



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 and Ballot Preparation, *Minnesota Rules*, Chapters 8200, 8205, 8210, and 8250; and Proposed Repeal of *Minnesota Rules*, parts 8200.0800; 8210.0600, subpart 2; 8210.0730, subparts 1, 3, and 4; 8230.4360; 8255.0020; and 8255.0025.

Introduction

In 2014 and 2015, multiple changes were made to the statutes governing elections and election administration. As a result of these changes, there were many places that Minnesota Statutes and Minnesota Rules conflicted. In addition, certain statutory changes from 2015 required rule changes before the full statutory purpose could be achieved. As a result, the Secretary of State began a rulemaking process to amend the current rules governing elections and election administration.

In addition to the proposed changes in direct response to legislative action, since the last election-related rulemaking, the Office of the Secretary of State has received comments from election officials and citizens requesting changes to forms, instructions, and other items reflected in the rules. The Office has been collecting these comments and suggestions, and has considered them in the proposed rule revisions.

A Request for Comments was published in the State Register on June 29, 2015, 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 described in this Statement of Need and Reasonableness ("SONAR"). The Additional Notice Plan was approved by Administrative Law Judge Barbara Neilson on June 22, 2015. The Secretary's staff used these comments as well as comments and suggestions received prior to the rulemaking 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 711.

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.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; 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; 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 eight 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.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 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 eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) 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 the Secretary of State.

Eligible voters will benefit from the proposed rule amendments because the rules clarify forms in response to reported confusion by voters. These changes include changes to the voucher form and absentee ballot instructions. Additionally, the proposed changes include revisions to the standard ballot design. The proposed rules require the ballot be printed in mixed upper and lower case to improve readability, and provides flexibility to increase the font on the ballot for ballot question text and allows the reduction of font size for those items utilized by election administrators. Finally, these rules benefit voters –specifically voters who are military veterans – by allowing the use of the veteran identification card as one of the approved documents for election day registration.

Election officials and local governments will benefit from the proposed rule amendments because they address issues and points of confusion identified by voters. Responding to voter questions takes government staff time and often requires the resending of voting materials at a cost to the local governments. Further, the proposed rule changes allow for flexibility in the printing of voter registration materials and additional flexibility in ballot layout and design. This allows for some potential cost savings for local election officials and their respective local governments.

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 including the use of electronic roster technology.

The **Office of the 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 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 the 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 materials 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, forms and materials, but these costs should be minimal as many of these materials are printed for each election and counties, cities, and towns do not keep a large supply of pre-printed materials on hand. In addition, some of the changes are designed specifically to permit cost savings by election officials – in the printing of voter registration materials, for example.

“(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 will be required to provide training on these rule changes, but 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”

Where applicable, this factor is discussed in the rule-by-rule section of the analysis. In addition to the discussion in the rule-by-rule section of the analysis, the Office considered allowing counties, cities, and towns to continue to use any remaining stock of certain materials such as the voucher form. However, because the amendments are designed to address problems with forms and instruction identified by voters and election administrators, the office declined to propose the continued use of the existing stock of those forms.

“(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”

Where applicable, this factor is discussed in the rule-by-rule section of the analysis. In addition to the discussion in the rule-by-rule section of the analysis, the Office looked to other states and solicited feedback from election administrators to determine alternative means for achieving the purpose of the proposed rules. Because of the unique nature of many of Minnesota’s election laws, many alternative methods employed by other states were not applicable in Minnesota.

“(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 very limited one-time cost increases to county, city, township, and school district election officials due to the need to re-print forms and instructions (for those that have leftover stock remaining to be used). However, this should be minimal as the forms requiring reprinting are those that are generally printed in the spring of an election year. Further, some proposed changes to the forms are required by the legislative changes adopted in 2014 and 2015 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 majority of the proposed rule changes are a result of legislative changes in 2014 and 2015. Without these proposed rule changes, the Administrative Rules would conflict with statute. Further, these changes reduce the cost of printing some materials, such as voter registration materials. Finally, there would be non-financial costs with respect to voter confusion, reduction in election integrity, and additional burdens carried by election administrators.

“(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. Various federal laws and regulations govern election administration, but the proposed changes do not conflict with nor modify any federal regulation.

“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . ‘[C]umulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”

The primary purpose of the proposed rule amendments are to bring the rules in line with current Minnesota law and increase clarity and accessibility for voters. Because the proposed rule amendments do not cover areas addressed by federal law, and because proposed rule amendments relating to state law are designed to bring the rules in line with state statute, this consideration is not applicable. To the extent that a proposed rule amendment is designed to bring the rules in line with state statute, that is noted in the rule-by-rule section of the analysis.

Commissioner of Management and Budget Review

As required by Minn. Stat. § 14.131, the Secretary of State has consulted with the Minnesota Management and Budget agency. Minnesota Management and Budget was provided a copy of the proposed rule revisions as well as the draft SONAR. The Office of the Secretary of State will supplement the record with any formal response from the Minnesota Management and Budget.

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 or Small Business

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 or small business and the Office has determined that it will not. The Office has made this determination based on the minimal printing costs needed to comply with the proposed rule, as described in the Regulatory Analysis section of this SONAR and the rule-by-rule analysis.

In addition, the Office also asked Wendy Lewin, City Clerk of the City of Spring Park, Minnesota, to estimate whether the cost to the city of complying with the proposed rules during the first year would exceed \$25,000.

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 elections in Minnesota are governed exclusively by federal and state laws and cannot be established at the local level. Thus, no local ordinance or regulatory changes are required.

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 as well as in-person, absentee, and mail ballot voting. Details of these considerations can be found in the rule-by-rule analysis.

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 the Office's Additional Notice Plan and (2) an explanation of why the Office believes the Additional Notice Plan complies with Minn. Stat. § 14.131, i.e., why the 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 Dual Notice, 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 Government Operations and 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 Committee
- House 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:

- Mark Ritchie
- Mary Kiffmeyer
- Joan Anderson Growe
- Arlen Erdahl

Chairs of the Minnesota's political parties:

- Democratic-Farmer-Labor
- Republican
- Independence
- Green
- Libertarian
- Constitution
- Grassroots Legalize Cannabis
- Legal Marijuana Now

The following election attorneys:

- Alan Weinblatt
- Tony Trimble
- Eric Magnuson
- Fritz Knaak
- Reid LeBeau
- Charles Nauen
- David Asp
- Jay Benanav
- Matthew Haapoja
- Erick Kaardal

John Knapp
William Mohrman
Brian Rice
David Zoll

Representatives of voting equipment and service vendors:

Dominion
Election Systems & Software
Everyone Counts
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:

AARP
ACLU
Catholic Charities
Citizens for Election Integrity
Center of the American Experiment
Common Cause
Education Minnesota
League of Women Voters
Minnesota Citizens Concerned for Life
Minnesota Council of Nonprofits
Minnesota Majority
Minnesota Taxpayers League
Minnesota Voter's Alliance
Minnesota School Employees Association
Minnesota Board on Aging

Minnesota Department of Veterans Affairs
Minnesota Public Interest Research Group
TakeAction Minnesota

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

ARC Minnesota
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
National Alliance for the Mentally Ill

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

Council on Asian-Pacific Minnesotans
Council on Black Minnesotans
Chicano/Latino Affairs Council of Minnesota
Minnesota Indian Affairs Council
Native Vote Alliance of Minnesota
Asian American Organizing Project
Hmong American Partnership
Immigrant Law Center of Minnesota
International Institute of Minnesota
Karen Organization of Minnesota
Minneapolis Urban League
NAACP Minneapolis
NAACP St. Paul
Somali Action Alliance

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 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 Barbara L. Neilson in a June 22, 2015, order and by Administrative Law Judge James E. LaFave in a January 5, 2015, order.

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.

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
Julie Strother, Director of Government Relations, 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 or in response to the statutory amendments adopted by the Minnesota Legislature in 2014 and 2015. 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.

When reviewing the rules draft, please note that some text in the instructions for voters 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 **8200.1100** are needed and reasonable in order to update the rules to incorporate two key statutory changes. First, in 2015, the Legislature removed the requirement that paper voter registration applications be printed on paper suitable for mailing. *Minnesota Laws 2015, Chapter 70, Article I, Section 8*. Though the current rules require that voter registration applications be printed in a form suitable for mailing, the rules also provide the option for counties to use a lighter-weight paper when a voter registers at the county office or at the polling place. The proposed rule change would now allow a county to continue to use the heavier voter registration stock if the county so chooses, but would allow counties to print voter registration applications on any paper so long as the paper is white and 8.5 by 11 inches in size. This proposed change is needed to reflect the intent of the 2015 legislative change and is reasonable because counties maintain the flexibility to produce voter registration cards on heavier stock. This proposed change is also a benefit to the local election officials because it reduces the cost of producing voter registration materials.

The second statutory change reflected in the proposed changes to 8200.1100 is the addition of the word “paper” in subpart 2. This change is needed and reasonable to reflect the use of online voter registration. In 2014, the legislature authorized the use of online voter registration. Voters can now register or update their registration electronically, without use of a paper application. Therefore it is needed and reasonable to reflect that the size-specifications in 8200.1100 apply only to paper voter registration applications, and not the online applications.

The proposed changes to **8200.1200** are needed and reasonable to reflect the use of online voter registration. The first change to 8200.1200, subpart 1, strikes the words “have printed” and inserts the word “include” to reflect that not all voter registration applications are printed but are still required to contain the information in paragraphs E through H. The second change reflects that subpart 2 and subpart 3 are specific only to paper registration forms. Subpart 2 is a requirement that the voter registration form have a space for election judges to mark the form with ward, precinct, and school district information. With online voter registration applications, this information is entered automatically into the Statewide Voter Registration System when the registration is processed, and it is therefore needed and reasonable to reflect that this requirement on the face of the application only applies to paper forms. Similarly, it is needed and reasonable to specify that subpart 3 applies only to paper voter registration applications. All online voter registrations must be completed on a website maintained by the Office of the Secretary of State. Minn. Stat. § 201.061. Because all applications “obtain” their registration application on the Office’s website, because there is no way to “mark” the face of online application with anything other than the applicant’s information, and because the Statewide Voter Registration System internally records that

the application was received online, it is needed and reasonable to reflect that this possible identifying mark only applies to paper voter registration applications.

The proposed changes to **8200.5100, subpart 2** adds a veteran identification card to the list of acceptable photo identification documents that must be combined with an authorized proof of residence to register to vote on the same day as casting a ballot. Currently, 8200.5100, subpart 2, authorizes the use of military identification cards, but does not specifically authorize the use of veteran identification cards. The Office became aware of the potential need to add the veteran identification card following a request from the Minnesota Department of Veterans Affairs to include the identification card on the list of approved registration documents. The request was made on the basis that the veteran identification card is a government issued photo identification that many veterans may have as their only form of current identification.

In determining that it is reasonable to add a veteran identification card, the Office considered the security around the issuance of the card. Veteran identification cards are issued by the U.S. Department of Veterans Affairs and are issued to veterans who are enrolled in the VA health care system. These cards contain a photo of the individual and the individual's full name. Veteran identification cards are used to access health benefits through the VA. In addition, because of the security requirements that need to be met to obtain a veteran identification card, these cards can also be used to access U.S. military bases and, in some cases, access through U.S. airport security. See Veterans Health Identification Card, <http://www.va.gov/healthBenefits/vhic/index.asp>.

As of November 2015, 31 states and the District of Columbia accept the veteran identification card as a form of either primary or secondary identification for voting. Because of the security surrounding the issuance of the veteran identification card, because the veteran identification card is commonly used for voting purposes in other states, and because the veteran identification card may be the only identification card in the possession of a veteran, it is needed and reasonable to add this identification to the list of approved documents under 8200.5100.

The proposed changes to **8200.5100, subpart 3**, are needed to ensure that the rules properly reflect state law in relation to student housing lists. Prior to 2014, Minnesota Rule 82100.5100 contained two subparts relating to student housing lists. Subpart 3 addressed those students living on a college campus and on a student housing list provided under Minnesota Statutes, section 135A.17. Subpart 4 addressed those students living off campus but also on a student housing list provided under Minnesota Statutes, section 135A.17. Minnesota Statutes, section 135A.17, allows for enrolled students living both on and off-campus students to be included on a residential housing list for the purpose of election-day registration:

All postsecondary institutions that enroll students accepting state or federal financial aid may prepare a current list of students enrolled in the institution and residing in the institution's housing or within ten miles of the institution's campus. The list shall include each student's current address. The list shall be certified and sent to the appropriate county auditor or auditors for use in election day registration as provided under section 201.061, subdivision 3. A residential housing list provided under this subdivision may not be used or disseminated by a county auditor or the secretary of state for any other purpose.

Minn. Stat. § 135A.17, subd. 2. When the Office of the Secretary of State proposed repealing Minnesota Rule 8200.5100, subp. 4, in 2014, the Office failed to incorporate the provisions of section 135A.17 addressing off-campus students into subpart 3.

The proposed changes are needed and reasonable to fix this omission in the 2013/2014 rulemaking. The residential housing list authorized in Minnesota Statutes section 135A.17 has two distinct parts: (1) students that live on campus owned housing and (2) students that live in private housing within 10 miles of campus. Since the statute still permits the student housing list to include students living off campus but within 10 miles of campus, this change is needed and reasonable to ensure that the rule part reflects Minnesota law related to student housing lists.

The proposed change to **8200.5400** is needed and reasonable to reflect the change in **8250.5100, subp. 2**. The rationale for this proposed change is discussed above.

The proposed changes to **8200.9115** are needed and reasonable to reflect the legislative changes allowing for the use of new technology and in response to concerns from county attorneys regarding potential voting crime prosecutions. The first changes on lines 4.20-4.23, 5.6, and 5.10-5.11 of the rule draft provide flexibility to accommodate the formatting used in electronic rosters. The use of electronic rosters was authorized in the 2014 legislature, and these changes are needed and reasonable to reflect that electronic rosters would not have information "printed on" the roster but instead the information would be "included in" the roster.

The change on line 4.24 of the rule draft is in response to a request from county attorneys. County attorneys were declining to prosecute some alleged voter crimes because they felt that the language "certify" was not sufficient to prosecute certain crimes. By adding "swear or affirm" the prosecutors indicated it would be easier to prosecute if an individual provides

false information. This change is needed and reasonable to allow counties to pursue allegations of voter crimes and to insure the integrity of Minnesota's electoral system.

The proposed changes to **8200.9939** are in response to reports of voter confusion in completing the voucher oath. Under Minnesota Law, the oath contained in 8200.9939 can be used in the polling location for election day registration and when a voter is registering in conjunction with casting an absentee ballot. Although the form is used in these two circumstances, the current form is written as if it is being used only in the polling location. Because this form is also used with unregistered absentee voters, there was confusion specifically around what should be included in the "Voter ID" line and the "signature of the election judge." Although not specified on the current form, the "Voter ID" line and the "signature of the election judge" do not need to be completed by the voucher before returning the voucher form with an absentee ballot. This has caused confusion for voters submitting an absentee ballot resulting in errors in the completion of the form and frequent questions for election officials.

In order to address these issues, the Office proposes adding clear indications of what fields need to be completed by the election judge, as opposed to the voucher. This will allow the form to continue to be used at both the polling location and with absentee voting, while addressing the confusion reported by voters. These proposed changes are needed and reasonable to address the confusion with the form identified by voters and election administrators.

The Office considered creating two separate forms, one voucher oath for use in the polling location and a separate voucher oath form for use with absentee voting, but ultimately determined that a single form was preferable. In making this determination, the Office considered whether a single form could be revised to avoid voter confusion and whether an additional form would result in additional costs to election administrators. Because the Office determined that the single form could be revised to eliminate voter confusion and because additional forms would place additional administrative and printing costs on counties, the Office decided to propose only revisions to the current form and not propose a new form for absentee voting only.

Finally, the Office received reports of concerns that signatures on this form were illegible. By adding a line for the voucher's printed name on line 5.17 of the rule draft, election officials will have a clear record of the voucher's name. Because there is a limit on the number of voters a single person can vouch for, election officials need to be able to read the voucher's name. Adding a requirement that a voucher provide his or her printed name ensures that election officials can accurately track the number of voters an individual has vouched for.

8205 Petitions

The proposed changes to **8205.3200** are needed and reasonable to reflect the 2015 change to Minnesota law that clarified that major and minor party petitions must be signed within a year of submission. *See Minnesota Laws 2015, Chapter 70, Article 1, Subdivision 7.* In incorporating this legislative change, the Office considered whether the language in the proposed rule change should state that the office would “verify” that the signatory signed the petition not more than one year prior to filing the petition. The Office verifies the addresses of signatories to the petition, but the Office does this by simply comparing the address on the petition to the precinct finder in the Statewide Voter Registration System to ensure that the address is within the district of the candidate on the petition. The Office has no way to verify that the petition was signed on the date the signatory dates his or her signature, and can only determine through visual inspection that the date is within the year period. Because of this, the Office concluded that it was appropriate to use the term “determine” in the proposed rule change. This language is needed and reasonable because it incorporates and reflects the new statutory requirements for petitions while also accurately reflecting the procedure that the Office will follow.

8210 Absentee Ballots

The first proposed change to **8210.0500** is the specification that there be a privacy notice included with the instructions provided to the absentee voter. Currently, the rule part includes the entire text of the privacy notice (the “Tennessee Warning”) in each sample absentee voter instruction. A Tennessee Warning is designed to provide information to an individual about how his or her data will be used. Minnesota law specifies that a Tennessee Warning must contain:

- (a) the purpose and intended use of the requested data within the collecting government entity;
- (b) whether the individual may refuse or is legally required to supply the requested data;
- (c) any known consequence arising from supplying or refusing to supply private or confidential data;
- and (d) the identity of other persons or entities authorized by state or federal law to receive the data.

Minn. Stat. § 13.04, subd. 2. The specification in rules of the exact language of the Tennessee warning presented a challenge in 2014 when the legislature changed the data that could be shared about absentee voters prior to election day. The Office was unable to update the Tennessee warning without conflicting with Rules.

In considering how best to address this issue, the Office considered simply updating the current Tennessee warning within the rules to reflect the 2014 law change. However,

because the obligation to include a Tennessee warning is prescribed by statute and because the text of Tennessee warnings is generally not included in rules or statute, the Office declined to rewrite the language in the proposed rule. This change is reflected on lines 7.19-7.20, 10.22-1.26, 15.17-15.24, 18.22-18.72, and 22.15-22.21 of the rule draft.

The remaining proposed changes to **8210.0500** are needed and reasonable to remove outdated language, update certain language to reflect legislative changes, and to reflect that a veteran identification card can be used for registration purposes. Specifically, this section covering instructions to absentee voters reflects the following: (1) that counties have stopped using the absentee envelopes with flaps; (2) the legislative change allowing voters to return their absentee ballots on election day before 3:00 p.m.; (3) the need to provide voters the contact information of their local election office if they make a mistake on their ballot so they can request a replacement ballot; and (4) that voters can use a veteran ID card as an alternative proof (in combination with a document showing an address) under the proposed rule change in 8200.5100. These changes appear throughout these rule parts and are repeated in several sections.

The changes needed to reflect that counties no longer use absentee envelopes with security flaps, and instead use a third envelope, requires incorporating the language on lines 10.27-11.9, 15.23-16.6, and 19.1-19.9 of the rule draft within the standard instructions. Because all counties now use the third envelope, it is needed and reasonable to now incorporate this language throughout the instructions. Previous to this revision, counties using the third envelope would have had to incorporate these instructions on their own. Because no county now uses the envelope with flap system, it is needed and reasonable to incorporate the third-envelope instructions as the standard instructions.

The Office considered leaving the language regarding the flap-envelope system but ultimately decided to remove the language entirely. In deciding to remove the language the Office considered the benefit to voters that would be gained by having a uniform set of instructions and absentee materials, the fact that the flap system has caused problems in processing for some counties, and that no county has expressed interest in returning to a envelope-with-flap system. For these reasons, the Office has chosen to remove all references to the envelope-with-flap absentee system.

The changes needed to reflect that Minnesota law now permits an absentee voter to return his or her own ballot on election day can be found on lines 9.21-9.22 and 13.15-13.16. It is needed and reasonable to update these instructions to reflect current Minnesota law and to provide voters with the correct information regarding their options to return their ballot.

The next category of changes to rule 8210.0500 are designed to provide voters with contact information for their local election official within the instructions. These changes can be found on lines 10.1-10.4, 14.31-14.34, 18.2-18.4, and 21.20 of the rule draft. Under the

current rules, military and overseas voters and mail ballot voters have this contact information printed on the instructions, but regular absentee voters do not. Providing this information on the form is a benefit to voters because they will have this information readily accessible. Further, there will be no additional printing costs associated with this change because election officials will already need to reprint these forms because the old forms contain out of date information about when a voter can return his or her ballot. Because this will provide a benefit to voters without additional printing costs to election officials, and because this provides uniformity of instructions across all absentee and mail balloting, these changes are needed and reasonable.

The final category of changes to rule 8210.0500 is the incorporation of the veteran identification card as an approved document for the purposes of election day registration. This change can be found on line 14.2 of the rule draft. This change is needed and reasonable for the reasons outlined in 8200.5100, described above.

The changes to **8210.0710** are needed and reasonable to reflect that no county uses the return envelopes with flaps, and instead use an additional envelope to return ballot materials. The proposed changes to 8210.0710, subparts 4 and 5, are needed and reasonable to reflect that the additional or third envelope system is now the only absentee ballot envelope system used in Minnesota. Similarly, the changes to 8210.0710, subparts 6 and 7, incorporate the language from 8210.0730, which is required to be used when a county uses a third envelope instead of an envelope with a flap. It is needed and reasonable to incorporate this language because all counties now use the third envelope and the envelope-with-flap system is no longer used in Minnesota.

The change to **8210.0720** removes unnecessary language. Since the only return envelope used in Minnesota is the third envelope, the struck language is no longer necessary. In order to reflect the current system and to avoid confusion, this change is needed and reasonable.

The proposed change to **8210.0800** merely reflects that, without the envelopes with flaps, the proper reference to the location of the certificate of eligibility is the signature envelope. This change is needed and reasonable to reflect the discontinuation of the use of return envelopes with flaps. This change from “return envelope” to “signature envelope” is also included in **8210.2000 and 8210.2450**.

The proposed change to **8210.2000** adding language regarding the label placement on the envelope is needed to incorporate the non-redundant language from the repealed 8210.0600, subpart 2 (see repealer). This change is needed and reasonable because it merely incorporates the non-redundant language of the proposed-repealed rule.

The proposed change to **8210.2200** is needed to reflect the legislative change that allowed either the voter or the voter's agent to return an absentee ballot by 3:00 pm on election day. This change brings the rules in line with Minnesota Statute, as amended by *Minnesota Laws* 2015, Chapter 70, Article I, Sections 13 and 14. Prior to the 2015 legislative change, only a voter's agent could return an absentee ballot on election day. Under current Minnesota Law, a voter or a voter's agent may return the absentee ballot in-person by 3:00 p.m. on election day. This proposed rule change is needed and reasonable to reflect current law.

The proposed change to **8210.2450** on lines 27.16-27.17 of the rule draft is needed and reasonable to reflect the 2015 legislative change that permitted Absentee Ballot Board members to check the identification numbers on the signature envelope against the absentee ballot application or Statewide Voter Registration System. Previous to the 2015 legislative change, Absentee Ballot Board members could only compare the numbers on the signature envelope to those on the application. This change merely ensures that the rules comport with Minnesota Law. See *Minnesota Laws* 2015, Chapter 70, Article I, Section 15. The remaining changes are needed and reasonable for the reasons discussed in relation to the proposed changes to **8210.0800**, described above.

The proposed change to **8210.2500** removes the reference to the last mail delivery, but maintains the requirement that municipal clerks take reasonable steps to ensure that all return envelopes received by the post office before 4 p.m. are delivered. This is needed and reasonable because, regardless of the time of the last mail delivery, the municipal clerks maintain the requirement that all ballots received by the post office before 4 p.m. on election day are delivered and received by the absentee ballot board. This ensures voters are not penalized if their municipality happens to have a very early regularly scheduled mail delivery time.

The first proposed change to **8210.3000** inserts a requirement that the instructions include a privacy notice that complies with Minn. Stat. § 13.04, and then removes from the rule part the specific text of the privacy statement. The next change includes the contact information for the election official on lines 32.1-32.4. Although mail ballot voters are also provided with a phone number for the election official on the front side of the instruction, providing this information on the back side of the instructions ensures mail ballot voters' instructions regarding correcting mistakes are the same as all other absentee voters submitting a ballot by mail. These changes are consistent with the changes made to the absentee ballot instructions, and are needed and reasonable for the reasons outlined with respect to the changes to **8250.0500**, described above.

The proposed changes to **8230.1130** are needed and reasonable to reflect that ballot duplication must be completed in accordance with 8230.3850, regardless of whether it is in relation to a central count system or at the precinct. This change is needed and reasonable because the procedures for duplicating outlined in 8230.3850 are specifically stated to be

used in both a polling location (where a precinct counter would be used) or at a central counting center (where a central count voting system would be used). This change makes no substantive change to the rules but instead streamlines the rules by removing the unneeded reference to 8230.4360 and instead directly reference rule part 8230.3850.

The proposed changes to **8230.3560 and 8230.4365** are needed and reasonable to reflect the changes in technology. Previously, central count technology could not count more than 10 precincts, and precinct count equipment could not count more than four precincts. As technology has evolved, this limit is no longer needed. Instead, central count and precinct count equipment can be used for as many precincts as the county so desires and the equipment can be programmed for, so long as the election results can be reported on a precinct-by-precinct basis. This change is needed to remove the arbitrary requirement that the central count equipment be used for only 10 precincts and precinct count for only four, while specifying that the central count and precinct count equipment used in multiple precincts must be able to provide segregated results.

Finally, the proposed changes to **8230.3950, 8230.4050 and 8230.4380** are needed and reasonable to reflect that only one summary statement is required to be produced, and that the Secretary of State is not required to receive a summary statement from the county auditor. These changes are needed and reasonable to reflect the 2015 legislative repeal of the requirement that county auditors send the Secretary of State a copy of the summary statement. *See Minnesota Laws 2015, Chapter 70, Article I, Section 63.* By conforming these rule parts to the legislative change, this change also saves counties time and costs associated with mailing the summary statement to the Secretary of State.

8250 Ballot Preparation

Many of the proposed changes to rule parts in chapter 8250 are made throughout the rule chapter rule parts. Because of this, the SONAR will first examine those changes made consistently throughout the chapter rule parts, and then will address the additional individual proposed changes.

The first proposed changes to **8250.0375, 8250.0385, and 8250.1810** requires ballots be printed in mixed upper and lower case letters. This is needed and reasonable to reflect the legislative change in 2015 which allowed the printing of ballots in mixed upper and lower case letters. *See Minnesota Laws 2015, Chapter 70, Article I, Sections 27-30.* The legislature repealed the requirement that ballots be printed in upper case to improve the readability of the ballot. Organizations representing low vision readers and the elderly and aging support the use of mixed case lettering. The organizations supporting the use of mixed case lettering include:

- The AARP

- American Printing House for the Blind
- Brennan Center for Justice
- Center for Disease Control
- Federal Elections Commission – Usability Standards
- National Institute on Aging
- Royal National Institute for the Blind
- U.S. Election Assistance Commission
- U.S. National Library of Medicine
- Usability.gov

In addition, several non-partisan organizations have researched and provided recommendations for ballot design. Based on research from the 2007 Democracy Project for the U.S. Election Assistance Commission, the American Institute’s Graphic Association (AIGA) delineated 10 recommendations for making ballots more understandable. In their field research, AIGA’s first recommendation was to “use all lower case letters, as lowercase letters are more legible than ALL CAPITAL LETTERS because they make shapes that are easier to recognize.”¹ Much like AIGA, the Brennan Center for Justice’s Better Ballots project also recommended to “[d]isplay all text in mixed case, rather than all capital letters.”²

Because this is a benefit to voters, because technology in use in Minnesota allows for mixed upper and lower case lettering on ballots, and because the legislature considered this benefit when permitting ballots to be printed in mixed upper and lower case and repealing the all upper case requirement, these changes are needed and reasonable.

The next proposed rule changes to **8250.0385 and 8250.1810** provide flexibility on the instructions for filling in the target shape on the ballot. This change is needed and reasonable both to reflect the statutory language regarding target shapes and to reflect the target shapes used by different voting systems within the state. In 2015, Minnesota statutes were updated to reflect that, while an oval target shape has been the most common target shape used over the past decade, it is not the only possible target shape. *Minnesota Laws 2015*, Chapter 70, Article I, Sections 27-29. The changes to the instructions regarding target shapes are needed and reasonable to directly reflect these legislative changes.

The proposed rule changes to **8250.0385 and 8250.1810** also include changes to the presumptive font size of some portions of the ballot. The Office considered multiple factors when examining possible changes to the presumptive font size, including: (1) the desire to ensure that all ballot information be contained on one as opposed to two ballot cards whenever possible; (2) the costs to local election officials associated with printing on longer

¹ See <http://civicdesigning.org/wp-content/uploads/2012/06/Field-Guide-Vol-011.pdf>.

² See <http://www.brennancenter.org/sites/default/files/legacy/Democracy/Better%20Ballots.pdf> page 64.

ballot; (3) and the need for voters to be able to read and comprehend the voted portion of the ballot. In order to balance the interest of election officials in keeping the costs associated with larger sized ballots down, but also improving the usability of the ballot for voters, the Office decided to provide election officials the flexibility to reduce the font size of those items that are not within the voted portion of the ballot (i.e., the portion of the ballot that the voter needs to comprehend in order to effectively cast his or her vote) while increasing the minimum font size of the text of ballot questions.

Specifically, on line 41.24 of the rule draft, the minimum font size of the ballot heading is reduced to 10-point font. Election officials have the option of increasing the size of the ballot heading if they have space on the ballot, but this change provides them with the flexibility to reduce the size of the heading if needed. This is needed and reasonable to ensure that election officials can include all necessary information on the ballot and because the ballot heading only signifies the type of election, and is not within the voted portion of the ballot.

Similarly, on lines 38.4 and 41.26 of the rule draft, the minimum font size of the words “official ballot” is reduced to 8-point font, and on line 42.2 the minimum font size for the word “Judge” is also reduced to 8-point font. These items are used by election officials, and are not within the voted portion of the ballot. Election officials maintain the ability to print the words as large as practicable, but this change provides them with the flexibility to reduce the font size to 8-points. This change is needed and reasonable to ensure that election officials can include all necessary information on the ballot while maximizing the font-size of the voted portion of the ballot.

Finally, on lines 47.23 and 48.19, the minimum font size of ballot question text is increased from 8-point font to 10-point font. The Office considered increasing the font-size to a minimum of 12-point font, but declined to increase to 12-point font because of the costs associated with increasing ballot size and because of the assistive voting technology required to be used in polling places. Assistive voting technology, among other features, allows voters to magnify portions of the ballot for better readability. This proposed change is needed in order to improve readability of the ballot for the average voter and reasonable because it balances the needs of local election officials to keep ballot sizes manageable while increasing the readability for voters.

These change to the minimum font sizes are need and reasonable because they provide election officials the flexibility to reduce the font size of those items that are not within the voted portion of the ballot while increasing readability of ballot questions within the voted portion of the ballot.

Finally, the last general proposed change to **8250.0385 and 8250.1810** related to ballot form is with respect to shading on the ballot. The proposed changes would provide election officials with greater flexibility regarding the shading on different portions of the ballot. This

change is needed, in part, to reflect the changes in technology. While most counties in Minnesota used the same voting equipment over the past decade, new voting equipment has been certified for use in Minnesota. Providing local election officials with the flexibility to work with their respective voting equipment vendors to layout the ballot in the most efficient way possible provides a benefit to both the voters and to the county. These proposed changes include, on lines 39.8-39.9 of the rule draft, removing the requirement that the shade screen be exactly 30 percent and setting a minimum screen of 10 percent. Similarly, on line 43.14 of the rule draft, the proposed change removes the requirement that the screen be either printed with a shade screen of 10 percent or less or white on black, and instead provides the flexibility of a shade screen of at least 10 percent. These changes ensure that there is a minimum shade screen to signal to the voters different portions of the ballot, but provides flexibility to elections administrators in the design of the ballot.

In proposing this change, the Office considered removing the requirement of shade screens completely, but declined to remove the requirement entirely because a minimum shade screen provides voters with a visual demarcation between races on the ballot.

The proposed rule changes to **8250.1600** is needed and reasonable to remove an outdated cross reference and insert the correct cross reference. The rule parts referenced in the current rule part 8250.1600 have been repealed and replaced with rule part 8250.1810. For this reason, it is needed and reasonable to update this cross reference.

The proposed rule changes to **8250.1810, subpart 2, paragraphs B and D**, are needed and reasonable to provide flexibility in the ballot design demarcation between the partisan and nonpartisan section of the ballot. This change is reasonable because it still maintains the requirement that there be a demarcation between the partisan and nonpartisan sections of the ballot, but is needed to allow election officials to work with their voting equipment vendors to provide the most efficient ballot layout. This change provides needed flexibility to election officials while maintaining the requirement of a demarcation that provides notice to voters of the beginning of the nonpartisan section of the ballot.

The proposed rule changes to **8250.1810, subpart 2, paragraph E**, is needed and reasonable to reflect that it is possible for a primary ballot to contain only a partisan primary. Currently the rules provide instructions for when the ballot contains partisan and non-partisan races, but does not specify the instructions to voters if there is only partisan races on the primary ballot. The Office considered leaving the instructions to the election officials' discretion, but because of the need to have uniform written instructions to voters on all ballots, the Office instead proposes instructions that would be used on all primary ballots containing partisan only races.

The proposed rule changes to **8250.1810, subpart 2**, adding a new **paragraph F**, is needed and reasonable to incorporate the requirements for partisan-primary ballot design outlined

in Minn. Stat. § 204D.08. This change is needed and reasonable because, though the requirements are also set out in Minn. Stat. § 204D.08, this rule part sets a comprehensive list of requirements for ballot design, including primary ballots. The omission of the requirements of Minn. Stat. § 204D.08 is inconsistent with the purpose of rule part 8250.1810, and the inclusion is needed and reasonable to ensure that rule part 8250.1810 serves and effective guide for election officials in preparing optical scan ballots.

The proposed rule changes to **8250.1810, subpart 3**, include the addition of two additional ballot headings. These additions are needed and reasonable to include two valid and used ballot styles in relation to special elections: “special primary ballots” and “special election ballots.” In addition, this change is needed and reasonable to reflect the requirements in Minn. Stat. §204D.25, regarding special election ballots.

Finally, the last proposed change to this rule chapter is found in **8250.1810, subpart 4**, which provides the option for county election officials to include an image demonstrating the voter instruction. As new voting technology enters the market, the technology has the ability to provide graphic instructions to voters on how to completely fill the oval or similar mark. This change is needed to incorporate the new functionality of the voting equipment that is designed to help voters visually understand how to complete the ballot. In addition, the proposed language requires that the Office of the Secretary of State approve the image. This is needed and reasonable to ensure that the image is appropriate and accurately reflects the instruction without specifying in rules what the image must be.

Proposed Repealed Rule Parts

The proposed repeal of **8200.0800** is needed and reasonable because it is redundant to 8200.9300, subpart 9, if the proposed changes to 8200.9300, discussed above, are accepted.

The proposed repeal of **8210.0600, subpart 2**, is needed and reasonable because it is redundant to 8210.2000 if the proposed changes to 8210.000, discussed above, are accepted.

The proposed repeal of **8210.0730, subparts 1, 3, and 4**, is needed and reasonable because these requirements have been incorporated into 8210.0710. This alternative language was needed when the presumption was that counties were using envelopes with security flaps. Since the proposed changes to 8210.0710 reflect that all counties are now using a third envelope instead of an envelope with the flap, it is needed and reasonable to incorporate this language into rule parts 8210.0710 and repeal this rule part.

The proposed repeal of **8230.4360** is needed and reasonable in light of the proposed changes to **8230.1130**, described above. The repeal of this rule part makes no substantive change to the rules but instead streamlines the rules because the proposed change to 8230.1130 would directly reference 8230.3850.

The proposed repeal of **8255.0020 and 8255.0025** are needed and reasonable to reflect the repeal in 2015 of the corresponding statutory provision. *See Minnesota Laws 2015, Chapter 70, Article I, Sections 63* (repealing Minn. Stat. § 204B.14, subd. 6).

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 a revised voucher form
- Information provided by the Department of Veteran's Affairs on Veteran identification cards
- Example of a revised absentee and mail ballot instructions
- Example of a revised ballot using mixed upper and lower case letters

Conclusion

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

January 15, 2016



Steve Simon
Secretary of State