municipality may require that an election judge responsible for election day registration initial each completed registration application.

Minnesota Statutes, section 201.071, subd. 4, which provides:

A county auditor who receives a registration application indicating that an individual was previously registered in a different county in Minnesota shall update the voter's record electronically through the statewide registration system in the manner prescribed by the secretary of state. A county auditor who receives a registration application or notification requiring a change of registration records under this subdivision as a result of an election day registration shall also check the statewide registration system to determine whether the individual voted in more than one precinct in the most recent election.

Minnesota Statutes, section 201.091, subd. 4, which provides:

The county auditor shall make available for inspection a public information list which must contain the name, address, year of birth, and voting history of each registered voter in the county. The telephone number must be included on the list if provided by the voter. The public information list may also include information on voting districts. The county auditor may adopt reasonable rules governing access to the list. No individual inspecting the public information list shall tamper with or alter it in any manner. No individual who inspects the public information list or who acquires a list of registered voters prepared from the public information list may use any information contained in the list for purposes unrelated to elections, political activities, or law enforcement. The secretary of state may provide copies of the public information lists and other information from the statewide registration system for uses related to elections, political activities, or in response to a law enforcement inquiry from a public official concerning a failure to comply with any criminal statute or any state or local tax statute.

Before inspecting the public information list or obtaining a list of voters or other information from the list, the individual shall provide identification to the public official having custody of the public information list and shall state in writing that any information obtained from the list will not be used for purposes unrelated to elections, political activities, or law enforcement. Requests to examine or obtain information from the public information lists or the statewide registration system must be made and processed in the manner provided in the rules of the secretary of state.

Upon receipt of a statement signed by the voter that withholding the voter's name from the public information list is required for the safety of the voter or the voter's family, the secretary of state and county auditor must withhold from the public information list the name of a registered voter.

Minnesota Statutes, section 201.221, subdivision 1, which provides:

To implement the provisions of this chapter, the secretary of state shall adopt rules consistent with federal and state election laws.

Minnesota Statutes, section 201.221, subdivision 2, which provides:

The secretary of state shall assist local election officers by devising uniform forms and procedures. The secretary of state shall provide uniform rules for maintaining voter registration records on the statewide registration system. The secretary of state shall supervise the development and use of the statewide registration system to insure that it conforms to applicable federal and state laws and rules.

Minnesota Statutes, section 201.221, subdivision 3, which provides:

The secretary of state shall prescribe the form of polling place rosters that include the voter's name, address, date of birth, school district number, and space for the voter's signature. The secretary of state may prescribe additional election-related information to be placed on the polling place rosters on an experimental basis for one state primary and general election cycle; the same information may not be placed on the polling place roster for a second state primary and general election cycle unless specified in this subdivision. The polling place roster must be used to indicate whether the voter has voted in a given election. The secretary of state shall prescribe procedures for transporting the polling place rosters to the election judges for use on election day. The secretary of state shall prescribe the form for a county or municipality to request the date of birth from currently registered voters. The county or municipality shall not request the date of birth from currently registered voters by any communication other than the prescribed form and the form must clearly indicate that a currently registered voter does not lose registration status by failing to provide the date of birth. In accordance with section 204B.40, the county auditor shall retain the prescribed polling place rosters used on the date of election for 22 months following the election.

Minnesota Statutes, section 203B.04, subd. 5(c), which provides:

The secretary of state shall adopt rules governing procedures under this subsection.

Minnesota Statutes, section 203B.08, subd. 4, which provides:

The secretary of state shall adopt rules establishing procedures to be followed by county auditors and municipal clerks to assure accurate and timely return of absentee ballots. The rules of the secretary of state may authorize procedures and methods of return in addition to those specified in this section.

Minnesota Statutes, section 203B.09, which provides:

The secretary of state shall adopt rules establishing the form, content, and type size and style for the printing of blank applications for absentee ballots, absentee voter lists, return envelopes, certificates of eligibility to vote by absentee ballot, ballot envelopes and directions for casting an absentee ballot. Any official charged with the duty of printing any of these materials shall do so in accordance with these rules.

Minnesota Statutes, section 203B.125, which provides:

The secretary of state shall adopt rules establishing methods and procedures for issuing ballot cards and related absentee forms to be used as provided in section 203B.08, subdivision 1a, and for the reconciliation of voters and ballot cards before tabulation under section 204C.20, subd. 1.

Minnesota Statutes, section 204B.071, which provides:

The secretary of state shall adopt rules governing the manner in which petitions required for any election in this state are circulated, signed, filed, and inspected. The secretary of state shall provide samples of petition forms for use by election officials.

Minnesota Statutes, section 204B.25, subdivision 2, which provides:

The secretary of state shall adopt rules establishing programs for the training of county auditors, local election officials, and election judges by county auditors as required by this section.

Minnesota Statutes, section 204B.45, subdivision 3, which provides:

The Minnesota Election Law is applicable to mail balloting except as provided by this section or by rules adopted by the secretary of state, but only paper ballots may be used. The secretary of state shall adopt rules for the conduct of mail

balloting, including instructions to voters, procedures for challenge of voters, public observation of the counting of ballots, and procedures for proper handling and safeguarding of ballots to ensure the integrity of the election.

Minnesota Statutes, section 204C.361, which provides:

(a) The secretary of state shall adopt rules according to the Administrative Procedure Act establishing uniform recount procedures. All recounts provided for by sections 204C.35, 204C.36, and 206.88, shall be conducted in accordance with these rules.

(b) Notwithstanding Minnesota Rules, part 8235.0800, the requirement that ballots be recounted by precinct means that a recount official shall maintain the segregation of ballots by precinct but the recount official may recount more than one precinct at a time in physically separate locations within the room in which the recount is administered.

Minnesota Statutes, section 204D.08, subdivision 1, which provides:

Except as provided in this section, state primary ballots shall be printed in the same manner as state general election ballots as far as practicable. A sufficient number shall be printed for each precinct and ward in the state.

The secretary of state shall adopt rules for the format and preparation of the state primary ballot.

Minnesota Statutes, section 204D.11, subdivision 1, which provides:

The names of the candidates for all state and federal offices, all proposed constitutional amendments, all county offices and questions, and all judicial offices voted on at the state general election shall be placed on a single ballot that shall be known as the "state general election ballot." This ballot shall be prepared by the county auditor subject to the rules of the secretary of state. The secretary of state shall adopt rules for preparation and time of delivery of the state general election ballot.

Minnesota Statutes, section 205.17, subdivision 6, which provides:

The ballots for municipal elections must be prepared by the municipal clerk in the manner provided in the rules of the secretary of state.

Minnesota Statutes, section 205A.08, subdivision 5, which provides:

The ballots for school district elections must be prepared by the school district clerk in the manner provided in the rules of the secretary of state.

Minnesota Statute, section 206.84, subdivision 2, which provides:

The ballot information must be in the same order provided for paper ballots, except that the information may be in vertical or horizontal rows, or on a number of separate pages. The secretary of state shall provide by rule for standard ballot formats for electronic voting systems. Electronic ballot displays and audio ballot readers shall be in the order provided for on the optical scan ballot. Electronic ballot displays may employ zooms or other devices as assistive voting technology. Audio ballot readers may employ rewinds or audio cues as assistive voting technology.

Ballot cards may contain special printed marks as required for proper positioning and reading of the ballots by electronic vote counting equipment. Ballot cards must contain an identification of the precinct for which they have been prepared which can be read visually and which can be tabulated by the automatic tabulating equipment.

Under these statutes, the Secretary of State has the necessary statutory authority to adopt the proposed rules.

Regulatory Analysis

Minnesota Statutes, section 14.131, sets out seven factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (7) below quote these factors and give the Office's response.

“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”

The proposed rules will benefit multiple classes of persons including voters, election officials and local governments and the Office of Secretary of State.

Eligible voters will benefit from the proposed rules because they provide more user-friendly and intuitive absentee and mail balloting instructions and certifications, making it easier to successfully complete these processes. The proposed rules also provide for additional

proofs of residence for same-day registration, which especially benefits voters in light of the reduction in the ability to use vouching for providing proof of residence. These additional proofs of residence will benefit voters because they reflect the changes in technology and reports from citizen groups and elections officials as to the forms of additional proofs of residence that will increase the number of otherwise eligible voters who are able to register on election day.

Election officials and local governments will benefit from the proposed rules because they clarify and revise current rule provisions governing absentee and mail balloting materials and processing. These proposed changes will make it easier for officials to administer these procedures, and lead to fewer calls from confused voters. The proposed rules also benefit elections officials by clarifying certain procedures that have previously resulted in rejection of absentee ballots. Reducing the number of rejected absentee ballots also reduces the amount of time and resources that an election official has to spend re-sending materials to voters in order to allow voters to correct the errors.

The proposed rules are updated to conform to the recent changes in Minnesota law and obsolete rules have been repealed, allowing local elections officials to better rely upon the rules as a guide. Finally, the proposed rules are updated to reflect the changing voter technology, allowing elections officials to better apply the rules to the changing technological environment.

The **Office of Secretary of State** will benefit from the proposed rules because they clarify the rules, modify the rules so that they comply with current law, make changes requested by local election officials, and remove obsolete rules. The proposed rules also provide the Office with a set process to follow when reviewing petitions for Major and Minor Political Party recognition. The more that voters and election officials understand the rules, the fewer resources the Office of the Secretary of State must expend to answer questions.

Many of the groups that benefit from the proposed rules will also bear some of the costs associated with implementing the rules.

The **Office of Secretary of State**, for example, will bear some of the costs of the proposed rules. The Office will incur staff costs, for example, to prepare new sample instructions and certificates that comply with the changes made in the proposed rules. These costs should be minimal, however, because the Office's staff simply will make the changes to the current electronic versions of the forms and print these new samples.

Election officials and the local governments for whom they work will bear some costs related to printing new instructions and absentee and mail ballot materials, but these costs should be minimal. To the extent possible the proposed rules provide for the use of excess

stock of materials when a change to forms is suggested, in order to ensure the most efficient use of government resources.

“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”

The Secretary of State is already required to conduct training for election officials. The provisions of the new rules will be incorporated into the current training session. As discussed in factor (1), the Secretary’s office already provides samples of the material discussed in the rules to local governments and does not expect to incur any additional costs due to the proposed rules.

To the best of the knowledge and belief of the Office of the Secretary of State, there will be no impact on state or local revenues, nor will the proposed rules cause any other state agency to incur costs.

“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”

This factor is discussed in the rule-by-rule section of the analysis.

“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”

This factor is discussed in the rule-by-rule section of the analysis.

“(5) the probable costs of complying with the proposed rule including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”

There will be some limited one-time cost increases to county, city, township and school district election officials due to the need to re-print absentee balloting materials (for those that have leftover stock remaining to be used). However, when possible the proposed rules provide for a method for the depletion of the remaining stock. Some proposed changes to the forms are required by the legislative changes adopted in 2013 and not independently imposed by the proposed rules.

“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals”

The proposed changes to the absentee and mail ballot instructions will clarify the requirements that must be met for voters to have their ballots accepted and counted. Not making these changes could result in voters continuing to make mistakes that otherwise could have been avoided. These mistakes can lead to voters’ ballots being rejected, to the dismay of voters and requiring local election officials to incur the expense of sending replacement ballots to the voters.

The changes to the rules regarding preparation of ballots will ease the burden on those using the optical scan ballots and towns conducting elections in March. Not making these changes causes confusion and could prevent a county from implementing new voting technology.

The rules regarding authorized proofs of residence expands options for voters. Not adopting these rules could prevent voters who are otherwise eligible to vote from registering on election day, especially given the recent statutory changes.

The changes clarifying the language of certain rules, incorporating already practiced interpretations and procedures, and repealing obsolete rules will ensure uniformity in election practice. Not adopting these changes could result in disparate treatment of voters or ballot materials throughout the state.

“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”

Nothing in the proposed rules is in conflict with federal regulations.

Consultation with Commissioner of Management and Budget on Local Government Impact

As required by Minn. Stat. § 14.131, the Secretary of State has consulted with the Commissioner of Management and Budget. The Minnesota Management and Budget office provided the Secretary of State with a memorandum after reviewing the proposed rules and SONAR and responded that, “[b]ased upon the information provided to me by the Office of the Secretary of State, I believe that the proposed rule revisions will have minimal fiscal impact on local units of government, and the Secretary of State has adequately considered local government costs.”

In this portion of the SONAR, there usually appears a discussion of the fiscal impact and benefit of the proposed rules on local government. However, because the proposed rules

directly impact local government and as the impact and benefits are addressed throughout the SONAR both in the Regulatory Analysis preceding this section and in the rule-by-rule analysis, that information is not repeated here.

Cost of Complying for Small City and Office of Secretary of State **Determination of Cost**

As required by Minn. Stat. § 14.127, the Office has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small city and the Office has determined that it will not. The Office has made this determination based on the probable costs of complying with the proposed rule, as described in the Regulatory Analysis section of this SONAR on pages 9 to 13 and the rule-by-rule analysis.

The Office also asked Wendy Lewin, City Clerk of the City of Spring Park, Minnesota (a small city affected by the proposed rules), to estimate whether the cost to the city of complying with the proposed rules during the first year would exceed \$25,000. Ms. Lewin concluded that compliance with the proposed changes within the first year would be under the \$25,000 threshold.

Performance Based Rules

Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the Office, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the Office in meeting those goals. The proposed rules are specifically designed to improve the performance election administration and in person, absentee and mail ballot voting.

Additional Notice

Minnesota Statutes, section 14.131, requires a description of the agency's efforts to provide additional notification under § 14.14, subd. 1a, to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made.

The following is: (1) a description of our proposed Additional Notice Plan and (2) an explanation of why we believe our Additional Notice Plan complies with Minn. Stat. § 14.131, i.e., why our Additional Notice Plan constitutes good faith efforts to seek information by other methods designed to reach persons or classes of persons who might be significantly affected by the proposal.

The Additional Notice Plan is to send a copy of the Proposed Amendments to Rules and the Statement of Need and Reasonableness for those Proposed Amendments, the Notice of

Hearing, and a transmittal letter to the following persons by electronic mail wherever possible and by United States mail where electronic mail addresses are unavailable:

All members of the following legislative committees with policy oversight in this area of law:

House Elections Committee
Senate Rules Subcommittee on Elections

Chairs and Ranking Minority Members of the following legislative committees with fiscal oversight in this area:

House State Government Finance and Veterans Affairs Committee
House Ways and Means Committee
Senate State Departments and Veterans Division
Senate Finance Committee

House and Senate Leadership from the Majority and Minority Caucuses

Governor Dayton

Former Secretaries of State:

Mary Kiffmeyer
Joan Anderson Growe
Arlen Erdahl

Chairs of the Minnesota's political parties:

Democratic-Farmer-Labor
Republican
Independence
Green
Libertarian
Constitution

The following election attorneys:

Eric Magnuson
Fritz Knaak
Reid LeBeau
Tony Trimble
Charles Nauen
Alan Weinblatt

Representatives of voting equipment and service vendors:

- Dominion
- Election Systems & Software
- Sequoia
- Synergy Graphics
- Hart
- Knowink
- Data Card
- Election Administrators
- SOE

Representatives of:

- Association of Minnesota Counties
- League of Minnesota Cities
- Minnesota Association of County Officers/Minnesota County Auditors
- Minnesota Association of Townships
- Minnesota School Boards Association

Representatives of the following public-interest groups:

- Center of the American Experiment
- Common Cause
- League of Women Voters
- Minnesota Citizens Concerned for Life
- Minnesota Council of Nonprofits
- Minnesota Majority
- Minnesota Taxpayers League
- TakeAction Minnesota

Representatives of the following agencies and organizations of people with disabilities:

- Minnesota Commission Serving Deaf, Deaf-Blind and Hard of Hearing People
- Minnesota Disability Law Center
- Minnesota State Council on Disability
- National Federation of the Blind

Representatives of the following groups representing communities of color in Minnesota:

- Council on Asian-Pacific Minnesotans
- Council on Black Minnesotans
- Council on the Affairs of Chicano/Latino People

Minnesota Indian Affairs Council
Native Vote Alliance of Minnesota

Representatives of the following groups representing additional organizations that provided comments in response to the notice of rulemaking:

ACLU of Minnesota
Catholic Charities
Citizens for Election Integrity Minnesota
Education Minnesota
Minnesota Public Interest Research Group
Minnesota School Employees Association

The Office of the Secretary of State believes that this Additional Notice Plan complies with the statute because the notice materials – described above – provide the principal representatives of the affected parties with ample notice and opportunity to provide suggestions, proposals and comments regarding the proposed rule amendments.

The listed persons and organizations receiving the Additional Notice together represent the vast majority of persons interested in these rules. They frequently comment on (or make) public policy. They represent several parties and a number of different positions on the spectrum of political thought, and will adequately represent the views of a diverse group of Minnesota citizens, which is a central purpose of the rulemaking process. They represent:

Policymakers, especially in the Legislature, who have oversight of this subject matter area;
Political parties;
Professional elections administrators;
Former Secretaries of State;
Local governments that actually implement elections;
Lawyers with expertise in elections matters; and
Public-Policy groups representing a spectrum of populations and views held within the general public.

The scope of persons to receive notice and the main points of this Additional Notice Plan include everyone from—some organizations in addition to—those included in the Additional Notice Plan for the Request for Comments that was reviewed by the Office of Administrative Hearings and approved by Administrative Law Judge Ann C. O’Reilly in a June 18, 2013, letter. The Additional Notice Plan contained in this SONAR was approved by Administrative Law Judge Erick L. Lipman in an order dated November 12, 2013.

The Notice Plan also includes giving notice required by statute. The Office will send the proposed rules and Notice of Intent to Adopt to everyone who has registered to be on

the Office's rulemaking mailing list under Minn. Stat. § 14.14, subd. 1a. The Office will also give notice to the Legislature per Minn. Stat. § 14.116.

Determination About Rules Requiring Local Implementation

As required by Minn. Stat. § 14.128, subd. 1, the Office has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The Office has determined that they do not because all election laws in Minnesota are State laws and thus no local election law changes are required.

List of Witnesses

The Office anticipates having the following witnesses testify in support of the need for and reasonableness of the rules at the public hearing:

Gary Poser, Director of Elections, Office of the Secretary of State
Beth Fraser, Deputy Secretary of State, Office of the Secretary of State

Rule-by-Rule Analysis

The Secretary is proposing relatively few changes to the rules other than those required by the statutory amendments adopted by the Minnesota Legislature in 2013. Nevertheless, the proposed rule document is longer than one might expect due to the fact that the statutory amendments require changes to be made to multiple rule subparts. The proposed changes, which are outlined in detail below, include the following:

- Updating the rules to comport with the statutory changes in the 2013 Elections Omnibus Bill. See Minn. Laws 2013, chapter 131.
- Rewording certain rule parts to clarify the rule intent.
- Clarifying the requirements for proving employment at a residential facility for the purpose of residential facility vouching.
- Adding proofs of residence allowed for same-day registration and removing a proof of residence that is not in use.
- Providing a formalized process for the Major and Minor Political Party recognition petitions.
- Revising the instructions in absentee and mail ballot materials to reduce voter and witness error.
- Providing processes for handling materials in mail ballot elections.
- Adjusting rules to accommodate new voting technology.
- Revising the ballot preparation rules to reflect the removal of all references to colored ballots and the colored ballot system.

When reviewing the rules draft, please note that some text in the instructions for voters and on the certificates of eligibility is underlined to indicate the newly added language. Other text is underlined for emphasis in the current rules, and is not proposed to be changed. Only the proposed changes are outlined below.

8200 Voter Registration

The proposed changes to **8200.2200** are necessary to reflect the changes in Laws of Minnesota 2013, chapter 131, article 2, section 9. The Legislature removed the requirement that each county auditor designate one public building per 30,000 residents for preregistration of voters. The statute now only requires that the county auditor designate a number of public buildings where preregistration of voters can occur. It is necessary and reasonable to remove the reference to requiring one building per 30,000 residents in the rule to reflect this change in Minnesota law.

The proposed changes to **8200.2900** were made in response to feedback from community groups that this language was unclear, and the language as originally written could mislead a voter into thinking that the voter would be unable to register at the polls on election day. The language change proposed is reasonable and necessary to clarify that a late registration results in the voter being registered *after* election day, but the voter can still register at the polls on election day using the same-day registration process.

The proposed changes to **8200.3200** simply removes the abbreviated definition of exempt individuals under the Federal Voting Accessibility for the Elderly and Handicapped Act. The subpart maintains the reference to the Federal Voting Accessibility for the Elderly and Handicapped Act, but in removing the abbreviated definition of exempt individuals, the subpart avoids confusion and allows the reader to go directly to the Federal Voting Accessibility for the Elderly and Handicapped Act for the definition of exempt individual under the act. The Office considered adding the full text of the Federal Voting Accessibility for the Elderly and Handicapped Act definition from the federal statute, but decided against incorporation to avoid confusion if congress were to make changes. It is reasonable and necessary to make this change in order to ensure that voters and election officials are relying on the actual definition of exempt individuals contained in the Federal Voting Accessibility for the Elderly and Handicapped Act.

The proposed changes to **8200.3600** are necessary to reflect the current state of Minnesota law. The proposed changes to this rule part clarify that a person who has previously registered to vote in Minnesota who changes residence must be permitted to vote only after their registration has been updated. This change removes the language that implies that the only way to update such registration is to complete a voter registration application. Minnesota law allows a person to update their registration by completing a voter registration application, but also allows the counties to update a voter's registration if the

voter has changed his or her address in the National Change of Address registry. In the case of Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) voters who are eligible to register, Minnesota law allows them to register or update their registration by submitting the Federal Post Card Application or a Federal Write-in Absentee Ballot.

The proposed changes to **8200.5100, subp. 1, clause E**, provide guidance to election judges as to what a residential facility employee may show in order to demonstrate that he or she is an employee of the facility. This change is reasonable and necessary because Minnesota law defines residential facility and provides that an employee of a residential facility may provide proof of residence for a voter by signing an oath in the presence of an election judge that the employee personally knows that the voter is a resident of the precinct because the voter lives within the precinct in the residential facility (“vouching”). Minn. Stat. § 201.061, subd.3(a)(4). The statute sets out one way for employees to establish their employment in the residential facility by requiring that residential facilities provide a certified list of their employees to their county auditor at least 20 days before the election. Minn. Stat. § 201.061, Subd. 3(b). These lists are provided to election judges in the polling place, who can establish that an individual is an employee at the facility by looking their name up on the list. However, the law does not prohibit employees from using other means to prove their employment.

There are cases in which an employee would need to prove employment by methods other than the list provided by the employer. For example, lists may not be provided in the case of a special election, or employees may be hired after the list was submitted but still meet the requirements under the law to vouch for residents because they are currently “employed by and working in a residential facility in the precinct.” Further, an eligible voter should not be penalized and prevented from voting if the residential facility failed to provide a list but an employee is able to provide proof of employment and provide proof of residence for the residential facility voter. The statute does not provide additional guidance for election judges on the methods for verifying that the facility worker is an employee of the facility, and municipal elections officials have reported varying methods of determining the veracity of a facility worker’s employment. It is reasonable and necessary to provide guidance in the rules regarding what types of proof an employee may show in order to demonstrate that he or she is an employee of the residential facility.

Further, it is reasonable and necessary that the guidance provided in the rule subpart not be exclusive because the statute does not limit the manner in which an employee can prove employment at a residential facility. Because the statute does not limit the manner of proof, providing an exclusive list would be inappropriate. By using “including” to introduce the guidance regarding methods of proof of employment, the rule subpart makes clear that the rule is intended to provide guidance and ensure that, at a minimum, these proofs of employment are accepted uniformly across the state. This is reasonable and necessary to

ensure that there is guidance provided as to what are acceptable proofs, without providing an exclusive list.

Currently 8200.5100, subp. 1, clause E, provides that an employee of a facility can provide documentation of their employment by providing a statement on the facility's letterhead that the individual is an employee of the facility, signed and dated by a manager or equivalent officer of the facility. Municipal elections officials report that this method of providing proof of employment is commonly used by residential facilities. The current language of the rule, however, also proscribes that the statement must be in substantially the same form as the sample form provided in the rule. The sample statement provided in the rule was intended to provide just one model for a residential facility to use, but instead causes confusion because the language in the sample form implies a different set of standards than in the rule subpart. The sample statement uses language such as "let it be known and recorded" and cites to the Minnesota Statute defining residential facility. This language is outside of most Minnesotan's normal vernacular and goes beyond the requirement of the statement outlined in 8200.5100, subp. 1, clause E(2) (requiring "a statement on the facility's letterhead that the individual is an employee of the facility that is signed and dated by a manager or equivalent officer of the facility."). Further, by including such legalistic language in the sample statement and by including the citation to Minnesota Statutes in the sample statement, the sample letter implies that such legal language and statutory citations are required in order to be in substantially the same form.

Because the sample statement has caused confusion rather than providing the guidance originally desired, it is reasonable and necessary to strike the sample statement from 8200.5100, subp. 1, clause E. Removing the sample statement is also reasonable because the rule maintains the general language that an employee of a residential facility may prove employment at that facility by providing "a statement on the facility's letterhead that the individual is an employee of the facility that is signed and dated by a manager or equivalent officer of the facility[.]" This language outlines the only requirements for a statement of employment, and provides clear and simple direction to both election judges and residential facility managers on what is required in a statement. This change is both reasonable and necessary to ensure consistent treatment and evaluation of residential facility statements, and to avoid the unintended application of additional evaluation criteria to residential facility statements of employment.

In addition to clarifying the requirements of the residential facility statements of employment in 8200.5100, subp. 1, clause E, it is reasonable and necessary to add an employee identification badge as a method for proving that an individual is an employee of a residential facility. Although many additional methods for proving employment in a residential facility have been considered, only the addition of the employee identification badge is reasonable and necessary at this time. Additional and alternative forms of employee identification suggested included such items as uniforms worn by employees or business

cards. Because employee identification badges are provided for the express purpose of identifying the individual as an employee of the facility, because employee identification cards can be easily provided by the employee without need to take time from a manager to prepare a letter, and because unlike business cards or uniforms, employee identification badges are generally returned at the end of employment, it is reasonable to consider an employee identification badge proof of employment. In addition, it is reasonable and necessary to add employee identification badges to the enumerated list of forms of residential facility employment proof because municipal elections officials have reported currently accepting employment identification as proof of employment, and enumerating identification badges in 8200.5100, subp. 1, clause E, ensures that residential facilities employment proof of this kind will be treated consistently across the state.

The rules and statutes regarding residential facility vouching were intended to ensure that a previously frequently disenfranchised population of eligible voters are able to exercise their right to vote. These residents of nursing homes and battered women's shelters, for example, often have no other proof of residence (such as a driver's license, bill, etc.) besides the oath provided by a residential facility employee. The proposed rule provides clear guidance to both election judges and residential facility employees and residents. These changes are reasonable and necessary because they ensure a reliable and consistent method for an election judge to determine the veracity of a residential facility worker's employment, and provide consistent, reasonable and not unduly burdensome methods for a residential facility worker to prove employment when vouching for a resident of a residential facility.

The proposed changes to **8200.5100, subp. 2**, are in response to community and elections officials' comments, as well as the changes adopted by the Legislature in 2013. One of the significant changes adopted by the Legislature in 2013 was the reduction in the number of people for whom one registered voter could swear under penalty of perjury that he or she had personal knowledge that the person lived in the precinct ("vouching"). In light of the reduction in vouching advanced by the Legislature in 2013, and in response to comments by community groups and elections officials, the Office explored many additional acceptable proofs of residence. In evaluating additional proofs of residence, the Office looked to how frequently that proof of residence was accepted by other states with election day registration, the reliability of the proof of residence, and feedback from elections officials and community organizations. The Office looked to these sources to evaluate the potential advantages of the additional proof of residence, and the potential for the proof of residence to fill in a gap that would otherwise prevent an eligible voter from being able to provide proof of residence and register to vote. Although there were many additional proofs of residence suggested, and though there are many alternative proofs that are in use by other states, the Office decided on the following limited additional proofs of residence.

Minnesota law provides that a voter may provide proof of residence by providing a photo identification and another document containing the voter's name and current address. The

first proposed change to **8200.5100, subp. 2, clause A**, adds to the list of acceptable documents used for photo identification that must be combined with an authorized proof of residence in order to register to vote on election day. Currently, 8200.5100, subp. 2, clause A, allows the following photo identifications: (1) a Minnesota driver's license or identification card containing a voter's previous address, (2) a United States passport, (3) a United States military identification card, (4) a student identification card issued by a Minnesota postsecondary educational institution; or (5) a tribal identification card issued by a tribal government recognized by the Bureau of Indian Affairs.

In response to the notice of proposed rulemaking, many groups commented that the list of acceptable photo identification in 8200.5100, subp. 2, clause A, should be expanded. The most common suggested addition to 8200.5100, subp. 2, clause A, was the addition of other states' drivers' licenses and identification cards. The Office looked to other states that allow voters to register on election day as one measure of whether the proposed additional proofs of residence were reasonable. We found that almost the majority of the states that allow voters to register on election day accept licenses and/or identification cards issued by another state as a proof of identification for the purpose of registering to vote. The addition of other state's licenses as proof of identity is reasonable at this time because the purpose of the identification cards is simply to confirm who the voter says he or she is – the voter still has to provide another approved document with his or her address in the precinct.

Furthermore, the federal government established minimum standards for state-issued driver's licenses and identification cards, which means that those voters who obtain other state's licenses are required to provide uniform documentation prior to receiving a license and the license itself is subject to uniform base standards of security. Moreover, the Legislature indicated that other state's driver's licenses and identification cards should be sufficient to prove one's identity in the polling place. In 2011, legislation requiring photo identification to vote authorized the use of other state's licenses or identification cards in conjunction with another document showing the voter's current residence. *See* Minn. Laws 2011, chapter 69, article 1, section 19. Although Laws of Minnesota 2011, chapter 69, was ultimately vetoed by the governor, it provides further support that the acceptance of other state's licenses and identification cards is reasonable.

Because this is the only form of photo identification some voters may have, especially those that have moved to Minnesota shortly before election day, it is reasonable and necessary to add this form of photo identification to the list of approved documents to demonstrate identity.

The second proposed change to 8200.5100, subp. 2, clause A, clarifies that a learner's permit is an acceptable form of photo identification. A learner's permit has always been specifically included as an available proof of identification under 8200.5100, subp. 1, clause A, and it has long been the interpretation of this office that a learner's permit was permitted as a valid

form of photo identification under 8200.5100, subp. 2, clause A. However, it is clear from the comments submitted in response to the notice of the proposed rulemaking that, because a learner's permit is not specifically listed, there is confusion about whether a learner's permit is authorized under 8200.5100, subp. 2, clause A. Therefore it is reasonable and necessary to specifically add learner's permit to the list of approved forms of photo identification under 8200.5100, subp. 2, clause A.

The final proposed change to 8200.5100, subp. 2, clause A, is the addition of Minnesota secondary school identification cards to the list of acceptable proofs. Currently 8200.5100, subp. 2, clause A, allows student identification cards issued by Minnesota postsecondary educational institutions. It is reasonable to add identification cards issued by Minnesota secondary educational institutions because many Minnesota secondary educational institutions issue photo identifications to students and because – like postsecondary students – Minnesota secondary students' student identification may be their only form of photo identification. Further, this change is reasonable in light of the growing trend in teens waiting later and later to get a driver's license, especially those teens with less access to resources. (See "Fewer teens get driver's licenses," Washington Post, July 31, 2013). It is reasonable to add Minnesota secondary student photo identification to the list of acceptable photo identifications under 8200.5100, subp. 2, clause A, because it fulfills the same purpose as postsecondary student identification cards but expands the right to use a Minnesota student photo identification card to secondary school students, a group more likely to have their student identification as their only form of photo identification.

Currently, **8200.5100, subp. 2, clause B**, governs the additional proofs of residence that can be used, in combination with the proofs of identity outlined in 8200.5100, subp. 2, clause A, to register to vote on election day. The rule subpart is broken into two distinct requirements: clause A outlining the proofs of photo identification allowed, and clause B outlining documents with the voter's address in the precinct allowed. In order to provide an alternative proof of residence when registering to vote on election day a eligible voter must present *both* an approved photo identification from clause A and a document with the voter's address from clause B. It is therefore reasonable to add an introduction to clause B that parallels the language of clause A to clarify the dual requirements. Clause A currently states "The following documents are acceptable photo identification cards under this subpart if they contain the voter's name and photograph." The first proposed addition to clause B would be the parallel statement regarding proof of residence: "The following documents are acceptable additional proofs of residence under this subpart if they contain the voter's name and current address." This is reasonable because it mirrors the language in clause A and it is needed in order to provide clarity in the rule subpart.

The changes to 8200.5100, subp. 2, clause B, also include the addition of certain documents showing the voter's address. Currently the rule allows original bills for the following services to be used as an authorized proof of residence: telephone, television, Internet, gas, electric,

solid waste, water, or sewer services. In addition to these services, the rule also permits a rent statement that itemizes utility expenses. The rule subpart further requires that the bill show the voter's name and address in the precinct, and be due within 30 days of the election.

Following the notice of proposed rulemaking, several groups submitted comments suggesting the expansion of the authorized proofs of residence to include such items as paychecks, any government mail, bank statements, leases, rent statements that do not include an itemized list of utility expenses included in the statement, mortgage statements, and start of service letters. Although some other states allow the full scope of the authorized proofs of residence suggested by the commenters, or go even further by allowing *any* piece of mail, the Secretary of State determined that not all suggested additional proofs were needed at this time.

In order to determine the scope of additional proofs needed, the Office of Secretary of State consulted with county and municipal elections officials and utilized the information gained from the Secretary of State's voter hotline to determine the additional proofs that would be needed to assist those otherwise eligible voters that have no other proof of residence available – some of whom had previously relied on vouching, which has now been limited. The Secretary of State also considered the interests of election judges to ensure that the number of documents that an election judge would have to review on election day would be limited and not unduly burdensome.

The Office of Secretary of State first determined that expanding the definition of bill to include start-of-service notification and account statements is reasonable because it would then include a notification that would go to a voter who has just moved and established service, but has not yet received an invoice for those services. These voters who have just moved are more likely to rely on proofs such as vouching because they will have just moved and have few documents reflecting their new address. Further, account statements would include those statements that are not a bill but merely a current accounting of the services provided. This could occur when, for example, a person overpays their bill or receives a credit for a particular month. The following month the person may not receive an invoice or bill for services, but merely an accounting of the services provided. Expanding the definition of bill to include both start-of-service notifications and account statement is reasonable – because the documents have the same authenticity as a bill – and is needed in order to ensure that eligible voters and election judges have clarity that such notifications and statements constitute a bill for the purpose of the rule subpart.

In addition to clarifying that a start-of-service notification and account statement constitute a bill for the purpose of the subpart, the proposed changes also add other bills that can be used as authorized proofs of residence. The first addition is credit card bills and banking statements. It is necessary to add these additional documents to the list of acceptable bills

because municipal election officials and commentators reported that credit card and bank statements are some of the most common documents presented to election officials as the only document with the otherwise eligible voter's current address. Several other same-day registration states allow banking statements, including Iowa and Wisconsin, as proof of residence for same-day registration. It is reasonable to add these additional documents to the list of acceptable bills because these are communications that, like other previously enumerated bills, contain the individual's name and address, and are generally sent monthly to the individual just as the other previously enumerated bills. Further, these documents are sent by third parties with whom the individual has a legal contract for services.

It is common for students living in private housing to have no utilities in their own name, and to be on "family" cell phone plans such that they are not receiving a cell phone bill. For these otherwise eligible voters, a bank or credit card statement may be the only bill they receive at their off-campus housing. Currently, these voters would be turned away at the polls and left only with the option of finding someone to vouch for their residence. It is also reasonable to add both credit card and banking statements, as some voters may not have access to credit but may have checking account. Allowing both credit card and banking statements ensures that no voter is at a disadvantage in registering simply because he or she does not have access to credit.

Finally, the definition of bill is expanded to include un-itemized rent statements and mortgage statements. Previously, the rules allowed for rent statements that itemized utility expenses. But voters have expressed confusion as to why a document like their mortgage or un-itemized residential rent statements would not be sufficient to prove residence. Election officials have reported that these documents are brought to polling places by voters in an attempt to prove residence. Allowing un-itemized rent statements would allow a voter to prove residence even in cases where the utilities were included in rent but not itemized in rent, where utilities were paid by another tenant, where the lease had transitioned to a month to month lease, or where the landlord is not required to provide a written lease at the time of lease signing (see residential lease discussion below). Further, allowing mortgage statements would ensure that a new homeowner who may not have received a utility bill or start-of-service notification could prove his or her new residence. Even more than other authorized proofs of residence, these rent and mortgage statements are documents are tied to the voter's residence.

Allowing these alternative forms of proof of residence is reasonable and necessary because it will reduce the number of individuals that have to rely on vouching, which is especially reasonable and necessary in light of the reduction of vouching from 15 to eight. These additional proofs further respond to the concerns of commentators that the current list of authorized proofs of residence is insufficient. These additional authorized proofs as "bills" are also reasonable because they are subject to the current standard that, in order to be an authorized proof, the bill must be due within 30 days of the election.

Finally, the language in the rule subpart governing bills incorporates the current interpretation that, for bills delivered electronically, “original” means either a printed copy of the electronic bill or a display of the bill on the voter’s portable electronic device. This interpretation of “original” has been in place for several election cycles, and guidance to this effect has been included in the election judge guide provided to election judges throughout the state (stating that a utility bill can be used “regardless if delivered electronically or by mail”). This interpretation was developed in response to the growth of both portable electronic devices and online billing, and mirrors Wisconsin’s registration requirements that permits the acceptance of electronic bills for same-day registration. It is reasonable to incorporate this interpretation into the rule subpart because of the current practice of accepting electronic original bills, and it is necessary to incorporate this interpretation to ensure consistent treatment of voters across the state.

It is reasonable and necessary to renumber 8200.5100, subp. 2, clause B(3), to clause (B)2, and to strike the language from that sub-clause stating “is also acceptable as proof of residence.” Striking this language is necessary in light of the additional language added to the introduction to clause B stating “The following documents are acceptable additional proofs of residence under this subpart if they contain the voter’s name and current address,” which makes the stricken language redundant.

The final additional authorized proof of residence proposed in 8200.5100, subp. 2, clause B(3), is a residential lease or residential rental agreement. Many renters, including students, do not pay utilities and do not receive monthly invoices or bills for their rent. Expanding the authorized proofs of residence in this way allows those voters with no other alternative proof to provide their residential lease or rental agreement, so long as that document contains their name and address within the precinct, and so long as the rental agreement is valid through election day. Like the other authorized proofs, a residential lease or rental agreement meeting this criteria provides a reliable source for an otherwise eligible voter to show proof of his or her address. Please note that this addition to the authorized proofs of residence does not include oral leases or those leases that have expired but have transitioned to month to month leases because a month to month lease or oral lease does not provide written verification that the lease is valid through election day. (See Minn. Stat. § 504B.111, requiring a written lease for buildings with 12 or more residential units).

Further, as with residential rental and mortgage statements, voters have expressed confusion as to why a document like their residential lease or rental agreement would not be sufficient to prove residence. These documents are tied to a voter’s residence and, further, other states such as Wisconsin and Iowa allow residential leases as proof of residence. It is reasonable to include residential leases and rental agreements as additional proofs of residence because these are legal documents inherently tied to a residence. This change is needed in order to reduce voter confusion and allow those voters with only a residential lease or rental agreement to prove their residence without having to identify a voucher. This

will reduce the number of individuals relying on vouchers and reduce the number of otherwise eligible voters from being turned away at the polls.

The proposed repeal of **8200.5100, subp. 2, clause C**, is reasonable and necessary in light of the changes made to 8200.5100, subp. 2, clause B. Providing local election officials with samples of authorized proofs of residence was originally adopted prior to the increase in electronic billing and portable electronic devices. In consultation with local elections officials, the Office of Secretary of State has determined that providing examples of the full scope of sample proofs of residence would cause more confusion and would not be useful to the election judges in light of the multiple forms that technology has allowed each proof to be presented in. It is reasonable and necessary to remove this provision requiring samples of authorized proofs of residence and instead focus election official training on what criteria to look for when examining the authorized proofs of residence to determine if they comply with the requirements of clause B.

The proposed changes to **8200.5100, subp. 3**, include removing all references to subp. 4 and changing the language of one sentence to provide clarity. The proposed removal of references to subp. 4 are necessary in order to reflect the proposed repeal of subp. 4. The change in language does not change the meaning of the sentence, but changes what appears to be a grammatical error. The sentence currently reads that the additional student proof “must be allowed on an equal basis for voters resident in housing of any postsecondary education institution” The proposed change involves adding “who” and changing “resident” to “reside” in order to correct the apparent grammatical error. These changes to 8200.5100, subp. 3, are reasonable and necessary in light of the proposed repeal of 8200.5100, subp. 4, and to clarify the language of the subpart.

The proposed repeal of **8200.5100, subp. 4**, is reasonable because it has not been used in the state of Minnesota. Because this subpart has never been used, and because it provides a complex system that is in many ways redundant of subp. 3, it is reasonable and necessary to repeal this unused subpart. Further, because additional proofs of residence have been added in order to assist students with registration, this subpart is no longer as needed.

The proposed changes to **8200.5400** are reasonable and necessary to reflect the proposed removal of 8200.5100, subp. 4, and the proposed additional authorized identifications and proofs of residence for registering to vote on election day. The addition of semicolons in place of commas in the listing of the forms of identification and proofs of residence allowed are reasonable and necessary to ensure that the reader understands that “Minnesota or any other state of the United States as defined in Minnesota Statutes” qualifies only the reference to “license, learner’s permit, or identification card” and does not qualify the other forms of identification listed in 8200.5400.

The proposed change to **8200.5500, subp. 2**, is necessary to reflect that any challenge recorded in the statewide voter registration system is to a voter's record. The statewide voter registration system holds "records" of voters, and not voters or votes themselves. Only a voter's record can be challenged in the statewide voter registration system. This change is necessary to reflect what can actually be challenged in the statewide voter registration system.

The proposed addition of **8200.5710** is reasonable and necessary because Minn. Stat. § 201.13 provides a method for voters to report the death of a voter, but the rules do not provide a uniform basis for election judges to collect these reports at the polling locations. Elections officials have reported that it is a common occurrence for a voter to inform the election judge orally that a voter has died. However, an oral report of the death of a voter is insufficient under the statute to change the voter's record. The statute requires that a voter provide the report of death in writing, and some but not all local election officials have developed their own forms for collecting this written report.

In order to maintain consistency throughout the state, it is reasonable and necessary to prescribe the form for reporting a deceased voter to be used at the polling places. Further, the proposed form is reasonable because it contains the statutorily required elements of (1) a written statement that the registered voter knows that a voter has died, and (2) a signature by the registered voter. In addition, the form has fields where the voter reporting the death can provide the date of birth, date of death, and last known address of the deceased voter. While this information is not required by statute, it is helpful to the county officials in determining that the appropriate person is marked as deceased in the statewide voter registration system. The addition of this rule is reasonable and necessary to provide uniform collection of reports of deceased voters.

The proposed changes to **8200.9300, subp. 8**, are reasonable and necessary to ensure that the rule subpart is consistent with the statutory requirements for the handling of absentee ballots and the marking of the roster as reflected in Minn. Stat. § 203B.121. The current language in 8200.9300, subp. 8, references Minn. Stat. § 203B.12, which no longer governs the handling of absentee ballots. In 2010 the process for handling absentee ballots was changed, and it is necessary to change the language in 8200.9300, subp. 8, to reflect these statutory changes. It is reasonable and necessary to update the statutory reference to the correct governing statute, Minn. Stat. § 203B.121, subd. 2, and to strike the remaining instructions regarding the duties of an election judge regarding an absentee ballot. Absentee ballots are now handled by the absentee ballot board pursuant to Minn. Stat. § 203B.121. Because the instructions governing the absentee ballot boards are extensive in Minn. Stat. § 203B.121, it is reasonable and necessary to strike the remaining language in 8200.9300, subp. 8, and replace that language with a reference to the instructions outlined in Minn. Stat. § 203B.121, subd. 2.

The proposed removal of **8200.9300, subp. 11**, is reasonable because it is redundant and is not necessary in this rule part. Subpart 11 only refers the reader to 8200.1100 regarding printed voter registration applications, and serves no other purpose in this rule part. This subpart is a remnant from when the voter registration application contained three perforated parts. Striking subpart 11 is reasonable and necessary in order to remove redundancy and provide clarity within the rules.

The proposed changes to **8200.9940** are necessary to reflect the changes in Laws of Minnesota 2013, chapter 131, article 2, section 7, which limited the number of individuals for whom a voter may sign proof-of-residence oaths for election day registration. Further, the changes to the introductory language in the rule are needed because election officials have reported that election judges have been confused by the language of the form. Reformatting the introductory language into bulleted items parses the instructions to provide clarity to election judges. The parsing of the introductory instructions does not change the substance of the instructions, but makes them more readable and readily understandable. The changes in the proposed form are both necessary to reflect current law and reasonable to prevent confusion regarding the instructions and the new limit on proof-of-residence oaths for election day registration.

8205 Petitions

The proposed changes to **8205.1050, subp. 1**, clarify that the procedure outlined in 8205.1050 does not apply to statewide Major and Minor Political Party Recognition Petitions. These changes are reasonable and necessary in light of the proposed additions to this rule chapter providing a verification process for statewide Major and Minor Political Party Recognition Petitions.

The addition of **8205.3000** is reasonable and necessary in order to detail the additional form requirements for statewide Major and Minor Political Party Recognition Petitions. The proposed rule part mirrors the structure of the Form of Recall Petition rule part in 8205.2000. Like 8205.2000, the proposed 8205.3000, subd. 1, incorporates the general petition requirements in 8205.1010 through 8205.1040. The proposed 8205.3000, subd. 2, outlines the specific form in which a Major Political Party Recognition Petition must be prepared and outlines the statutory criteria that a petition must include pursuant to Minn. Stat. § 200.02, subs. 7 and 17. Because Minn. Stat. § 200.02, subd. 7, requires that a petition contain the signatures of “party members,” this rule subpart incorporates the definition of “Member of a major political party” found in Minn. Stat. § 200.02, subd. 17. Because the rules do not currently specify how a Major Political Party Recognition Petition is to be formatted, and because the requirements of a Major Political Party Recognition Petition are distinct from other election related petitions, it is reasonable and necessary to provide guidance in the rules regarding the petition form requirements.

Similarly, the addition of 8205.3000, subd. 3, is reasonable and necessary to provide guidance regarding the form of Minor Political Party Recognition Petitions. Unlike Major Political Parties, there is no statutory definition of a member of a Minor Political Party. Therefore, unlike subp. 2, subp. 3 does not contain a definition of what it means to be a member of a Minor Party, but instead requires the petitioner to swear or affirm that the petitioner is a member of the Minor Party. Because the rules do not currently specify how a Minor Political Party Recognition Petition is to be formatted, and because the requirements of a Minor Political Party Recognition Petition are distinct from other election related petitions, it is reasonable and necessary to provide guidance in the rules regarding the petition form requirements.

The addition of 8205.3000, subd. 4, is reasonable and necessary to provide guidance to the petitioner as to what to do with a completed petition, and requiring that the prospective major or minor party provide the Office of the Secretary of State with a contact person ensures that the Office will be able to contact the prospective major or minor party to provide the required notice outlined in 8205.3200. The additional requirement that the petitioner consecutively number the signatures is also reasonable because the petitioner will have counted the signatures prior to returning the petition, and will allow the Office of the Secretary of State to more easily double check the number of signatures. Further, the consecutive numbering will allow the Office of the Secretary of State to more easily engage in the process of sampling and verification outlined in 8205.3200, which will ensure that the Office of the Secretary of State completes verification within the 10-day window prescribed by 8205.3200.

The addition of **8205.3200** is reasonable and necessary because the statute provides no mechanism for verifying Major and Minor Political Party recognition petitions. Further, the language proposed in 8205.3200 is reasonable because it mirrors the language currently in use in 8205.2120 governing the verification of recall petitions.

The language in subp. 1 and subp. 1, clause A, is reasonable and necessary because it provides that the Secretary of State must verify the petition, and clause B requires that the Secretary of State examine the petition to determine if the petition was filed before the close of filing for state and federal offices. According to statute, a petition must be filed before the close of filing for the state partisan primary ballot. Minn. Stat. §§ 7(c) and 23(b)(2). Because the statute sets the requirement for when the petition must be filed, it is reasonable and necessary to include a provision in the rules that the Secretary of State must dismiss the petition if the Secretary determines that the petition was filed after the filing deadline. Similarly, it is reasonable that the Secretary would be required to provide notice to the filing party that the petition was dismissed and the reason for the dismissal. The language in subp. 1, clause B, provides that the Secretary of State must first determine if the petition meets the form and filing requirements outlined in the rules.

Subpart 1, clause C, is reasonable and necessary because it requires the Secretary of State to inspect the petition and determine if it contains the statutorily required number of signatures. It is reasonable for the Secretary determine if there are a sufficient number of signatures prior to verifying the signatures, because if the number of signatures is deficient the petition is deficient on its face. It is also reasonable to require the Secretary of State provide notice to the filing party that the petition was dismissed and the reason for the dismissal only if the deadline for submission has passed. If the deadline has not passed, it is reasonable to require the Secretary of State to inform the petitioning party that the required number of signatures have not been gathered, and require that the Secretary inform the petitioner of the deficiency and the number of signatures and time remaining to correct the deficient petition.

The procedure outlined in subp. 1, clause C, provides that if the petitioner does not provide the number of signatures required prior to the end of the filing period, then the Secretary of State must dismiss the petition and notify the petitioner. But if the petitioner provides the necessary signatures prior to the petition deadline, the Secretary must move to the next phase of the verification process. This is both reasonable and necessary to ensure that petitioners understand the process of verifying petitions and that the Secretary of State has a clear process and notice obligations.

Subpart 1, clause D, is reasonable and necessary because it provides a method for sampling to determine the validity of signatures on the petition. Providing for sampling is reasonable and necessary because of the time and resources that verifying every signature would require, and in light of the fact that sampling is an approved method for verifying signatures on recall petitions in 8205.2120, subd. D. The method proposed for verifying and sampling petitions for Major or Minor Political party petitions mirrors the requirements for recall petitions in 8205.2120, subd. D. Like statewide recall petitions, the sample size proposed for the state Major or Minor Political Party recognition petitions is set at 2,000. Just as with the statewide recall petitions, the proposed Major and Minor Political Party recognition petition verification process requires the Secretary of State to use a randomly generated number constitute the sample for the verification process. Again, just as with the recall petition verification process, the Secretary of State must examine the sample to determine: that the address given by each signatory is in the State of Minnesota and that each signatory was at least 18 years old at the time they signed the petition; and from that what percentage are eligible voters. The proposed rule subpart then requires that the Secretary of State determine if the statistical sampling shows that the number of signatories is less than 100 percent of the required number.

If the number of signatures is determined to be deficient based on the statistical sampling, the procedure outlined in subp. 1, clause D, just like clause C, provides a method for informing the petitioning party. It is also reasonable to require the Secretary of State to provide notice to the filing party that the petition was dismissed and the reason for the

dismissal only if the deadline for submission has passed. If the deadline has not passed, it is reasonable to require the Secretary of State to inform the petitioning party that the required number of signatures have not been gathered, and require the Secretary to inform the petitioner of the deficiency and the number of signatures and time remaining to correct the deficient petition. The proposed rule provides that if the petitioner does not provide the number of signatures required prior to the end of the filing period, then the Secretary of State must dismiss the petition and notify the petitioner. But if the petitioner provides the necessary signatures prior to the petition deadline, the Secretary must repeat the verification process.

Subpart 1, clause E, requires that, if the petition meets the requirements, the Secretary of State must certify the petition, send notice to the petitioning party, and inform both the executive director of the Campaign Finance Board and the Department of Revenue of the petition's certification.

The procedures outlined in 8205.3200, subd. 1 are reasonable and necessary because the statute provides no mechanism for verifying Major and Minor Political Party recognition petitions and because the requirements set out in 8205.3200, subd. 1, to a large extent, mirror the language currently in use in 8205.2120 governing the verification of recall petitions.

The addition of 8205.3200, subd. 2, is reasonable and necessary because the statute does not provide a time period for verifying the recognition petitions. Currently the rules governing recall petitions in 8205.2120, subp. 2, provide that the "secretary of state shall complete the verification of a petition no later than ten working days after the day on which the petition was filed." The language proposed in 8205.3200, subd. 2, mirrors this language and requires a similar ten working day period for verification of the petition. This is reasonable in light of the current ten day time limit regarding recall petitions and is necessary to provide a time period for verification that is otherwise unspecified.

8210 Absentee Ballots

The proposed changes to **8210.0200, subp. 4**, are necessary and reasonable to reflect the changes in Laws of Minnesota 2013, chapter 131, article 1, section 9 and to ensure that the subpart conforms to statutory requirements. In order to comply with the statutory requirements the proposed change strikes the language "who meets the requirements in" Minnesota Statutes and replaces the language with the word "under" Minnesota Statutes. This change is necessary and reasonable to reflect the change in Minnesota law removing the eligibility requirements such as permanent illness or disability in order to receive permanent absentee voter status. The proposed change now reflects the statute which requires only that an eligible voter apply for permanent voter status under 203B.04, subd. 5.

The removal of the reference to 203B.04, subd. 6, is necessary and reasonable to reflect the removal of that subdivision in Laws of Minnesota 2013, chapter 131, article 1, section 9.

The proposed change removing the reference to “45” days before each election and replacing it with “60” days is also necessary and reasonable reflect the 60 day requirement established in Minn. Stat. § 203B.06, subd. 1.

The proposed changes to **8210.0500** are necessary to make the instructions clear and easier for voters to follow. County officials have reported that some voters called with questions when filling out the white signature envelope provided with absentee ballots. Instructions on how to fill out the white signature envelope are found in 8210.0500, subps. 2, 3, 4, and 6.

One of the points that lead the voters to call is confusion about which identification number a voter should provide on the white signature envelope when the voter provided multiple numbers on his or her absentee ballot application. This instruction is the same in 8210.0500, subps. 2, 3, 4, and 6. Since the instructions currently read that a voter should use “the same number” that he or she provided on the absentee ballot application, voters were unsure which number to include if they provided multiple numbers on the absentee ballot application. By including a reference to “one of” the same “numbers,” the instructions clarify that it is possible to have had included multiple numbers on the absentee ballot application and that it is appropriate for a voter to include any one of the numbers provided. This change is reasonable because it will both reduce voter confusion and will provide guidance to those voters that included multiple numbers on the absentee ballot application.

It is also reasonable and necessary to add an instruction that the witness’ street address include the city. The same instructions for the witness’s requirement for filling out the white signature envelope can be found in 8210.0500, subps. 2 and 3. County officials have reported that a number of absentee ballots have been rejected due to the omission of the city by the witness, and that additional instructions will clarify to witnesses that listing a city along with the physical street address is required. This change is both reasonable and necessary because it will help voters and their witnesses make fewer mistakes in filling out the absentee white signature envelope, leading to more accepted absentee ballots and fewer ballots rejected due to technical errors in the witness’s name and address fields. It is not necessary, however, to make the same changes to the voter section of the form because this information is pre-filled for the voter by the election official.

It is reasonable to revise the instructions to voters on the procedure for correcting a mistake. The identical instructions for correcting a mistake on a ballot can be found in 8210.0500, subps. 2, 3, and 4. Currently, the instructions in 8210.0500, subps. 2, 3, and 4, present three options for a voter who wishes to correct a mistake on his or her ballot. The first proposed change to the instruction contemplates striking the provision instructing the voter to completely erase the mark. The removal of this instruction is reasonable and necessary in

light of the fact that voters are instructed to use ink pens to complete the ballot, and that it is not possible to erase the mark. Furthermore, attempting to erase an ink mark may damage the ballot.

In addition, the proposed changes to these instructions require reordering the instructions. While each option is acceptable, because ballots in Minnesota are counted using optical scan equipment, crossing out the name of a candidate can lead to an initial tabulation of an overvote. By first directing voters to obtain a replacement ballot if possible, this change is reasonable and necessary to reduce the number of duplicate ballots that the absentee ballot board would have to create in order to prevent the optical scan equipment from perceiving the obliterated vote as an overvote. This reordering is also reasonable because it continues to instruct voters to cross out the erroneous vote if it is unlikely that a voter would be able to obtain and return a replacement ballot in time to be properly counted.

Similarly, the instructions regarding correcting a mistake in 8210.0500, subp. 6, provide the identical instructions with the additional instruction that a military and overseas voter who received his or her ballot electronically may instead print out a new ballot if the voter makes a mistake marking the ballot. For the same reasons that reordering and removing the instructions to erase are reasonable and necessary in 8210.0500, subps. 2, 3, and 4, it is reasonable and necessary to reorder subp. 6 to move “ask for a new ballot from your election office” to the second option, just below “[p]rint off a new ballot.” It is preferable to have the voter simply print off a new ballot because this will save time and resources for both elections officials and the voter.

It is reasonable in 8210.0500, subps. 4, 5, and 6, to remove the reference to the website “<https://minnesota.overseasvotefoundation.org>” when directing military or overseas voters to the online tool to check the status of their absentee ballot, and instead direct them to “<http://www.mnvotes.org>.” Currently, the Overseas Vote Foundation redirects all inquiries about the status of absentee ballots back to the Minnesota Secretary of State’s webpage at [mnvotes.org](http://www.mnvotes.org). By replacing the reference to the Overseas Vote Foundation webpage the instructions send military and overseas voters directly to the online absentee ballot lookup tool, and avoids them having to access that absentee ballot look-up tool through an additional site. This is reasonable because it reduces the burden on and time spent by voters. Also, while the Office of the Secretary of State currently has a contract with the Overseas Vote Foundation to provide information to overseas voters, directing the voters to the Secretary of State’s webpage ensures that voters have a direct link to the absentee ballot lookup tool even if the Overseas Vote Foundation were to discontinue its contract with the Office of the Secretary of State.

Finally, the proposed changes to 8200.5100 require changes to the instructions contained in 8210.0500, subp. 3, governing instructions to unregistered absentee voters. The instructions currently contain a list of options of eligible proofs of residence that are acceptable for

registering at the same time as voting. It is necessary to update the list of eligible proofs of residence to reflect the proposed list of eligible proofs of residence in 8200.5100, subp. 2. Because the standard for election day registration applies to those registering at the same time as absentee voting, it is reasonable and necessary to change the language regarding eligible proofs of residence to reflect those listed in 8200.5100, subp. 2.

The first proposed change to **8210.0600, subp. 1a** requires removing the language indicating that the voter meets the legal requirements to vote “by absentee ballot” and instead reflects the change in Minnesota law that allows any eligible voter to vote absentee if the voter requests an absentee ballot. This language change is reasonable and necessary because it removes any implication that there are separate requirements to vote absentee, and conforms the instructions to current Minnesota law.

Similar to the changes made to the instructions to absentee voters in 8210.005 above, the second proposed change to 8210.0600, subp. 1a, revises the witness section of the form filled out by the voter and witness to clarify that a witness is required to provide his or her city as part of the street address. County officials have reported that a significant number of absentee ballots have been rejected due to the omission of the city by the witness, and that additional instructions will clarify to witnesses that listing a city along with the physical street address is required. This change is both reasonable and necessary because it will help voters and their witnesses make fewer mistakes in filling out the statement of absentee voter, leading to more accepted absentee ballots and fewer ballots rejected due to technical errors in the witness’s address field. For the same reasons, this change is also reasonable and necessary in the statement of unregistered absentee voter form in **8210.0600, subp. 1b**.

An additional change to 8210.0600, subp. 1b, is the addition of clarifying language to the witness instructions. County officials have reported that some witnesses do not check proof of residence provided by a voter and such a failure requires the absentee ballot boards to reject the ballot. Currently, the instructions state “Voter must provide proof of residence (See instructions, **check one**)”. There is concern that the witnesses do not understand that they must complete this section, not the voter. Therefore the instructions have been clarified to read “Witness MUST CHECK ONE indicating proof of residence provided by voter (See instructions)”. This change is reasonable because it maintains the basic instruction that a voter must provide proof of residence and the envelope must reflect that proof of residence used, but is also needed because it clarifies that it is the witness’s obligation to indicate what proof of residence was provided by the voter. This will ensure that fewer absentee ballots are rejected, providing a benefit to voters and county election officials.

Finally, 8210.0600, subp. 1b, contains a list of eligible proof of residence for voter registration. It is necessary to update the list of eligible proofs of residence to reflect the proposed list of eligible proofs of residence in 8200.5100, subp. 2. Because the standard for election day registration applies to those who register at the same time as absentee voting,

it is reasonable and necessary to change the language regarding eligible proofs of residence to reflect those listed in 8200.5100, subp. 2.

The proposed change to **8210.0600, subp. 3**, is reasonable and necessary because it ensures that counties can continue to use the already-printed stock of absentee envelopes, but provides that the county can only use these when completing in-person absentee voting. Requiring that they be limited in use to in-person absentee voting is reasonable because the voter and witness mistakes that the proposed changes are meant to address are not being made in this context. Deputy county auditors and deputy city clerks are authorized to give oaths and they serve as the voter's witness in this capacity. As such they are only required to give their title and not their address. Allowing the local election officials to use the remainder of the printed stock of these envelopes for in-person absentee voting will both ensure that counties and cities do not have to waste resources and will prevent the types of errors that the proposed changes to the envelopes are meant to address.

The proposed changes to **8210.2200, subp. 1**, provide clarity to election officials regarding the process for handling absentee ballots delivered by personal delivery that arrive after the statutory deadline for acceptance of the absentee ballots. These changes also mirror the changes codified in Minnesota law. See Minn. Laws 2013, chapter 131, article 2, section 15. These changes are reasonable because they provide guidance to election officials and are necessary to ensure that election officials have the information necessary to comply with the changes to Minnesota law.

The proposed change to **8210.2300** is necessary to conform to the requirements of Minn. Stat. § 203B.121 and to comport with Rule part 8210.2400, both of which do not contemplate nor allow delivering the return envelope to the polling place on election day. Removing this language, 8210.2300 is both necessary and reasonable in order to ensure compliance with current Minnesota law.

The proposed removal of **8210.2400, clause A**, is reasonable and necessary in light of the fact that auditors and clerks no longer deposit absentee return envelopes in the mail. Because all absentee ballot materials are kept for the absentee ballot board, this procedure is no longer used and therefore it is reasonable and necessary to remove clause A.

The proposed change to **8210.2400, clause D**, is reasonable and necessary to reflect that the ballot boards do not open absentee ballot envelopes on election day, but instead open them pursuant to Minn. Stat. § 203B.121, subd. 4. Minn. Stat. § 203B.121, subd. 4, currently provides that after the close of business on the seventh day before the election, the ballots from return envelopes marked "Accepted" may be opened. It is necessary and reasonable to change this rule to conform to current statutory requirements.

The proposed change to **8210.2450, subp. 1**, includes the addition of a provision exempting trained deputy auditors or deputy city clerks from the requirement that those reviewing the ballots be of differing major political parties. This change is reasonable because it reflects the current statutory requirements. See Minn. Laws 2013, chapter 131, article 2, section 30.

The proposed changes to **8210.2450, subp. 6**, are necessary to reflect the changes made in Laws of Minnesota 2013, chapter 131, article 1, sections 6-8. In light of the anticipated additional absentee ballots elections officials will receive due to the implementation of no-excuse absentee voting, the Legislature allowed elections officials to open and begin processing absentee envelopes seven days prior to the election, instead of four. It is reasonable and necessary to change 8210.2450, subp. 6, to reflect the statutory change.

The proposed changes to **8210.2500** are reasonable and necessary to reflect the current state of Minnesota law – that absentee ballots are delivered to the ballot boards, and not the precinct where the absent voter resides. This change in procedure is consistent with the procedures for the processing of absentee ballots outlined in Minn. Stat. § 203B.08, subd. 3 and Minn. Stat. § 203B.121. Further, the additional language regarding the marking of late absentee ballots returned by mail after the election is consistent with the requirements added by Laws of Minnesota 2013, chapter 131, article 2, section 15. These changes are both necessary and reasonable to ensure the rules conform to current Minnesota law.

The proposed change to **8210.3000, subp. 4**, modifies the language to comport with statutory changes and to provide a process for providing notice to challenged voters in mail ballot elections. First, subpart 4 is amended to indicate that a ballot mailing must be sent no earlier than 46 or no later than 14 days prior to the election in the context of mail election. The current 8210.3000, subp. 4, states that a ballot mailing must be sent no earlier than 30 days, which is inconsistent with the current statutory requirement that a ballot mailing be sent no earlier than 46 days. The proposed change is reasonable and necessary to ensure that 8210.3000, subp. 4, complies with Minn. Stat. 204B.45, subd. 2.

Next, the proposed change to 8210.3000, subp. 4, includes a process for providing notice to a mail ballot voter whose registration has been challenged. The proposed change is needed in order to provide uniform treatment of challenged mail ballot voters and to provide guidance to election officials in light of the expansion of mail ballot elections provided for in Minnesota Laws 2013, chapter 131. The current rule provides that a challenged mail ballot voter may apply for an absentee ballot if they believe their registration has been challenged in error. However, the current rule provides no process to notify a challenged voter that they are challenged, and will therefore not receive a ballot as a matter of course in a mail ballot election. Providing challenged mail ballot voters with notice that their registration is challenged is needed to provide voters with notice in cases where the voter's record has been challenged in error or the voter's status has changed since the voter records were updated. In-person voters receive notice of their challenged registration when they arrive at

the polls, but mail-ballot voters would not have this opportunity because their precinct votes by mail and not in polling locations. A challenged mail ballot voter could otherwise erroneously believe that the mail ballot will still arrive in the mail and not realize that there is a reason that they have not been provided with a ballot until it is too late to apply for, receive and return an absentee ballot. Providing mail notice to voters in mail-ballot precincts ensures that mail-ballot voters have the same rights as in-person voters to have notice of and correct an erroneous challenge to their registration.

Providing a uniform process for notice is both needed to ensure uniformity and reasonable because it places a minimal burden on elections officials while providing notice to a voter of a challenge to his or her registration and a mechanism for the voter to obtain a ballot to vote in a mail ballot election.

The proposed changes to **8210.3000, subp. 4a**, are needed and reasonable in order to prevent voter error when completing the mail ballot materials and to reduce the occurrence of unintended overvotes. First, the changes to 8210.3000, subp. 4a, contemplate changing the instructions directed to witnesses and their address information similar to proposed changes made to the absentee ballot envelopes in 8210.0500, subps. 2 and 3. Similarly, reordering the instructions for correcting mistakes is needed and reasonable for the same reason as 8210.0500, subps. 2, 3 and 4.

The proposed change to **8210.3000, subp. 4b**, similar to the proposed change in subp. 4a, is needed and reasonable to ensure that witnesses understand that a city is included in addition to street address. This change will lead to more accepted mail ballots and fewer ballots rejected due to technical errors in the witness's name and address fields.

The proposed change to **8210.3000, subp. 6**, is needed to provide uniformity and consistency in mail ballot elections, and is reasonable in light of the identical requirement in 8210.2600 governing the transmittal envelope requirements for replacement ballots for absentee voters.

The proposed changes to **8210.3000, subp. 7**, are needed in order to provide a uniform process for counties and municipalities conducting a mail election to process returned ballots when a ballot is returned as undeliverable.

There are a variety of statutes and rules that apply to mail ballots that local election officials have had to synthesize. Minnesota Statutes, section 204B.45, subd. 2, requires that mail ballots be sent by nonforwardable mail. This section also states that eligible voters who are not registered at the time that the ballots are mailed may vote by applying for an absentee ballot. Minnesota Statutes, section 201.12, subd. 2, requires county auditors to update voters' registrations based upon nonforwardable mail that is returned with a forwarding

address for the voter. Minnesota Statutes, section 204B.45, subd. 2, requires county auditors to send ballots to voters who registered before the pre-registration deadline (before the 20th day before the election). Minnesota Rules, section 8200.3110, require that county auditors send voters who submit a voter registration application after the pre-registration deadline a “notice of late registration,” which can be used as proof of residence for same day registration. The proposed changes to this subpart are needed and reasonable in order to provide clear guidelines to local election officials and voters as to how to apply these statutes to returned mail ballots.

The rules must account for the range of possible variables: whether the returned mail provides a forwarding address for the voter, whether the mail is returned before or after the pre-registration deadline, and whether the voter’s new address is in a mail ballot precinct or a precinct with a polling place.

The new language proposed in the rule provides that if a ballot is returned as undeliverable to a voter prior to 20 days before an election and the post office provides notification that voter’s new address is within a jurisdiction holding a mail ballot election, then the auditor or clerk must send the appropriate ballot and envelope to the voter at the new address.

However, if the ballot is returned within 20 days of the election (after the pre-registration deadline) with a forwarding address in a mail ballot jurisdiction, the clerk or auditor cannot send him or her a new ballot under current law. In order to ensure that the voter has an opportunity to vote, the new language proposes that the auditor or clerk transmit instructions on how the voter can then vote absentee.

If a mail ballot is returned more than 20 days before the election and the forwarding address indicates that a voter has moved to a jurisdiction that does not hold its election by mail, the county auditor will update the voter’s registration and notify the voter in accordance with Minn. Stat. § 201.12, subd. 2. Since a single statute already provides clear direction to the county auditor in this case, the proposed rule does not cover this situation.

If instead a mail ballot is returned within 20 days before the election and the forwarding address indicates that the voter has moved to a jurisdiction that is holding an election using a traditional polling place, the auditor cannot update the voter’s registration under the law. Instead, the rule proposes that the auditor provide the voter with notice of how to register at the polling place. This proposal is needed and reasonable because it provides the voter with notice of the steps they need to take, especially since they may be used to simply receiving ballots in the mail and may be unfamiliar with the requirements for updating their voter registration and voting at a polling place. It is also reasonable to provide voters with notice in these situations, because notice is routinely provided to voters who attempt to update their voter registration by submitting a voter registration application after the pre-registration deadline. It is needed and reasonable to treat the notice proposed to be sent

under this subpart as a notice of late registration which can be used as proof of residence for same day registration because voters who have recently moved may not have acquired other authorized proof of residence for their new address.

These procedures are both reasonable because they comply with Minnesota statute and ensure that registered voters who move are afforded the opportunity to have their registration appropriately updated if possible and, if not, provided with the information needed to vote. It is necessary to adopt formal procedures for this process to ensure uniformity in mail ballot jurisdictions across the state and to provide clarity to local election officials as to how the various election laws apply to mail balloting, especially in light of the expansion of mail ballot elections.

The proposed addition of **8210.3000, subp. 7a**, is needed in order to provide a process when a mail ballot has already been sent to a voter, but that voter then submits a voter registration application with an update to the voter's name or address. Because the voter no longer is eligible to vote at that address or under that name, the proposed rule subpart first proposes the needed and reasonable requirement that the local election official note that the ballot mailed to voter should not be counted, which is accomplished by marking voter's ballot as "spoiled." Further, this provision reasonably requires that the voter be notified that the original ballot mailed to that voter cannot be counted. Although this additional mailing requirement will have small cost implications for jurisdictions holding mail ballot elections, the number of required mailings will be very small and the costs will be minimal. This procedure is reasonable and necessary to ensure that the ballot sent to the voter is not counted, and that the voter receives notification that it would not be counted.

Similar to the previous section, determining the subsequent steps in the process requires accounting the range of possible variables: whether the voter's updated registration application is received before or after the pre-registration deadline, and whether the voter's new address is in a mail ballot precinct or a precinct with a polling place.

If the application was received prior to 20 days before the election and the voter's registration is in a mail ballot precinct, then the new rule subpart requires that a new ballot for that precinct be mailed to the voter. If the application was received within the 20 days prior to the election with an address in a mail ballot jurisdiction, the clerk or auditor cannot send him or her a new ballot under current law. In order to ensure that the voter has an opportunity to vote, the new language proposes that the auditor or clerk notify the voter that his or her ballot cannot be counted and transmit instructions on how the voter can then vote absentee. The rule also clarifies that county auditors must provide these voters with a notice of late registration, as they would to other voters who attempt to update their voter registrations after the pre-registration deadline.

If a voter updates their voter registration more than 20 days before the election to an address within a jurisdiction that does not hold its election by mail, the county auditor will update the voter's registration and notify the voter in accordance with Minn. Stat. § 201.12, subd. 2. Since a single statute already provides clear direction in this case, the proposed rule does not cover this situation.

Finally, the rule provides a process for voters who were sent a mail ballot but who submit a registration application changing their address to a non-mail ballot precinct within the 20 days prior to the election. The proposed rule states that the voter must be notified through a notice of late registration that his or her mailed ballot will not be counted and how to register and vote at the proper polling location. These procedures are reasonable and necessary to ensure that county auditors clearly understand that they must provide a notice of late registration to these voters in accordance with 8200.3110, but that the notice must differ from the notice sent to other late registrants by notifying these voters that their mail ballot will not be counted. This proposal is especially needed and reasonable because mail ballot voters may be used to simply receiving ballots in the mail and may be unfamiliar with the requirements for updating their voter registration and voting at a polling place.

These procedures are both reasonable because they comply with Minnesota statute and ensure that registered voters in mail ballot precincts who submit voter registration applications with an updated name or address after mail ballots have been sent are afforded the opportunity to have their registration appropriately updated if possible and, if not, provided with the information needed to vote. It is necessary to adopt formal procedures for this process to ensure uniformity in mail ballot jurisdictions across the state and to provide clarity to local election officials as to how the various election laws apply to mail balloting, especially in light of the expansion of mail ballot elections.

The proposed changes to former **8210.3000, subp. 8**, is reasonable and necessary because it clarifies the process in accordance with the new statutory provisions for marking and handling ballots received after the statutory deadline in mail ballot elections.

The proposed changes to former **8210.3000, subp. 10**, are reasonable and necessary because they first clarify that mail ballots are not sent to the election judge, but instead sent to the ballot board. This change is necessary to ensure the rule subpart is consistent with Minnesota law. The next proposed change to subpart 10 includes the addition of a provision requiring that the transfer cases be sealed by two or more election judges of different parties, unless the process is completed by two municipal clerks or deputy clerks, or if the election is statutorily exempt from this requirement. These changes are reasonable and necessary to comply with the 2013 statutory changes.

8230 Optical Scan Voting Systems

The proposed change to **8230.4050** changes the requirement that the county auditor provides two copies of the county canvassing board report to the Secretary of State and changes the requirement to one. This is both needed and reasonable in light of the statutory provision only requiring that one county canvassing board report be provided to the Secretary of State. See Minn. Stat. §§ 204C.32, and 204C.33.

The proposed changes to **8230.4355** first strike the requirement that a ballot box have two compartments, with one specifically designated for write-in votes. Statutory changes were implemented in 2013 to respond to changes in voting equipment technology that no longer require that write-in votes be sorted into a separate compartment in order to be reviewed and counted. Because of the statutory change, it is reasonable and necessary to change the language of 8230.4355 to be permissive, allowing jurisdictions to have equipment that sorts ballots into two ballot boxes, but does not require it.

The proposed change to **8230.4365, subp. 3**, is needed to conform the subpart to current Minnesota law. Minnesota statute § 204C.06 prohibits most people from standing within six feet of the ballot counter, but makes an exception for election judges. It is reasonable and necessary to strike this prohibition on election judges standing within six feet of a ballot counter in order to ensure the subpart reflects the current state of Minnesota law.

Similarly, the proposed changes to **8230.4365, subp. 5**, change the language of the subpart to reflect that some, but not all, ballot boxes have write in compartments. The language change is reasonable because of the technology change and necessary to indicate that the procedure for removing ballots from the write-in compartment is only required to be done when the ballot box has a write-in compartment.

The proposed change to **8230.4375, clause A**, is also in response to changing technology. New ballot counting technology allows election judges to determine if write-in votes exist without physically removing the ballots from the counter. The language change to 8210.4375 is reasonable because it strikes the requirement that the write-in ballots be removed, which presumes that there is a write-in compartment, and replace that language with a requirement that an election judge determine if any write-in votes exist. This can be done through technological means or by physically removing ballots from the write-in vote compartment of a ballot box, if the jurisdiction is still utilizing that equipment. Further, the change to 8210.4375 contemplates striking the word “the” prior to “election judge,” which is reasonable in order to clarify that this has to be done by an election judge, but not necessarily the election judge currently in the precinct. Again, these changes are necessary to accommodate new technological changes in voting equipment.

The proposed changes to **8230.4380** modify the requirement that the county auditor provide two copies of the summary statement to the Secretary of State and changes the requirement to one. This is both needed and reasonable in light of the statutory provision only requiring that one summary statement be reported to the Secretary of State. See Minn. Stat. § 204C.30.

The proposed change to **8230.4385, subp. 1, clause D**, merely corrects a grammatical error. The current subpart reads “envelopes with notations concerning any other issued ballots contained which are not be to counted.” It is clear that the words “be” and “to” in that sentence are transposed, and the sentence should instead read “envelopes with notations concerning any other issued ballots contained which are not to be counted.” This change is needed to correct a grammatical error and is reasonable in light of the minor change.

8235 Recounts

The proposed changes to **8235.0200 and 8235.0300** are necessary to reflect the statutory changes in Laws of Minnesota 2013, chapter 131, article 2, section 37 through 39. The statutory language removed all references to “automatic” recounts and instead renamed those recounts “publicly funded.” Therefore the striking of all references to “automatic” and the replacement of such references with “publicly funded” is both reasonable and necessary to reflect the legislative changes.

Further, in **8235.0300** the language “authorized and requested” is added to the 24-hour period for a publicly funded recount because publicly funded recounts are no longer automatic. The changes to Laws of Minnesota 2013, chapter 131, article 2, section 37 through 39, now provide that a race that is within the threshold for a publicly funded recount does not automatically trigger a recount. Where previously a losing candidate could waive an automatic recount, Minnesota law now provides that a losing candidate must request a publicly funded recount if it is authorized under the threshold requirements. The language changes in 8235.0300 are reasonable and necessary to reflect the changes to Minnesota law.

Similarly, the change in the language in **8235.1200** is reasonable and necessary to reflect the change in Minnesota law striking the term “administrative” recount and substituting the term “discretionary.” This change is both reasonable and necessary to comply with the language changes in Minnesota law.

8240 Election Judge Training Program

The proposed repeal of **8240.2850** is reasonable because 8240.2850 outlines the implementation schedule for certification of municipal and school district clerks, an implementation which was completed on December 31, 2001. It is reasonable and

necessary to repeal this rule part because it is no longer applicable and its continued presence in Chapter 8240 is confusing.

8250 Ballot Preparation

The proposed repeal of **8250.0100, 8250.0300, 8250.0350, 8250.0365, 8250.0370, 8250.0390, 8250.0395, 8250.0397, 8250.0398, 8250.0400, 8250.0500, 8250.0600, 8250.0800, 8250.0900, 8250.1000, 8250.1100, 8250.1200, and 8250.0200** are reasonable in light of the repeal of the multicolored ballot system previously in place in Minnesota. Currently, all elections in Minnesota appear on the optical scan ballot with the exception of some March Township elections. The ballot preparation rules governing the preparation of the optical scan ballot can be found in 8250.1810. The optical scan ballot now includes the offices previously appearing on one of the colored ballots. Because the colored ballots are no longer in use, it is reasonable and necessary to repeal the following colored ballot provisions from the rules: 8250.0100 (“Definition of White Ballot”), 8250.0350 (“Form of State Primary Ballot”), 8250.0365 (“Form of Pink Ballot”), 8250.0370 (“Form of Canary Ballot”), 8250.0390 (“Form of Blue Ballot”), 8250.0395 (“Form of Buff Ballot”), 8250.0397 (“Form of Goldenrod Ballot”), 8250.0398 (“Form of Tan Ballot”), and 8250.0100, 8250.0300, 8250.0400, 8250.0500, 8250.0600, 8250.0800, 8250.0900, 8250.1000, 8250.1100, and 8250.1200 (all governing “Form of White Ballot).

The proposed changes to **8250.0200** are reasonable and necessary to reflect the changes made to Minnesota law regarding ballot preparation. The 2013 legislative changes removed references to the “white ballot” and replaced such references with the “state general election ballot.” It is therefore reasonable and necessary to make these language changes in 8250.0200 as well. Further, it is reasonable and necessary to change 8250.0200 to reflect that the auditor’s duties require that the auditor prepare and print the state general election ballot at least 46 days prior to the election. This change is reasonable and necessary to comply with current statutory requirements. Similarly, it is reasonable to require that the auditor provide a sample copy of each precincts state general election ballot for inspection by voters in the auditor’s office and provide the Secretary of State an electronic copy. This will ensure that voters have the opportunity to view the races on the ballot prior to election day both in person at the auditor’s office and online at the Secretary of State’s webpage, as required by statute. This requirement is reasonable and necessary to ensure the rule comports with the statutory requirements and to ensure voters are provided the opportunity to review the ballot before the voter votes either absentee, by mail, or in person.

The proposed changes to **8250.0375, subp. 1**, are reasonable because, although Minnesota law has stricken any reference to special colored ballots, the length of the state general election ballot may occasionally require the printing of a second ballot for the purpose of listing judicial races. The changes to 8250.0375 are needed because of the length of the

ballot may exceed the front and back of the current optical scan ballot, and are reasonable because they only apply when all races cannot fit on the state general election ballot and further conform to all other requirements of the state general election ballot format requirements. The only exception to this format requirement is the requirement that the heading for the ballot indicate that this second, separate ballot is only for judicial nonpartisan elections. Because the requirements for the judicial nonpartisan election ballot otherwise conform to the state general election ballot and because the judicial nonpartisan election ballot is only to be used in cases where it is not possible to place all offices on a single ballot, the changes to 8250.0375 are both necessary and reasonable. Finally, the proposed repeal of **8250.0375, subp. 1a**, is necessary and reasonable because the judicial ballot office order is governed by the rules in 8250.1810.

The proposed changes to **8250.0385** govern only those March Township elections that choose not to use the optical scan ballot. The changes to 8250.0385, subp. 1, are reasonable and necessary to indicate that this special ballot is only applicable to those town elections conducting elections in March pursuant to Minn. Stat. § 206.57, subd. 5a. Because the language 8250.0385, subp. 1, used to specify that the form of the town ballot had to be in the same manner as the white ballot, the changes to 8250.0385 include the addition of subps. 2, 4-8. These new subparts are necessary to include the ballot heading instructions, name of candidate instructions, town question instructions, back of ballot formatting instructions, type style and size requirements, and town clerk duties previously found in 8250.0400-8250.1200 which governed the preparation requirements for white ballots. Because Minnesota law has removed white ballots from the statutes, it is reasonable to incorporate those ballot formatting provisions into 8250.0385 because they now only apply to those townships conducting a March township election.

Finally, the proposed changes to 8250.0385, subp. 2, modify the ballot order instructions to remove any reference to city offices which are not permitted on March town election ballots, include the provision from 8250.0390 governing town questions, and striking any reference to municipal to reflect only town elections are governed by 8250.0385. These changes are reasonable and necessary to comply with current Minnesota law and make clear that the rule only applies to town elections.

The proposed changes to **8250.1810, subp. 1**, are necessary to reflect the current state of Minnesota law. Minnesota law requires, with limited exceptions, that ballots must be prepared and printed as soon as practicable, but in no event less than 46 days before an election. By removing the enumerated elections from 8250.1810, subp. 1, the rule is clarified to indicate that all elections unless otherwise specified by statute, are subject to this 46 day ballot-preparation requirement. This language change is reasonable and necessary to provide clarity and to ensure the rule reflects the 2013 statutory changes.

The proposed changes to **8250.1810, subp. 3**, add language regarding the appropriate heading for those county, city, town, school district or hospital district elections that are held separately from a federal or state election. The rule as written currently does not provide for a ballot heading if these elections are held separately from a state or federal election. Because many jurisdictions hold these elections in odd year and not in conjunction with a state or federal elections, it is necessary and reasonable to provide ballot headings for these elections to ensure consistency and to provide guidance to the election officials preparing the ballot.

The proposed changes to **8250.1810, subps. 4 and 12**, are reasonable and necessary to accommodate changes in technology. The proposed changes to both subps. 4 and 12 strike the reference to the voting method involving “completing the arrow.” No jurisdiction in the state of Minnesota currently uses the complete the arrow target, and therefore it is reasonable and necessary to remove this language. Further, because technology is changing and because it is possible for federally approved voting equipment to contain some other mark than an oval, it is reasonable to provide language that would allow for such marks assuming the equipment is otherwise approved. This change is necessary to ensure that the state can certify and a jurisdiction is able to use otherwise approved voting equipment and can provide instructions to voters on how to use that equipment in compliance with the approved equipment’s requirements.

The proposed changes to **8250.1810, subp. 7**, are reasonable and necessary to provide guidance to election officials in the method for determining the order of candidate names on a ballot. The addition of this language is reasonable because it merely incorporates the statutory requirements in Minn. Stat. § 204D.08 and Minn. Stat. § 204D.14, and directs the election officials to the rule governing rotation. The addition of this language is necessary because election officials have reported confusion as to why the subdivision referencing the “order” of candidate names on optical scan ballots does not reference or contain any guidance regarding the proper order of candidate names.

List of Exhibits

In support of the need for and reasonableness of the proposed rules, the Office anticipates that it will enter the following exhibits into the hearing record:

- Example of Affidavit of Death of Registered Voter provided by 8200.5710.
- Example of Major Political Party Recognition Petition provided by 8205.3000.
- Example of Minor Political Party Recognition Petition provided by 8205.3000.
- Example of Instructions to Absent Voters provided by 8210.0500.
- Example of Statement of Absentee Voter envelopes and forms provided by 8210.0600.

- Example of Instructions to Mail Voters provided by 8210.3000, subp. 4a.
- Example of Notice to Challenged Mail Ballot Voter provided by 8210.300, subp. 4
- Example of Mail Voter's certificate and envelopes provided by 8210.3000, subp. 4b.

Conclusion

Based on the foregoing, the proposed rules are both needed and reasonable.

November 21, 2013



Mark Ritchie
Secretary of State