

Secretary of State
Statement of Need and Reasonableness

**Proposed Amendment to Rules Governing Voter Registration and Absentee Balloting,
Minnesota Rules, Chapters 8200 and 8210**

INTRODUCTION

The Secretary of State is the chief elections official in Minnesota and is responsible for the administration of elections in this state. Over the past several years, the legislature has made changes to statute, but the rules have not been amended to reflect these changes or to provide uniform direction to local election administrators and voters as to how these changes should be implemented. The Secretary also asked his staff, the public, and local election officials to review all the election-related rules and to suggest amendments that would improve the rules and remove obsolete provisions. The secretary's staff used these suggestions and the legislative mandates 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 cassette tape. To make a request, contact Bert Black at Office of the Secretary of State, 180 State Office Building, 100 Rev. Dr. Martin Luther King, Jr. Boulevard, Saint Paul MN 55155, 651-201-1326, 651-215-0682 (fax). TTY users may call the Minnesota Relay Service at 1-800-627-3529.

STATUTORY AUTHORITY

Voter Registration

The Secretary's authority to adopt rules implementing voter registration statutes to establish the form of the voter registration application, to create uniform forms and procedures, and to adopt rules for maintaining the statewide voter registration system is set forth in Minnesota Statutes, section 201.221 which provides:

Subdivision 1. Adoption of rules. To implement the provisions of this chapter, the secretary of state shall adopt rules consistent with federal and state election laws.

Subd.2. Uniform procedures for counties. 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 also has additional authority with respect to amendments to Part 8200.5100 pursuant to Minnesota Statutes, section 201.061, subd. 3, item (a), paragraphs (2) and (3), subparagraph (i), which state that voters may prove residence for the purposes of registering by:

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

and (3) (i) [presenting] 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;

Absentee Ballots

The Secretary's statutory authority to adopt rules governing absentee voting is set forth in 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.

All of the sources of statutory authority were adopted and effective prior to January 1, 1996, and so Minnesota Statutes, section 14.125, does not apply. See Minnesota Laws 1995, chapter 233, article 2, section 58. Also, this rulemaking is primarily an amendment of rules and to that extent, Minnesota Statutes, section 14.125, does not apply. 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 six factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (6) 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 **Secretary of State's office** will benefit from the proposed rules because they clarify provisions currently governing the voter registration application, election day registration and absentee balloting materials. The Secretary's staff answers 10 to 20 questions about these matters from the public and election officials on an average day. Starting shortly before the state primary in September of an even-numbered year and continuing until after the state general election in November of that year, at least four members of the Secretary's staff work full-time answering questions from the public and election officials about these matters. The Secretary's staff believes that clarifying the current rules and proposing new rule parts will answer some of these questions,

thereby freeing them to answer other questions and to work on other projects.

Election officials and the local governments for which they work will benefit from the proposed rules because they clarify current rule provisions governing the voter registration application, Election Day voter registration, and absentee balloting materials, thereby making it easier for these officials to administer these procedures. Updating the rules so that forms and instructions to voters reflect statutory changes means that local election officials can again use the rules as a resource for these documents, and do not have to update the forms and instructions themselves or risk using forms that do not meet statutory requirements. Using updated and more user-friendly forms and instructions should also decrease the amount of time that local election officials spend answering questions from voters. Allowing for the use of different voter registration applications for those who pre-register and those who register to vote on Election Day will save election officials and local governments a considerable amount of money. Having the Secretary of State manage the compilation of student housing information and appending precinct data to the lists for November general elections will make administering this method of voter registration easier to administer.

Election Judges will benefit from the proposed rules because the rules provide for more user-friendly voter registration applications, voucher forms, challenger forms, and absentee balloting materials. As a result, election judges should find administering elections easier and less time consuming.

Eligible voters will benefit from the proposed rules because they provide more user-friendly and intuitive voter registration applications, absentee ballot certifications, and absentee ballot instructions. These forms should allow election judges to do their jobs more quickly, resulting in shorter lines for everyone. The proposed rules also will benefit eligible voters by providing additional ways to provide proof of residency for Election Day registration, while still ensuring that people vote only where they reside.

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

The **Secretary of State's Office**, for example, will bear some of the costs of the proposed rules. The new larger voter registration applications to be used before election day will cost more to produce than those used currently. In addition, the Secretary's office will incur some staff costs to prepare new sample forms that comply with the changes made in the proposed rules. These costs should be minimal, however, because the Secretary's staff simply will make the changes to the current electronic versions of the forms and print these new samples. The Secretary of State will also incur costs to write computer software to append precinct data to lists submitted by colleges and universities.

Election officials and the local governments for whom they work will bear some of the costs of the proposed rule, but these costs should be minimal. These costs will be related to training for election judges, printing voter registration applications, and working with lists of students who live off-

campus submitted by colleges and universities.

The **public** ultimately will bear any costs of the proposed rules because they fund the election process with their tax dollars.

"(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's Office will bear some costs to implement the proposed rules. The primary cost will be in printing the new larger voter registration application for use before election day. Voter registration applications will need to be printed in quantity regardless of the form of the application. The new application forms will cost about .0177 cents more per piece to print than the forms currently being used. The Secretary's Office is expecting to print approximately 3 million voter registration applications in 2008, for a total *additional* cost of just over \$53,000.

There will be some costs involved in programming our computers to process data submitted from postsecondary educational institutions, appending precinct information with the data provided, and sorting the data, as well as staff time to provide them to the appropriate county. However, once the initial programming is done, it should take minimal effort to process the data prior to each election. We estimate that it will cost approximately \$24,000 to do this initial programming.

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 and will replace material currently discussed. Accordingly, the new rules will not increase the length or cost of the current training seminar.

Also, as discussed in factor one, the Secretary's staff already has drafted the language for the new forms required by the proposed rules and therefore does not expect to expend any additional staff time on this task after the proposed rules are adopted. As discussed above, the Secretary's office already provides samples of the forms discussed in the rules to local governments and does not expect to incur any additional costs due to the proposed rules. Because printing the new language on the original forms simply will require updating existing computer files, the cost of creating the new original forms will be too small to estimate.

The proposed rules probably will not cause any other state agency to incur any costs.

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.

"(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"

Local elections officials are already required to train election judges (Minn. Stat. §204B.25, subd. 1-3), and the proposed rules should not require that this training be extended, which would increase costs. While there will be a few additional proofs of residency to cover in the training, it should take less time to do training on the new forms which are designed to be more user-friendly and intuitive.

Although the voter registration applications are changing, local governments will not incur increased costs for two reasons. First of all, the proposed rules allow local governments to continue to use their stock on hand through the 2008 general election and on election days thereafter, so there will not be a need to unnecessarily reprint new applications. Furthermore, the new voter registration applications will almost certainly save money for local election officials and the governments for whom they work. Although the new larger voter registration applications for use before election day will cost more to print than forms currently authorized (.04 cents a piece instead of .0223 cents a piece), this additional cost should be more than offset by allowing local governments to replace many of these forms with different forms for those registering in person that are less expensive and do not have an adhesive strip. We expect that these applications, which will cost only .0131 cents a piece to print, will make up about 75% of the voter registration applications that most counties order. In addition, local elections officials and local governments will also see a cost savings from reduced printing and paperwork if they choose to print the voucher's oath on the reverse of the election day voter registration application and because the proposed rules combine the voucher forms for vouching by registered voters and employees of residential facilities.

Printing absentee balloting materials that comply with the changes in 8210 will not cost local governments more if they wait to print them until these rules are finalized.

Any cost increase incurred by local government ultimately will be borne by the public because their tax dollars fund elections.

Administrative Law Judge Luis asked that we add information about the probable cost of not adopting the proposed rule. The primary cost to local election officials of not adopting the proposed rule is the additional cost of printing voter registration applications. We estimate that local election officials will print approximately four million voter registration applications for the 2008-09 election cycle. If all of these applications are printed using the specifications currently required by the rule, the printing will cost \$111,500. This figure is more than \$30,000 more than we expect local election officials to need to spend if the rule is adopted and they are allowed to print some forms to be mailed in and others for use on Election Day. Local election officials will also incur costs if the rule is not adopted, because they will need to continue to print separate

voucher forms (instead of being able to print them on the reverse of the voter registration applications for use on Election Day. There were more than 26,000 voters who were vouched for in 2006. If the counties print 100,000 voucher forms for use in the 2008-09 election cycle at \$.05 a piece, it will cost them an additional \$5,000. Finally, there will be costs if the rule is not adopted to jurisdictions to which off-campus housing lists are submitted. Blue Earth County, for example, would continue to have to print the entire student list for every precinct in the county, since they would not have the benefit of having precinct data appended to the list. They estimate that this costs at least \$1,000 per election cycle that could be saved if the rule was adopted.

“(6) 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.

COMMISSIONER OF FINANCE REVIEW OF CHARGES

As required by Minnesota Statutes, section 14.131, the Department has consulted with the Commissioner of Finance. We sent the copies on November 30, 2007. The documents included: draft rules and draft SONAR. The Department of Finance sent a letter dated November 30, 2007 with its comments.

In this portion of the SONAR, there usually appears a discussion of the fiscal impact and benefit of the proposed rules on local government, but as the proposed rules directly impact local government and as the impact and benefits are addressed throughout the SONAR both in the general descriptions preceding this section and in the rule-by-rule analysis, that information is not repeated here.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

As required by Minnesota Statutes, section 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. The Office has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small city.

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 2 to 5 and the rule-by-rule analysis.

The Office asked Bobbie Jo Vickerman, a representative of the City of Lanesboro (a small city affected by the proposed rules), to estimate the cost to the city of complying with the proposed rules during the first year. In an email dated December 11, 2007, Ms. Vickerman stated that the cost would not be in excess of \$25,000 for Lanesboro or other small cities in Minnesota. She went on to say that “actually the benefits to me outweigh any extra cost incurred!”

PERFORMANCE-BASED RULES

Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the agency, 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 agency in meeting those goals.

While many of the proposed rules are agency responses to recent legislative changes, Secretary Ritchie and his staff have taken the further step of searching for--and finding--many other rules that impede superior achievement and the cost-effective delivery of services. Moreover, the agency has worked with local election officials and average voters to identify areas for improvement. Some of the most valuable additions, revisions, and deletions proposed in this document were drawn from these sorts of discussions about our rules.

For example, these proposed rules establish what certain forms must look like and how some data will be compiled, but give local election officials the flexibility to decide how to provide these items to their elections judges and voters in a way that best serves their voters. The proposed rules, for instance, allow local elections officials the choice of printing the voucher form on the reverse side of the election day voter registration application or as a separate document. The proposed rules also lay out a procedure through which the Secretary of State's Office will compile the student lists provided by colleges and universities, append precinct data and provide this information to county auditors electronically. One of the few counties that currently receives lists of students who live off campus does not have the resources to append the precinct data. As a result, they have to reproduce and provide the entire list to every precinct in the county, in case any of the students live in that precinct. Not only is this more expensive than it needs to be, it is also cumbersome and time consuming for election judges to pinpoint the information that they need. The new proposed procedure will provide this and all counties with the data that they need and allow them to decide how to best provide the information to their election judges.

Although the Office's first goal was to ensure that our rules are in accord with recent statutory changes, staff searched for--and with the aid of others found--improvements that are sure to improve the performance of election administration.

ADDITIONAL NOTICE

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

Here are: 1) a description of our proposed Additional Notice Plan and (2) an explanation of why we believe our Additional Notice Plan complies with Minnesota Statutes, section 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 mail a copy of the Proposed Amendments to Rules Governing Voter Registration and Absentee Balloting, the Statement of Need and Reasonableness for those Proposed Amendments, the Notice of Hearing, and a transmittal letter to the following persons:

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

House Governmental Operations, Reform, Technology and Elections Committee;
Elections Subcommittee of the Senate State and Local Government Operations and Oversight Committee; and
Senate State and Local Government Operations and Oversight Committee

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

House State Government Finance Division;
House Finance Committee
Senate State Government Budget Division; and
Senate Finance Committee

House and Senate Leadership from the Majority and Minority Caucuses

Governor Pawlenty
Former Secretaries of State Mary Kiffmeyer, Joan Anderson Growe and Arlen Erdahl

Chairs of the Democratic-Farmer-Labor, Republican, Independence, and Green Parties, Minnesota's officially recognized major and minor parties

Alan Weinblatt, election attorney
Tony Trimble, election attorney

Members of the Voter Registration Application Redesign Committee originally appointed by former Secretary Mary Kiffmeyer

Representatives of local government:

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 student organizations:

Minnesota State College Student Association

Minnesota State University Student Association
Minnesota Student Association (University of Minnesota)
Minnesota Association of Private College Students

Representatives of postsecondary educational institutions:

MNSCU Board
University of Minnesota
Minnesota Private College Council

Representatives of the following public-interest groups

Center of the American Experiment
League of Women Voters of Minnesota
Minnesota Citizens Concerned for Life
Minnesota Commission Serving Deaf and Hard of Hearing People
Minnesota Council of Nonprofits
Minnesota Disability Law Center
Minnesota Senior Federation
Minnesota State Council on Disability
Taxpayers League of Minnesota
TakeAction Minnesota

Representatives of the following groups representing communities of color in Minnesota

Council on Asian-Pacific Minnesotans
Council on Black Minnesotans
Hmong Organizing Project
Council on the Affairs of Chicano/Latino People
Minnesota Indian Affairs Council
Native Vote Alliance of Minnesota

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 additions to the list of proofs of residence that may be used for Election Day voter registration, and improvements in the forms used on or relating to Election Day, and the design of the voter registration application and absentee ballot materials.

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 a rainbow of Minnesota ethnicity. 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 and municipal governments that actually implement elections;
 Public and private college student and administration organizations;
 Lawyers with expertise in elections matters; and
 Public-Policy groups representing a spectrum of views held within the general public.

The scope of persons to receive notice and the main points of this Additional Notice Plan are taken nearly verbatim from the Additional Notice Plan for the request for Comments that was reviewed by the Office of Administrative Hearings and approved in a June 25, 2007 letter by Administrative Law Judge Eric L. Lipman. The only differences are the addition of the Association of Minnesota Counties, the student organizations and the postsecondary educational institutions.

Our Notice Plan also includes giving notice required by statute. We will mail the rules and Notice of Intent to Adopt to everyone who has registered to be on the Department's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature per Minnesota Statutes, section 14.116.

LIST OF WITNESSES

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

1. Mr. Gary Poser, Director of Elections, Office of the Secretary of State will testify about the need and reasonableness of the changes to the rules.

RULE-BY-RULE ANALYSIS

Chapter 8200

The amendments to parts **8200.1100 and 8200.1200** are necessary to ease election administration by ensuring that the rules specify the optimal dimensions, description, and format of the voter registration application. These amendments are also necessary to provide voters with the most user-friendly and intuitive application possible.

The Help America Vote Act required that voter registration applications include the questions “Are you a citizen of the United States?” and “Will you be 18 on or before Election Day?” and gather voters’ driver’s license, state ID or the last four digits of their Social Security Numbers. As a result, the voter registration applications have become quite crowded. It is reasonable to amend part **8200.1100, subparts 1 and 2, items A**, increasing the size of the voter registration

application, because they will make the application easier to read, to fill out, and therefore, easier from which to do data entry. Requiring that the application be 8 ½ by 11 inches is reasonable because this is a standard paper size, which will make it familiar to voters and those doing voter registration drives, a size for which it will be easy to find storage, and a size less expensive to print than a larger size.

The amendment to part **8200.1100, subpart 1, item B**, decreasing the required weight of the paper, is reasonable because 80 pound paper provides a strong enough stock to withstand being mailed and is available at a lower cost than the currently required 100 pound paper.

The amendment to part **8200.1100, subpart 1, item D**, removing the specification of exactly where on the application the adhesive stub needs to be, is reasonable because the current language unnecessarily limits the design options available. We considered changing the placement of the stub to the top of the application, since that seems to be what would work best at this point, but ultimately decided to remove direction as to exactly where it had to be placed to allow flexibility to meet future needs.

The addition of part **8200.1100, subpart 1, item E** is reasonable, because many counties have a stock of applications on hand, and it would be a waste of public funds to require their disposal to comply with these new specifications before the 2008 general election. One rationale for requiring their disposal might be standardizing the form that voters will use in 2008. However, there are thousands of voter registration applications that have already been distributed to libraries, social service agencies and civic groups, so even if counties were required to print new applications immediately, there would still be a mix of applications used in the 2008 election cycle. After the 2008 general election, the proposed rule reasonably limits the use of applications currently on hand to election days for two reasons. First, it will provide voters with the easiest form to fill out prior to the election as possible when election judges are not available to assist voters if there is any confusion about the current form. Second, the current forms are missing a reference to the privacy statement which could easily be provided to voters in the polling place, so it would not matter that there was not a reference to the privacy statement on the form (see amendment adding part 8200.1200, subp. 1, items G and H).

The addition of **8200.1100, subpart 2** and the amendment of **8200.1200, item D** are reasonable because voter registration applications that are not going to be mailed do not need to meet the same requirements as forms that will be mailed. There is no need to require that they be printed on as heavy a stock of paper, include an adhesive stub, or include a return mailing address. **Item B**, requiring that these forms be printed on paper that is at least 40 lbs., is reasonable because this weight of paper is sturdy enough to allow the cards to stand up for data entry, but light enough to be printed at substantially lower cost, and to be “padded” allowing for more convenient storage and use. **Item C**, allowing the secretary of state to approve county use of applications with alternative dimensions, is reasonable because it allows the same flexibility for applications used “in person” as is allowed in existing subpart 1, item C for those to be mailed. **Item D**, allowing the voucher oath to be printed on the reverse side of these applications, is reasonable because it will reduce the amount of paper necessary in the polling place, and will simplify election administration, since the oath and application need to be stored together.

The amendment to part **8200.1200, subpart 1, item E** is necessary to clarify what is meant by providing instructions for “each element of” the application. Does this mean that in addition to instructing the voter to provide their first name by putting those words in the appropriate box, that there also needs to be a line by line instruction repeating this information, i.e., “Write your first name in box 3.”? If so, this is redundant and would take up much of the limited space on the application. Striking the language “each element of” is reasonable because it makes this rule clearer as to what is actually required and allows for a more coherent and readable application.

The addition of **8200.1200, subpart 1, items G and H** are necessary to comply with what may be a new requirement of a statutory change made in 2007, classifying a social security number as private data whether provided in whole or in part (Laws 2007, Chapter 129, Section 11). Under the federal Help America Vote Act, voters have been required to provide either their state drivers license or ID number or the last four digits of their social security number since 2004. Item G, requiring that voter registration applications designed to be mailed include direction to voters that they can find a Tennessee privacy statement on the Secretary of State’s website is reasonable because it reflects IPAD’s suggestion as to how to fulfill this requirement given what will still be limited space on voter registration applications that still need to reserve ¼ of the space on the form as a mailing label. This requirement provides voters with notice that there is a privacy statement and those who are interested in viewing it will have the opportunity to access it on-line, at their public library if they don’t have internet access at home, prior to filling out the application. Item H, requiring that applications designed to be filled out in-person have the privacy statement on or with the application, is reasonable because voters in the polling place or in the county auditor’s office will not have the opportunity to access the internet before completing the application and because application forms for in-person use have more space available because a return address is unnecessary.

The amendment to **8200.1200 subpart 2** is necessary to make the application form clearer. Local election administrators have made the reasonable suggestion of changing the title of the box on the voter registration application from “Election Day Official Use Only” to “Election Judge Official Use Only” to clear up any confusion among election judges about whether they are allowed to use this space.

The addition of **part 8200.4000** is reasonable because it is necessary to comply with federal law, 42 USC 1973 ff-I (a)(4), which requires that Federal Post Card Applications received from members of the military and others living temporarily overseas suffice to fully register these individuals to vote.

The changes to **part 8200.5100** are necessary to reflect changes made in state statute, to ease confusion among voters and election judges as to the proofs of residence allowed for Election Day registration and to ensure that all eligible voters are able to register to vote on Election Day.

The deletion of part **8200.5100, subpart 1, item A, paragraph (3)** and the addition of **subpart 2, item B, paragraph (2)** go hand in hand. Paragraph (3) has been in place since the 1970s and allows postsecondary students to provide proof of residence by providing a student identification

card, or a current fee statement, or a copy of a student registration card if the document shows their address in the precinct. It appears that no Minnesota postsecondary institutions provide student ID cards that include students' addresses and that student registration cards showing students' addresses are no longer used.

In 1991 MN Statute, Chapter 201.061 was amended to specify that student fee statements may be used as proof of residence if presented along with a photo student ID. Since this time, there has been confusion among voters and election judges as to whether a student fee statement may be used by itself to prove residence. Did the statute nullify the rule or are student fee statements that show a student's address still allowed under the Secretary's authority to approve additional proofs of residence? Some county auditors advise that student fee statements are allowed, others advise that they are not, leading to unequal treatment of voters across the state. Striking paragraph (3) and adding student fee statements to the list of documents that may be used as proof of residence in combination with a photo ID in subpart 2, item B, paragraph (2) is reasonable because it will end this confusion and provide clear guidance to voters, election administrators and election judges.

The amendments to part **8200.5100, subpart 1, item A, paragraph 4** and **subpart 2, item A, paragraph 5** are reasonable because they simply replace the references to statute with the requirement found there, so a reader does not need to go to the statute to find out which tribal IDs may be used.

The amendment to part **8200.5100, subpart 1, item B**, striking the limitation of using a valid registration in the precinct to those who were registered at a different address, is reasonable because it will provide the same advantage to all individuals who have current registrations in the precinct, but who need to re-register. In this case, it will assist those who have not moved, but instead have changed their name, usually due to marriage, divorce, or other life-events. This new language actually mirrors the language currently found in Minnesota Rules 8210.0500, subpart 2, step 3, paragraph (e) outlining the instructions for proving one's residence found on absentee ballot envelopes for non-registered voters and the accompanying absentee ballot envelope described in 8210.0600, subpart 1a.

The addition of the first two paragraphs of part **8200.5100, subpart 1, item E** is reasonable as it reflects the new option for proving residence added to Minnesota Statute 201.061, subdivision 3 in 2005, allowing those who live in residential facilities to have employees of that facility vouch for their residence, even if the employee is not registered to vote in that precinct. The first paragraph includes the reasonable requirement that employee vouchers fill out a standard form to ease election administration and ensure equal treatment of employee vouchers across the state.

The second paragraph defining "residential facility" is taken verbatim from Minnesota Statute 201.061, subdivision 3.

The subparagraph (1) is reasonable in that it reflects the requirement for being an employee voucher found in statute--that your name must appear on a certified list provided to the county at least 20 days before the election.

Subparagraph (2) is added under the secretary of state's authority to approve additional proofs of residence found in Minnesota Statutes, Chapter 201.061, subdivision 3, paragraph (2). Most residential facilities operate with very limited resources and are so focused on their primary mission that they do not begin to think about facilitating voting for those who live there until just days before the election, if they begin to think about it before election day at all. It is reasonable to add this proof of residence, because most residential facilities have found turning in certified lists prior to Election Day impractical, meaning that this new option approved by the legislature was used much less than expected. In 2006, fewer than 16% of the more than 1500 residential facilities in Minnesota provided lists to county auditors before Election Day.

Providing a certified statement on the facility's letterhead signed by the manager of the residential facility to an election judge should suffice as proof of residence. Like all other same-day registrants, voters who register using an employee voucher will be sent a non-forwardable postcard after the election; if they do not live at the facility, their registration can be investigated. The voter, the voucher, and potentially the manager of the residential facility can all be charged with felonies if the vouching oath was fraudulent. A letter provided to election judges at the polling place in which the manager certifies that the voucher is an employee provides no less security than a certified list provided before Election Day and is significantly more convenient.

We considered also allowing residential facility employees to demonstrate their employment by providing an ID badge from the residential facility or a business card, but decided against these options because not all residential facility employees have these documents, but all facilities could generate a statement on letterhead. Given our goal to make election administration as easy as possible, simply adding a standard letter on letterhead to the proofs of residency seemed like the best option.

The fourth paragraph, which lays out the required elements of the letter, is reasonable because it requires the necessary information: the name of the residential facility, the name of the employee, the signature of the manager of the facility, an indication that the letter certifies the veracity of the information, and the address of the residential facility in the precinct. We considered requiring the use of this exact language or of a standard form, but decided that specifying the elements of the letter would make it easier for residential facilities to comply while still gathering the required information.

Because some facilities may be part of a larger organization and their letterhead may reflect an address not located in the precinct, the fifth paragraph is reasonable in requiring the inclusion of the address in the precinct in these cases.

The change in the final paragraph of this subpart, requiring that the vouching oath be kept with the voter registration application for the entire 22 month retention period, is reasonable because it reflects current practice.

Subpart 2 provides a list of photo identifications that may be used in combination with a document with a current address in the precinct to provide proof of residence. Paragraph A is a list of the photo IDs and paragraph B lists the documents.

The amendment to part **8200.5100, subpart 2, item B, paragraph (1)**, clarifying that telephone, television and Internet provider service bills may be used regardless of how the services are delivered, is reasonable because it accommodates today's fast paced technological advances. It is simpler to use this general statement than to list every possible technology for every utility (cell, satellite, cable, VOIP, etc.) and to have to continually update the rules. Clarifying that these utility bills may be used regardless of how the services are delivered will prevent needless questions and the unequal treatment of voters we encountered before the rules specified that cell phone bills could be used. At that point, many wondered whether the rules which allowed for "telephone" bills included cell phone bills. Some election judges accepted them and others did not.

Clarifying that rent statements that itemize utility expenses should be considered utility bills for the purpose of proving residence in part 8200.5100, subpart 2, item B, paragraph (1) is reasonable because it will assist a significant number of renters to vote. Many apartments include all of the utilities in the rent payment, meaning that the renter cannot produce a utility bill to satisfy this subpart. This has been a significant issue and resulted in a lawsuit on the evening of the general election in 2006.

In this case (*Dolan v. Reichert et al.*, Hennepin County District Court, 27CV06-20179), Judge Gary Larson found that renters in this situation must be allowed to register to vote if the landlord provides a utility bill for the apartment building, along with a certified list of the current tenants. We considered, but rejected, simply codifying this decision in the rules and allowing landlords from across the state to provide these documents to either local election administrators prior to Election Day or to election judges in the polling place on Election Day. One of the reasons that we rejected this idea is because, the first sentence of 8200.5100, subpart 2 puts the burden on the voter to provide the information. It states, "An eligible voter may prove residence under this subpart *by presenting* one of the photo identification cards in item A and one of the additional proofs of residence listed in item B" [emphasis added]. Allowing landlords to provide a utility bill and a list of tenants instead puts the burden on the election judges who would have to keep track of yet another item throughout Election Day.

This proposed rule will help tenants whose utility expenses are included in their rent in a way that is not as burdensome for election judges to administer. It allows voters to prove their residence by presenting a statement from their landlord itemizing their utility expenses, if it includes their name and current address in the precinct and is dated within 30 days of the election.

Most of the changes to part **8200.5100, subpart 3** are necessary to make the rules easier to understand. It is reasonable to standardize the term used throughout this subpart by adding the word "postsecondary" or "educational" so that it always reads "postsecondary educational institution."

The final change to subpart 3 goes hand in hand with the addition of part **8200.5100, subpart 3a**. These changes are necessary to provide direction to postsecondary educational institutions and county auditors on how to comply with Minnesota Statute, sections 135A.17 and 201.061, subd. 3, item (a), paragraph (3), subparagraph (i), which allow students to register to vote by providing

just their student ID if their postsecondary educational institution has provided a list of students living either in the institution's housing or within 10 miles of the institution. Although the statute has allowed these lists to include students living within 10 miles of campus since 1991, the rules have never provided direction for institutions providing lists of students living outside of the institutions' housing.

As we have examined the issue, it has become apparent that it would not suffice to simply add the words "or within 10 miles of the institution" to the rules. Having a larger radius will result in institutions providing lists to multiple counties, and counties potentially receiving lists from a larger number of institutions than they currently do. To make implementing this change as easy as possible for local election administrators to prepare and for election judges to use in the polling place, we propose several reasonable changes to the process.

First of all, we propose not limiting the list to housing within 10 miles of the campus, and instead allowing postsecondary educational institutions to provide lists of all current students who attend the institution and reside in Minnesota. Doing so will be easier to administer and avoids questions about the point from which one measures the 10 mile radius. It will also provide equal treatment to all students who do not live in university housing, instead of providing an advantage to those who live 9 miles from the institution that is not available to those who live 11 miles away. As such, the proposed rule does not include the 10 mile limit found in MN Statutes section 135A.17, but instead is authorized under Minnesota Statute 201.061, subdivision 3 which allows the secretary of state to approve other proofs of residency.

Second, local election administrators have asked that the secretary of state facilitate the collection and sorting of the addresses. Minnesota Statutes, section 201.061, subd.3 allows student voters to prove their residency by providing:

- (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;

This section provides broad authority to the secretary to provide the most efficient system for certification of the list to the county auditor. It is reasonable for the secretary of state to implement a system in which the data is processed by the secretary of state to create such a unified list before returning that list to the county auditor.

The secretary of state's involvement in the process and responsibility to process and append precinct data to the lists is limited to those used in November general elections. This is reasonable because very few colleges and universities are going to have reliable address data for students who live off campus 30 days before the primary election, which is before the fall semester has even begun. Any colleges or universities who do have and want to provide certified lists of students who live off-campus may do so by providing the list directly to the county auditor under the authority granted by Minnesota Statute, section 137A.17. It is reasonable not to institute this process for special elections because the very short timeline involved would make it nearly impossible for everyone involved to process and transfer the data.

It is reasonable to provide this process for November general elections in both even and odd years (state and local elections), because some of the November general elections held in odd years are contested races in which there is high voter interest and significant numbers of same day registrations.

We propose piloting this process with November general elections. If it goes smoothly, we may propose amendments to the rule in the future to broaden its use to other elections as well.

The language added to the second paragraph of subpart 3 requires that agreements made by postsecondary educational institutions to provide student lists for all subsequent elections in a calendar year include an agreement to provide data to the secretary of state for the November general election as well. This requirement is reasonable because it maintains the current requirement to provide the lists for all elections during the rest of the calendar year, even though the data is now sent elsewhere for the November general election.

The period during which the lists must be submitted to the secretary is no earlier than 30 days and no less than 25 days before the election which is reasonable because it is close enough to the election to be accurate on election day and enough before the deadline for the secretary to provide the lists to the counties to allow the secretary adequate time to merge, append and sort the lists.

It is reasonable to allow the secretary of state to specify the electronic format in which the lists must be submitted because it is not possible for the secretary to handle any type of list that a postsecondary educational institution may choose to use nor is it reasonable for the secretary to make separate arrangements with each and every postsecondary educational institution.

To make it as easy as possible for the counties and the election judges to use the lists, it is reasonable for the secretary of state to append the precinct data to the list, using the secretary of state's electronic precinct finder, and to sort the list by precinct and last name. It is reasonable to limit the secretary of state's responsibility to precinct the data and to provide the data to counties to the extent that the precinct can be determined by the electronic precinct finder. We believe that the vast majority of addresses submitted will be able to be precincted and that this will ease registration for many students. We considered, but dismissed, the idea of requiring the secretary of state to determine the precinct of the remaining addresses in the month before the election. We also considered the idea of providing a list of addresses which could not be precincted to each county auditor either to process themselves or to provide to all election judges. In the end we rejected this idea because this would be an undue burden on local election officials in a very busy period and might be confusing for election judges. We also considered, but dismissed, the idea of sending a mailing to students at the addresses that could not be precincted that they could use to prove their residence, but decided that this might be confusing and unhelpful for students because we would not be able to provide them with their polling place location.

It is reasonable for the secretary of state to provide county auditors with the list of students at least 14 days before the election, because this should provide the county auditors with enough time to separate and distribute the lists and the secretary of state with enough time to process the data. It is reasonable for the secretary of state to forward the lists in an electronic format

provided by the secretary or other mutually agreed upon medium, because this will allow the counties to decide how to provide the data to the election judges (either on paper or electronically) and because the secretary could not provide the list in 87 different forms, if each county submitted its own request.

The amendments to part **8200.5400** are necessary and reasonable to reflect the changes in proofs of residence allowed in proposed rule part 8200.5100 and the change to the name of the box on the voter registration application made in proposed rule part 8200.1200 subp. 2. The addition of the qualification “if any” in reference to requiring election judges to record the number on identification cards used as proof of residence is reasonable because we are not sure if all tribal identification cards allowed by statute have identification numbers. Changing the name of the box in which election judges must record the type of identification used from the “office use only” box to the “election judge official use only” box is reasonable, because it reflects current practice. Despite the rule, this data has actually been recorded in the “election day official use only” box for many years now, so this change will maintain a procedure election judges and elections administrators are used to.

The change in rule **part 8200.6200** is necessary to ease election administration. Striking the words “A copy of” is reasonable in that this reflects changes in technology and that most county auditors do not keep a paper copy of the list in their office for public inspection, but instead store this data electronically and make copies available as necessary.

The change in rule **part 8200.9115** is necessary to ease election administration. Striking the words “on paper or computer tape or other electronic” is reasonable because it keeps the requirement that the medium continue to be mutually agreed upon while eliminating outdated and unnecessary words.

The change in rule **part 8200.9315** is necessary to ease election administration. Paragraph D was necessary when each county kept separate records of voters registered in their jurisdiction. It is reasonable to strike this paragraph now because the use of the statewide voter registration makes this paragraph obsolete.

The change in rule **part 8200.9939** is necessary to ease election administration and to comply with state statute. Minnesota Statutes, Chapter 201.061, subdivision 3, paragraph (a) allows employees of residential facilities to vouch for residents. The changes to this rule provide a form to be used in this case. A versatile form that can be used for vouching, whether it is being done by another registered voter or an employee of a residential facility, is reasonable because it will reduce the amount of paper that election judges need to keep track of and will be easiest for election judges to administer.

The addition of a space for the voucher's voter identification number for those who are preregistered to vote in the precinct is reasonable because it will allow the election judges to document that the voucher is actually already on the roster.

The collection of the voucher's address and telephone number is reasonable since it is required by Minnesota Statutes, Chapter 201.061, subdivision 3, paragraph (a), item (4). Adding a line for a voucher to also provide their email address, if they so choose, is reasonable because email is a convenient way for a county auditor to follow up with the voucher, if the need arises.

The statement that the voucher oath will be retained with the voter registration application for 22 months is reasonable because it informs the voucher that this information will be retained.

The change in rule part **8200.9940** is necessary to ease election administration and to comply with state statute. Minnesota Statutes, Chapter 201.061, subdivision 3, paragraph (a), item (4) requires that the secretary of state prescribe a form for tracking the number of people for whom an individual has vouched. This rule part implements this requirement.

The proposed form is reasonable because it collects the needed information in a way that is as simple as possible for the election judges to use. Detailed information need not be kept on this form, since if there are any questions, the vouching certifications required under **8200.9939** are available. The form requires that election judges record the voucher's name and keep a record of the number of voters for whom they have vouched. The form lists the numbers from one to 15, so that the election judge can simply cross out a number each time an individual vouches, making it easy to tell when they have reached the statutory limit of 15. We considered having election judges use tally marks to do the tracking, but decided against this option because it may be harder for election judges to use, and for us to print an example on the page with the fifth tally mark crossing the first four. Requiring that election judges record the voucher's voter identification number, if available, will allow election judges to document that the voucher is pre-registered.

The addition of **part 8200.9960** is necessary to implement the statute and ease election administration. Minnesota Statutes, section 204C.12, subdivision 2 requires that the secretary of state prepare a form for challengers to complete and sign when making a challenge. The categories on the form – an election judge, an authorized challenger, and a Minnesota voter – are reasonable because they reflect the three groups that are authorized to make challenges under Minnesota Statutes, section 204C.12, subdivision 1. Minnesota Statutes, section 204C.12, subdivision 2 requires that challenges be made in writing, under oath, based upon personal knowledge and that certain contact information be collected from those making challenges. This rule part provides a form to implement the statutory requirements.

The collection of the challenger's address and telephone number is reasonable since it is also required by the statute. Adding a line for a challenger to also provide their email address, if they so choose, is reasonable because email is a convenient way for a county auditor to follow up with the challenger, if the need arises.

It is reasonable to have election judges sign the form, since this makes the requirement the same as for vouching oaths. Local election administrators have made the reasonable request that the form include space for the election judge to note which judge administered the challenge, the time it occurred and the result of the challenge, so that one does not have to scour the roster to find out whether the challenge was upheld, whether the voter refused to take the oath, or whether the voter was allowed to vote.

Chapter 8210

The changes to **8210.0050** are necessary to make the rules easier to understand by removing obsolete language. The proposed rule references a deadline that passed in 2004. Repealing obsolete language is reasonable because it will make the rules easier to understand.

The additions to the form in **8210.0100, subp. 2** are necessary to facilitate election administration. The addition of lines to collect a voter's telephone number and email address to the presidential ballot absentee ballot application is reasonable because, for those voters who choose to provide this information, it will expedite processing an absentee ballot application by facilitating the quick resolution of any questions the election official may have.

Repealing **8210.0200, subparts 1, 1a, 1c, 1d, 2, 4a, and 6** are necessary to facilitate election administration and to make the rules easier to understand. When adopted in 1997, Minnesota Statutes, section 203B.04, subdivision 1, required that the format of absentee ballot applications be spelled out in the rules. However, an amendment in 2005 now allows the secretary of state to designate the format of the absentee ballot application forms and no longer requires that the format be specified in the rules. This section now states:

The county auditor shall prepare absentee ballot application forms in the format provided by the secretary of state, notwithstanding rules on absentee ballot forms, and shall furnish them to any person on request. By January 1 of each even-numbered year, the secretary of state shall make the forms to be used available to auditors through electronic means.

It is reasonable to repeal the formats for absentee ballot applications specified in subparts 1, 1a, 1c, 1d, 4a and 6 to avoid any confusion that may be caused by having outdated absentee ballot applications reflected there. It is also reasonable to repeal the instructions for filling out the absentee ballot application found in subpart 2, since the instructions are part of the forms and will need to be modified.

The changes to part **8210.0200, subpart 4** are necessary to implement state statute and to ease election administration. In 2005, the legislature added 203B.04, subd. 6 to the statute allowing voters to register for "ongoing" absentee ballot status, if they reasonably expect to need an absentee ballot for any of the allowed reasons. This was an addition to subd. 5 which was already in place and allowed voters who reasonably expect to be unable to go to the polling place permanently because of illness or disability to apply for permanent absentee applications ballot.

The rules 8210.0200, subpart 4 provides procedures for permanent absentee voters. It is reasonable to amend this section of the rules to modify the permanent absentee balloting procedures to also accommodate “ongoing” absentee voters. Amending this section of the rules and the form will make the rules easier to understand and election administration easier for both election administrators and voters than adding additional, repetitive sections to the rules.

The changes to part **8210.0500, subpart 1** are necessary to make voting by absentee ballot easier for voters to understand. It is reasonable to require the instructions to absentee voters to include a graphical depiction of how a voter assembles materials to return their voted ballot, because this will decrease the mistakes made by absentee voters and increase the probability that their ballot will be accepted and counted. It is reasonable to require the secretary of state to provide these graphic depictions so that this burden is not placed on local election officials and to ensure equal treatment of absentee voters across the state.

The changes to part **8210.0500, subparts 2 and 3** are necessary to make the rules easier to understand, to ease election administration and to make voting by absentee ballot easier for voters to understand. It is reasonable to put the instructions for pre-registered absentee voters before the instructions for non-registered voters in the rules, because the instructions for pre-registered voters are more straightforward and will make it easier to understand the rules.

The new language in both of these subparts is reasonable because it simplifies the instructions and is the product of a collective effort by the office’s elections division and county election officials from around the state. The new instructions also include optional steps for auditors using additional envelopes instead of a flap to protect voter certification information. Having one or the other was required by legislation passed in 2005, Laws 2005, Chapter 156, Art. 6, Sec. 28.

Removing the notice to challenged voters from the instructions for unregistered absentee voters is reasonable because this language often caused confusion, since it was sent to all unregistered voters, not just those whose registrations had been challenged. Since the remedy in this case is for challenged absentee voters to attest to their eligibility by re-registering, it is reasonable to delete any reference to challenged voters altogether.

The changes in part 8210.0500, subpart 3, step 3 are reasonable because they reflect the new options for proving residency allowed for election day registration found in proposed rule 8200.5100.

The changes to **8210.0500, subpart 4** are necessary to ease election administration and to make voting by absentee ballot easier for voters to understand. The new instructions for military and overseas absentee voters are reasonable because they simplify the instructions and are the product of a collective effort by the office’s elections division and county election officials from around the state. The new instructions also include optional steps for auditors using additional envelopes instead of a flap to protect voter certification information.

Many of the changes to **8210.0600** are necessary to make the rules easier to understand.

Several of the changes simply move language from one subpart to another. For example, the new text in **subpart 1** is substantially taken from **subpart 4**, which is repealed. The new language in **subpart 1a** is the form for pre-registered voters that used to appear in **subpart 4a**; only the title is different. The language in subpart 1a has been moved to **subpart 1b**. Combining subparts 1 and 4 and moving subpart 4a to 1a is reasonable because it simplifies the rule text and brings the two versions of the statement of absentee voters into the same subpart. Moving subpart 1a down to subpart 1b is reasonable because it puts the simpler form for pre-registered voters before the form for unregistered voters.

The remaining changes to **8210.0600, subpart 1b** are necessary to ease election administration. The specific changes to the unregistered voter envelope certification form are reasonable because they correspond to the proposed changes authorized Election Day proofs in rule 8200.5100 and provide space for residential facility vouchers to use the same envelope as other vouchers.

The changes to **8210.0700** are necessary to implement state statute, ease election administration and make the rules easier to understand. The addition of space for a reason that a ballot was rejected in subpart 2 is reasonable because it complies with state statutes sections 203B.12, subd. 3 and 203B.24. Changing the language in subpart 3 so that absentee ballots addressed to election judges do not have to be addressed to election judges in the precinct in which the voter lives is reasonable because it recognizes that the absentee ballot return envelope may alternatively be addressed to the election judges of an absentee ballot board.

The change **8210.0800, subpart 2** is necessary to ease election administration. It is reasonable to require that the words, “No Postage Necessary in the U.S. Mail – DMM703.8.0” be printed on military/overseas absentee envelopes, because this is recommended by both the Federal Voting Assistance Program of the U.S. Department of Defense and by the U.S. Postal Service.

The changes to part **8210.0800, subpart 3a** are necessary to conform with federal and state law, to ease election administration and to provide clearer directions to voters. The addition of places for the voter’s telephone number and email address is reasonable because it allows for quick resolution of any questions the election official may have to expedite processing of the absentee ballot application. The new language of the voter’s certification is reasonable because it is required by section 705 of the Help America Vote Act, Public Law 107-252 and by Minnesota Statute, section 203B.21, subdivision 3. Adding “(SSN)” after “Military identification [number]” is reasonable because it will make it clearer to voters that these numbers are the same. The change to the language in the “note” to voters is reasonable because it makes it clearer that the ballot may not be accepted if the numbers do not match.

The addition to **8210.2200, subpart 2** is necessary to ease election administration. Clarifying that an agent returning a ballot to the absent voter for correction or completion must do so by the deadlines set by subpart 1 is reasonable because it makes this stipulation clearer to election administrators and to voters.

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:

Voter Registration Application
Voter Registration Application for Same Day Registration
Graphics to be Included in Absentee Ballot Instructions for Unregistered Voters
Materials from *Dolan v. Reichert et al.*

CONCLUSION

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



December 24, 2007

Mark Ritchie
Secretary of State