



**STATE OF MINNESOTA**  
Office of Minnesota Secretary of State  
Mark Ritchie

September 16, 2011

Legislative Reference Library  
645 State Office Building  
100 Rev. Dr. Martin Luther King, Jr. Boulevard  
St. Paul, Minnesota 55155

Re: In The Matter of the Proposed Rules of the Office of the Secretary of State Relating To Absentee and Mail Balloting; No Governor's Tracking #AR.

Dear Librarian:

The Office of the Secretary of State intends to adopt rules relating to absentee and mail balloting. This Office plans to publish a Dual Notice in the September 19, 2011 State Register.

The Office has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Office is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 651-201-1326.

Best regards,

Bert Black  
Legal Advisor  
Office of the Secretary of State

Enclosure: Statement of Need and Reasonableness

## Office of the Secretary of State

### Statement of Need and Reasonableness (SONAR)

#### **Proposed Amendment to Permanent Rules Relating to Absentee and Mail Ballots, Minnesota Rules, Chapter 8210**

#### **INTRODUCTION**

In his role as the chief elections official in Minnesota, the Secretary of State partners with local election professionals to administer elections. In 2010, significant changes were made to the way that absentee ballots were processed in Minnesota. One of these changes was to require local election officials to track the status of absentee ballots in the Statewide Voter Registration System – for the first time allowing a thorough analysis of absentee ballot acceptance and rejection rates. Based upon this analysis, the Secretary is proposing relatively minor changes to the absentee balloting and mail balloting materials that he believes will provide voters with clearer instructions and assist voters in making fewer mistakes that result in the rejection of their absentee ballots. In addition, he is proposing changes that need to be made to the presidential absentee ballot materials to comply with statutory changes enacted since the last presidential election. A Request for Comments was published in the State Register on June 27, 2011 and a number of responses were received. The Request for Comments was also sent to a broad spectrum of interested parties pursuant to an Additional Notice plan similar to that described on page 6 of this SONAR. The secretary's staff used the analysis of the absentee ballots as well as input from local election officials to draft the proposed rules.

#### **ALTERNATIVE FORMAT**

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or audio file. To make a request, contact 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, Bert.Black@state.mn.us, 651-201-1326, 651-215-0682 (fax). TTY users may call the Minnesota Relay Service at 1-800-627-3529.

#### **STATUTORY AUTHORITY**

##### **Absentee and Mail Balloting, Minnesota Rules, Chapter 8210**

Minnesota Statutes, sections 203B.08, 203B.09, 203B.125, and 204B.45 authorize the Office to adopt rules for absentee and mail balloting.

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

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.

(Laws 1981, Chapter 29, Article 3, Section 8, as amended by Laws 1987, Chapter 266, Article 1, Section 16)

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.

(Laws 1981, Chapter 29, Article 3, Section 9, as amended by Laws 1990, Chapter 585, Section 20)

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.

(Laws 1983, Chapter 253, Section 7, as amended by Laws 2010, Chapter 194, Section 10)

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.

(Laws 1987, Chapter 212, Section 8)

All sources of statutory authority listed above were adopted and effective prior to January 1, 1996, and so Minnesota Statutes, section 14.125, does not apply. See 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 seven factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (7) below quote these factors and give the office's response.

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

The **Secretary of State's office** will benefit from the proposed rules because they clarify provisions currently governing absentee and mail balloting materials. The more voters understand these processes, the fewer resources the Office of the Secretary of State must expend to answer questions.

**Election officials and local governments** will benefit from the proposed rules because they clarify current rule provisions governing absentee and mail balloting materials, thereby making it easier for these officials to administer these procedures, and leading to fewer calls from confused voters.

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

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 Secretary's office will incur staff costs, for example, to prepare new sample instructions and certificates that comply with the changes made in the proposed rules. These costs should be minimal, however, because the Secretary'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 absentee ballot envelopes, but these costs should be minimal.

**"(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"**

As discussed in factor (1), the Secretary's office already provides samples of the instructions and certificates discussed in the rules to local governments and does not expect to incur any additional costs due to the proposed rules.

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 including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals;"**

There will be some limited one-time cost increases to county, city, township and school district election officials due to the need to re-print absentee and mail balloting materials (for those that have leftover stock remaining to be used). However, these costs should be offset by cost savings due to the need to answer fewer questions from voters about the requirements and to send out fewer replacement ballots to voters whose initial ballots are rejected due to a misunderstanding about the requirements.

**"(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"**

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

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

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

## **CONSULTATION WITH COMMISSIONER OF MANAGEMENT AND BUDGET ON LOCAL GOVERNMENT IMPACT**

As required by Minnesota Statutes, section 14.131, the Department has consulted with the Commissioner of Management and Budget. We sent the copies on August 25, 2011. The documents included: draft rules and draft SONAR. The Department of Management and Budget replied to our request for review in a memorandum dated September 13, 2011, in which they stated "...the proposed rule revisions will have minimal fiscal impact on local units of government and the Secretary of State has adequately considered local government costs."

In this portion of the SONAR, there usually appears a discussion of the fiscal impact and benefit of the proposed rules on local government, but as 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**

### **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 and the Office has determined that it will not. The Office has made this determination based on the probable costs of complying with the proposed rule, as described in the Regulatory Analysis section of this SONAR on pages 2 to 4 and the rule-by-rule analysis.

The Office also asked Cheri Johnson, City Clerk of the City of Excelsior, Minnesota (a small city affected by the proposed rules), to estimate whether the cost to the city of complying with the proposed rules during the first year would exceed \$25,000. Ms. Johnson stated that "the cost to implement these rules would be way under the \$25,000 threshold."

## **PERFORMANCE-BASED RULES**

Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the office, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the office in meeting those goals.

The proposed rules are specifically designed to improve the performance of the absentee and mail ballot materials – clarifying instructions to voters so that fewer mistakes are made, resulting in fewer rejected ballots, fewer replacement ballots being sent, and fewer calls to local election officials.

## **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 is: (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 send a copy of the Proposed Amendments to Rules Governing Absentee and Mail Balloting, the Statement of Need and Reasonableness for those Proposed Amendments, the Notice of Hearing, and a transmittal letter to the following persons by electronic mail wherever possible and by United States mail where electronic mail addresses are unavailable:

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

House Government Operations and Elections Committee;  
Senate Local Government and Elections Committee; and

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

House State Government Finance Committee  
House Ways and Means Committee  
Senate State Government and Innovations Committee  
Senate Finance Committee

House and Senate Leadership from the Majority and Minority Caucuses

Governor Dayton

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

Chairs of the Democratic-Farmer-Labor, Republican, Independence, Green, Grass Roots, Constitution and Libertarian Parties

Alan Weinblatt, elections attorney

Tony Trimble, elections attorney

Representatives of:

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

Representatives of the following public-interest groups

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

Representatives of voting equipment and services vendors

- Election Systems & Software
- Dominion Election Services
- Synergy Graphics

Representatives of the following groups representing communities of color in Minnesota

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

The Office of the Secretary of State believes that this Additional Notice Plan complies with the statute because the notice materials described above, provides 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;



Former Secretaries of State;  
Local governments that actually implement elections;  
Lawyers with expertise in elections matters;  
Voting equipment vendors; 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 and some organizations in addition to those included in the Additional Notice Plan for the Request for Comments that was reviewed by the Office of Administrative Hearings and approved by Administrative Law Judge Eric Lipman in a July 27, 2011 letter. The Additional Notice Plan contained in this SONAR was approved by Judge Eric L. Lipman in a letter dated September 7, 2011.

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

#### **DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION**

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

#### **LIST OF WITNESSES**

If a public hearing is required, the Office anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

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

#### **RULE-BY-RULE ANALYSIS**

The secretary is proposing relatively few changes to the rules governing absentee and mail balloting materials. Given this, the proposed rule document is longer than one might expect due to the fact that the changes need to be made to each and every type of absentee and mail balloting material. The proposed changes, which are outlined in detail below section by section, include the following:

- updating the presidential absentee balloting materials so that they more closely resemble other absentee balloting materials in their layout, formatting and content

- emphasizing that the certificate of eligibility needs to be filled out completely
- clarifying that voters who serve as witnesses for absentee and mail voters are required to provide their residential street addresses
- providing direction to absentee voters on how to check on the status of their absentee ballot
- providing the text of the full confidentiality notice on absentee ballot instructions
- requiring that envelopes in which replacement ballots are sent to voters are labeled as such
- allowing local officials to use up existing stock of absentee ballot envelopes in cases in which only minor changes are being proposed

When reviewing the rules draft, please note that some text in the instructions for voters and on the certificates of eligibility is underlined to indicate that it is being newly added to the rules, whereas other text is underlined for emphasis in the current rules, and is not proposed to be changed. Only the proposed changes are outlined below. Please refer to the mock ups in the appendix to see how the text will be formatted if these proposed rules are adopted.

### **8210 Absentee Ballots**

The proposed changes to **8210.0100, subp. 2**, which label the envelope used by presidential-only voters, make the text bold, and add space for a voter to provide an identification number, are needed to make the format of the certificate of eligibility used by presidential voters consistent with those used by other voters since the last presidential election. The proposed amendments are reasonable because labeling the envelope as the “Signature Envelope” is consistent with the labels used on other envelopes containing the certification of eligibility, which will help voters understand the enclosed instructions which use this term to refer to this envelope. It is reasonable to make the labels for required fields bold so that they stand out and the voter is less likely to skip over any of them.

It is reasonable to add space for an identification number, if the voter has one, since the certificates of eligibility for all other types of absentee ballots have changed since the last presidential election to include space for voters to provide this information. While all absentee voters must still sign their certificate of eligibility, signature matching has been replaced by matching identification numbers as the primary means of verifying the validity of absentee ballot materials. This change was adopted for domestic voters in 2010 after it worked well for military and overseas voters starting in 2008. Local election officials and election judges are not trained in handwriting analysis and found determining whether signatures matched a challenging and subjective task. Matching identification numbers, on the other hand, is an objective task. Domestic absentee voters are now asked for a Minnesota driver’s license number, a state-issued identification card number, or the last four digits of their Social Security Number, or to indicate that they do not have any of these numbers, on both their absentee ballot application and the certificate printed on their absentee ballot envelope. Matching the identification numbers is one step in accepting or rejecting an absentee ballot. If the numbers do not match, absentee ballot board members then compare the signatures. If neither match, the ballot must be rejected. It is reasonable to hold presidential voters to the same standard.

The proposed addition of **8210.0400**, which outlines requirements for the envelope in which absentee ballots are sent to voters, is necessary and reasonable because it is simply moving an already established requirement from the next rule part (8210.0500, subp. 1) and putting it in its own section so that it is easier to locate.

The proposed change to **8210.0500, subp. 1**, which allows the confidentiality notice to be printed in smaller type than the rest of the text on the instructions, is needed and reasonable because this will allow the full confidentiality notice to be printed on the instructions. If the confidentiality notice was required to be printed in as large a type as the rest of the text, the instructions would spill onto a third page, making the instructions more expensive to print and potentially to mail, and more daunting to voters. (The text of the proposed confidentiality notice can be found in subp. 2 and other sections throughout the rules.)

The proposed changes to **8210.0500, subp. 2** are necessary to make the instructions more succinct and easier for voters to understand and successfully follow.

In 2010, new legislation was implemented that fundamentally altered the way that absentee ballots are processed in Minnesota. These legislative changes streamlined the absentee balloting process while creating stricter standards for acceptance. If voters fail to provide any of the required information, their ballots must be rejected. As one would expect, this led to an increase in the percentage of ballots that were initially rejected. However, provisions of the law which require election officials to quickly review and process absentee ballots and to thereby quickly issue replacement ballots to voters who initially erred, helped to reduce this high initial rejection rate. Of the voters whose initial ballots were rejected, 3,960 benefited from this new practice and had a replacement absentee ballot accepted and counted. 378 voters whose absentee ballots were rejected went to their polling places and cast their ballots in person. In the end, only 2,691 absentee voters did not cast an absentee ballot that met the legal requirements and could be accepted (and did not cast a ballot in-person in the polling place) – a mere 2.97% failure rate.

The 2010 legislative changes also required that all absentee ballots in state elections be tracked in the Statewide Voter Registration System. This has allowed this Office to develop an online tool that voters can use to look up the status of their absentee applications and ballots. The other benefit of using the Statewide Voter Registration System is that it allows for an analysis of the reasons that voters' ballots were rejected which has allowed this Office to propose changes to the absentee balloting materials to help further reduce voter mistakes and rejection rates.

Looking at the data, it is clear that the vast majority of ballots (89%) are rejected because the voter failed to provide a required element on the certificate of eligibility, whether it was the voter's signature, the date, the witness's signature, or other information the witness is required to provide. As such, it is reasonable to emphasize in the instructions that the fields must be filled out in their entirety, as the change to instruction number 4 does by changing "Complete the white signature envelope" to "Fill out the white signature envelope completely".

More than 50% of the ballots were rejected because the voter's witness failed to provide an acceptable Minnesota address. Local election officials have explained that in many cases witnesses failed to provide any sort of address. In other cases, especially in rural areas,

witnesses provided a Post Office Box, which does not fulfill the legal requirement because it does not establish where the witness resides. As such, it is reasonable to add the word “street” to the instructions for the witness and to underline it for emphasis to clarify that P.O. Boxes are not acceptable. It is similarly reasonable to further clarify this by adding a parenthetical note that the witness should not provide a P.O. Box.

Voters now have the ability to check on the status of their absentee ballots and so it is necessary and reasonable to add a notice of this option to the instructions.

Instituting a requirement that absentee voters provide an identification number, if they have one, on their certificate of eligibility meant that voters were now providing private data. As such, the rules were updated in 2010 to add a confidentiality notice to the absentee ballot instructions. To ensure that the notice would fit on the instructions without detracting from the key directions that need to be provided to voters, the required notice directed voters to the Office’s website to read the full confidentiality notice. Some have suggested that there is room to print the full confidentiality notice if it is printed in a smaller type size and that providing it on the instructions would be a service to voters. As such, the Office is now making the necessary and reasonable proposal to print the full confidentiality notice on the instructions, albeit in a smaller type size to ensure that the text all still fits onto two pages.

The proposed changes to **8210.0500, subp. 3** are necessary to make the instructions more succinct and easier for voters to understand and successfully follow. Since the proposed changes in this subpart for unregistered voters are nearly identical to those proposed in subpart 2 for registered voters, the explanations and rationales are not repeated here. The only additional proposed change to this subpart is the addition of the descriptor “white” when referring to the signature envelope in the reminder to voters about the envelope into which they are supposed to put their voter registration application. It is necessary and reasonable to add the color of the envelope to this reminder to give voters another way to locate the correct envelope, as is done in most other places in the instructions that refer to that envelope.

The proposed changes to **8210.0500, subp. 4** are necessary to make the instructions more succinct and easier for voters to understand and successfully follow. Since the proposed changes in this subpart for military and overseas voters are nearly identical to those proposed in subpart 2 for registered voters, the explanations and rationales are not repeated here. The only proposed change that differs from that for registered voters is the website to which voters are directed to check on the status of their absentee ballot. It is necessary and reasonable to direct military and overseas voters to the Military and Overseas Voter Service website because this is a site with information specific to these voters and is the site to which the Office consistently directs them in all other communications.

The first proposed change to **8210.0500, subp. 5** simply adds a notice of how military and overseas voters can check on the status of their absentee ballots to the cover letter sent to them. This proposal is necessary and reasonable because it provides notice of a service that is required by the federal Military and Overseas Voter Empowerment (MOVE) Act (Public Law 111-84, Subtitle H, Section 580).

A second change to this subpart directs voters not to forward their ballot to other voters. This addition is needed and reasonable as it will warn voters that forwarding the email that they received with their blank ballot attached will not allow the people to whom it is forwarded to cast the attached ballot and have it counted. It reasonably provides the website to which those voters should instead go to apply for their own ballot.

The proposed changes to **8210.0500, subp. 6** are necessary to make the instructions more succinct and easier for voters to understand and successfully follow. Since the proposed changes in this subpart for military and overseas voters who receive their ballots electronically are nearly identical to those proposed in subpart 4 for military and overseas voters who receive their ballots by mail, the explanations and rationales are not repeated here. The only difference from the other set of instructions can be found in the confidentiality notice. In this case, the confidentiality notice refers to data on the certificate of eligibility instead of on the signature envelope, because voters who receive their balloting materials electronically do not receive an envelope and using the term certificate of eligibility instead is consistent with what has been done elsewhere in the instructions for these voters.

The changes to **8210.0600** are necessary to make the instructions for the voter's and witness's certificates easier to understand and for voters and witnesses to complete successfully. Most of the changes to the certificate mirror the proposed changes to the instructions in 8210.0500.

**8210.0600, Subpart 1a** lays out the certificate for pre-registered voters and their witnesses. It is reasonable to require that the labels for all of the required fields appear in bold type to draw attention to them. This is especially true of the date field, as 8% of the rejected ballots were rejected because voters neglected to provide this information.

It is reasonable to add the word "street" to the field in which the witness provides their address and have it underlined to emphasize that a Post Office Box is not acceptable. The office considered instead putting shaded text in the box in which the voter writes their address that said "No P.O. Boxes". The staff did a test with examples of both variations as well as the current format of the eligibility certificate and found that adding and underlining the word "street" to the instruction worked best. Having any text in the box in which the witness is to write their address led some voters to skip the field entirely.

It is also reasonable to add parentheses around the instruction "or title, if an official or notary" and not to bold this text. Doing so should clarify for voters the requirement to provide a street address applies in cases in which the witness is another voter, not an official or a notary. It also is reasonable because it de-emphasizes the request for a title, which is appropriate when the vast majority of those who serve as witnesses for absentee voters who receive their ballots by mail are other voters. If absentee voters cast their ballot in person, then local election officials usually serve as the witness and will provide their titles, but there is no need to emphasize the need to provide their title, as they are familiar with the requirements.

**8210.0600, Subpart 1b** lays out the certificate for unregistered voters and their witnesses. The proposed changes to this certificate are nearly identical to those proposed in Subpart 1a and therefore the explanations and rationales are not repeated here. The only additional proposal in

this subpart is to make the instruction to the witness to “check one” of the proofs of residence in bold type. This proposal is reasonable because it will draw further attention to the need for the witness to choose one of the options.

**8210.0710, Subps. 6, 7 and 8** lay out the checklists for voters that must be included on the three different types of signature envelopes. It is necessary and reasonable to make the proposed change to the wording to clarify that the envelopes must be filled out completely.

**8210.0730, Subp. 3** lays out the alternative checklists that are to be included in cases in which local election officials choose to use a third envelope, instead of an envelope with a flap. As in the previous rule section, it is necessary and reasonable to make the proposed change to the wording to clarify that the envelopes must be filled out completely. Also, it is necessary and reasonable to add the color of the signature envelope to this checklist to give voters another way to locate the correct envelope, as is done in most other places in the instructions that refer to that envelope.

**8210.0730, Subp. 4**, which allows local election officials to use up their existing stock of third envelopes, is necessary and reasonable as the only changes being made to this envelope are the slight wording changes on the checklist for voters outlined in the previous subpart.

**8210.0800, Subp. 3a, paragraph A** provides the format for the certificate of eligibility used by military and overseas voters. Similar to the changes made to the certificates used by regular absentee voters, it is necessary and reasonable to provide additional clarity to voters by requiring that instructions for all required fields appear in bold type.

**8210.0800, Subp. 3a, paragraph B**, which allows county auditors to use up their existing supply of absentee ballot envelopes for military and overseas voters, is necessary and reasonable, as the only change being made to this certificate is the use of bold text. In contrast, the changes proposed to the other certificates are more substantial (adding the word “street” to the instruction for the witness to provide their address and using parentheses to clarify that this instruction applies to witnesses who are not officials or notaries). As such, it is reasonable to allow counties to continue to use any remaining stock of envelopes for military and overseas voters, while requiring that they have other return envelopes reprinted to meet the new requirements.

The changes to **8210.2600**, requiring that the transmittal envelope containing replacement ballots be labeled as to its contents, is necessary to alert voters to what the envelope contains. There were cases in the 2010 election when voters were sent replacement ballots in unlabeled envelopes and called the election official without having opened it to report that they had been sent an additional ballot by mistake. Requiring that the transmittal envelope be labeled is reasonable because it will provide a clear indication of why the ballot is being sent, reduce confusion for voters as well as calls to local election officials. It is reasonable to require that the label be printed in at least 18-point type to ensure that it stands out to the voter.

The changes to **8210.3000, Subparts 4a and 4b** are necessary and reasonable to provide clear instructions to mail ballot voters on both the certificate of eligibility and the instruction sheet.

As these proposed changes are identical to those proposed for the absentee ballot certificates and instructions, the explanations and rationales are not repeated here. (Please see the explanations for 8210.0500, subpart 2 and 8210.0600, subp. 1a.) The only difference is that we are not proposing to add a notice of how to look up the status of a voter's mail ballot. It is reasonable not to include this notice, as mail ballots, unlike absentee ballots, cannot be tracked in the Statewide Voter Registration System, and, as such, there is no way to check on their status.

## **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:

Several different kinds of absentee balloting materials, as proposed.

## **CONCLUSION**

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



---

September 16, 2011

---

Mark Ritchie  
Secretary of State