



## **OFFICE OF THE SECRETARY OF STATE**

### *Statement of Need and Reasonableness*

#### **Proposed Amendments to Permanent Rules Governing Safe at Home Voting Procedures, *Minnesota Rules*, Chapter 8290**

#### **INTRODUCTION**

The Secretary of State is responsible for administering the Safe at Home address confidentiality program, established by Minnesota Statutes, Chapter 5B. Safe at Home was launched in 2007 to protect victims of stalking, domestic violence, sexual assault, and others who fear for their safety such as members of law enforcement or the judiciary. The Safe at Home program is designed to prevent violent offenders from using public data to locate their victims and cause further harm.

Safe at Home gives participants a legal substitute address (a post office box) to use in place of their physical address; this address can be used whenever an address is required. First class mail sent to the substitute address is forwarded to the participant's actual address by the Secretary of State, and all participants designate the Secretary of State as their agent for legal service of process.

Approximately thirty states have similar Address Confidentiality Programs. Minnesota currently has over 1,600 individuals in the Safe at Home program, representing over 700 households. This participation has doubled in the past two years and includes many families with children.

As a central part of the Safe at Home program, the Office of Secretary of State administers absentee balloting for Safe at Home program participants who are eligible voters. The Office proposes amendments to the rules regarding voting in the Safe at Home program to bring the absentee ballot process administered by Safe at Home into alignment with statutory changes made in the past several years, as well as adding specific processes to ensure that Safe at Home voter registrations and balloting procedures are treated as much like those for other voters, to the extent practicable.

Some of the statutory changes that need to be incorporated into these rules are general changes to election law, including changes to the absentee balloting process, such as the use of matching identification numbers for verification, the adoption of no excuse absentee balloting, and automatic updates to voters' addresses when they move. In addition, the legislature has also made specific changes to Safe at Home laws requiring amendments to the Safe at Home rules.

Although the initial request for comments published in June 2013 requested comments regarding the entire Safe at Home Rules Chapter, the proposed rule amendments only address those changes that are needed prior to the administration of the 2014 general election.

The proposed rule amendments are both needed and reasonable in order to ensure the Safe at Home voting procedures are in accord with Minnesota Statutes, and to provide clarity to Safe at Home participant voters prior to the 2014 state general election.

### **Alternative Format**

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

### **Statutory Authority**

The Secretary's statutory authority to adopt rules to govern the Safe at Home program is set forth in Minnesota Statutes, section 5B.08, which provides:

Enactment of this section satisfies the requirements of section 14.388, subdivision 1 for the enactment of rules to facilitate the administration of this chapter by state and local agencies.

Minn. Stat. § 5B.08 (2014).

## 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 provide clarity in the procedures guiding the operation voting through the Safe at Home Address Confidentiality Program. The Secretary of State's Office is the primary entity that will bear the costs of the proposed rule changes, as the Office bears the cost of administering the program generally.

Participants in Safe at Home will benefit from the proposed changes to rules because they provide clarity as to the voting process within the program.

Stakeholders and Application Assistants at community based programs that interact with participants will benefit from the proposed rule changes because they provide clarity as to how voting through the Safe at Home program works.

Election officials will benefit from the proposed rule changes because they clarify the procedure that is used for requesting ballots, submitting ballots and for absentee ballot boards to accept or reject ballots, and ensure that the rules reflect those changes in Minnesota statutes adopted in 2013.

**“(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 is the primary entity that will bear the costs of the proposed rule changes, as the Office bears the cost of administering the program generally. However, since the proposed rule changes are either clarifying or a result of statutory changes, the proposed rules will not result in measurable increases in cost to the Office.

Not adopting the rules, on the other hand, could lead to increased costs to the Office. Without the additional structure and clarity that the proposed rule changes provide, the Office will have to spend additional time and resources reaching out to participants when participants act on a misunderstanding of the rules.

To the best of the knowledge and belief of the Office of the Secretary of State, the proposed rule changes will not cause any other state agency to incur any costs since the changes are only related to the administration of voting through the Safe at Home program.

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 when other methods are available for achieving the purpose of the proposed rule amendments. In addition, the Office generally considered methods used by other states administering voting through their address confidentiality programs. Because of the unique nature of Minnesota’s election laws, and because of the desire to ensure that Safe at Home participant voting is as analogous as possible to non-participant absentee voting, the Office determined that the proposed rule amendments were the least costly and least intrusive methods of achieving the purpose of the proposed rule amendments.

**“(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 when other methods are available for achieving the purpose of the proposed rule amendments. As with factor three above, the Office considered methods used by other states administering voting through their address confidentiality programs. Because of the unique nature of Minnesota’s election laws, and because of the desire to ensure that Safe at Home participant voting is as analogous as possible to non-participant absentee voting, the Office determined that the procedures in use by other states could not accommodate the specific nature of Minnesota election laws, and therefore were not viable alternatives to the proposed rule amendments described in this SONAR.

**“(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”**

Since the proposed rule changes are either clarifying or a result of statutory changes, the proposed rules will not result in measurable increases in cost to the Office of the Secretary of State. The Office is not aware of any other costs that any public or private

entity will incur to comply with the proposed rules that are not necessary to comply with the underlying statutes or existing rules.

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

Since the proposed rule changes are either clarifying or a result of statutory changes, not adopting the proposed rule amendments will result in confusion among program participants, staff, and county and local election officials.

**“(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”**

There are no differences between the proposed amendments and federal regulations.

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

These amendments will have no impact on other federal and state regulations related to the purpose of these rules.

### **Consultation with Commissioner of Management and Budget on Local Government Impact**

As required by Minnesota Statutes, section 14.131, the Office has consulted with the Commissioner of Management and Budget. The Office sent copies of the draft rules and draft SONAR on June 10, 2014. The Department of Management and Budget concluded on June 20, 2014, that that “the proposed rule revisions will have minimal or no fiscal impact on local units of government, and the Secretary of State has adequately considered local government costs.”

### **Cost of Complying for Small City and Office of Secretary of State 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 or any small business. 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 or small business.

The Office asked the City of Lauderdale to estimate the cost to a city of complying with the proposed rules during the first year. The City Clerk of Lauderdale, Heather Butkowski, reviewed the draft rule amendments and the draft SONAR and in a June 14, 2014 email stated she “didn’t see any costs that will be borne by cities much less reach the \$25,000 threshold.”

Because the rule amendments deal with election administration, a government function, there are no costs that would be borne by a small business.

### **Determination about Rules Requiring Local Implementation**

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

### **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.

Secretary Ritchie and his staff have taken the further step of searching for, and finding, ways to structure Safe at Home, as governed by the rules, to provide superior achievement and the cost-effective delivery of voting services. Moreover, the Office has worked with stakeholders to identify areas for improvement.

## **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 amendments or must explain why these efforts were not made.

The Additional Notice Plan requires sending a copy of the proposed rule amendments, the SONAR, the Dual Notice, and a transmittal letter to the following persons by electronic mail wherever possible and by United States mail where electronic mail addresses are unavailable:

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

- House Civil Law Committee
- House Elections Committee
- Senate Judiciary Committee
- Senate Rules and Administration Committee, Subcommittee on Elections

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
- Senate Finance Committee

House and Senate Leadership from the Majority and Minority Caucuses

Governor Dayton

Victim Advocacy Groups, including:

- Minnesota Coalition for Battered Women
- Sheila Wellstone Institute
- Battered Women's Legal Advocacy Project
- Minnesota Coalition Against Sexual Assault

The Business and Banking Community, including:

- Minnesota Business Partnership
- Minnesota Chamber of Commerce
- National Federation of Independent Business – Minnesota
- Independent Community Bankers
- Minnesota Bankers Association
- Minnesota Credit Unions
- Wells Fargo
- TCF
- US Bank

Utility Companies and Landlords, including:

- Xcel Energy
- Department of Commerce
- Centerpoint Energy
- West Central Minnesota Community Action
- Connexus Energy
- Minnesota Rural Association
- Dakota Electric Association
- Minnesota Community Action Partnership
- Minnesota Municipal Utilities Association
- Century Link (f/k/a Qwest)
- Minnesota Telecom Alliance
- Onvoy
- Comcast
- Minnesota Cable Community Association
- Minnesota Multi Housing Association

State and Local Agencies (and their Associations) with which Participants are Most Likely to Interact, including:

- Department of Human Services
- Department of Public Safety, Division of Vehicle Services
- Department of Revenue
- Department of Transportation
- Minnesota Inter-County Association
- Association of Minnesota Counties



- Minnesota Association of County Officers
- County Recorders
- League of Minnesota Cities

School Associations, including:

- Minnesota Association of School Administrators
- Minnesota Catholic Schools
- Minnesota Nonpublic School Accrediting Association
- Minnesota Independent School Forum
- Education Minnesota

Law Enforcement, County Attorneys, and Corrections Associations, including:

- Minnesota Sheriffs' Association
- Minnesota Police & Peace Officers Association
- Minnesota Board of Peace Officer Standards & Training
- Minnesota Chiefs of Police Association
- Department of Public Safety, Bureau of Criminal Apprehension
- Minnesota County Attorney Association
- Minnesota Legal Services Advocacy Project

State Courts

Department of Corrections

Department of Administration, IPAD

US Postal Service

Former Secretaries of State:

- Mary Kiffmeyer
- Joan Anderson Growe
- Arlen Erdahl

Chairs of the Minnesota's political parties:

- Democratic-Farmer-Labor
- Republican
- Independence

- Green
- Libertarian
- Constitution

The following election attorneys:

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

Representatives of the following public-interest groups:

- ACLU
- Center of the American Experiment
- Citizens for Election Integrity Minnesota
- Common Cause
- League of Women Voters
- Minnesota Citizens Concerned for Life
- Minnesota Council of Nonprofits
- Minnesota Public Interest Research Group
- Minnesota Majority
- Minnesota Taxpayers League
- TakeAction 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 the rules governing voting through the Safe at Home program.

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.

The individuals and organizations in the Additional Notice Plan represent:

- Victim advocates who represent those who serve as application assistants and have experience working with the populations most likely to become program participants;
- State and local agencies with which participants interact;
- Schools;
- Law Enforcement;
- Courts;
- US Postal Service;
- Private entities who are most likely to interact with Safe at Home participants;
- Policymakers, especially in the Legislature, who have oversight of this subject matter area;
- Political parties;
- Professional elections administrators;
- Former Secretaries of State;
- Local governments that actually implement elections;
- Lawyers with expertise in elections matters; and
- Public-Policy groups representing a spectrum of populations and views held within the general public.

The scope of persons to receive notice and the Additional Notice Plan for the Request for Comments were reviewed by the Office of Administrative Hearings and approved in a letter dated June 19, 2013, by Administrative Law Judge Barbara L. Neilson. The Additional Notice Plan listed above was approved in a letter dated July 1, 2014, by Chief Administrative Law Judge Tammy L. Pust.

The Notice Plan also includes giving notice as required by statute. The Office will send the rules and Dual 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. The Office will also give notice to the Legislature per Minnesota Statutes, section 14.116.

## **LIST OF WITNESSES**

If a public hearing is requested by more than 25 individuals, the Office anticipates having the following witnesses testify in support of the need for and reasonableness of the rule amendments:

- Beth Fraser, Office of the Secretary of State, Deputy Secretary of State
- Dianna Umidon, Office of the Secretary of State, Safe at Home Director
- Gary Poser, Office of the Secretary of State, Elections Director
- Julie Strother, Office of the Secretary of State, Government Relations Associate

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

The Office is proposing rule amendments to bring the absentee ballot process administered by Safe at Home into alignment with statutory changes made in the past several years, as well as adding specific processes to ensure that Safe at Home voter registrations and balloting procedures are treated as much like those for other voters, to the extent practicable.

Some of the statutory changes that need to be incorporated into these rules are general changes to election law, including changes to the absentee balloting process, such as the use of matching identification numbers for verification and having absentee ballots processed by absentee ballot boards, instead of by election judges in the precincts, as well as the adoption of no excuse absentee balloting, and automatic updates to voters' addresses when they move.

There are also Safe at Home specific changes to the law that need to be incorporated into the rules. Most specifically, the change made in Minn. Laws 2013, Chapter 131, Article 1, Section 1. This section established a different process for permanent absentee voters voting through Safe at Home than other permanent absentee voters. In accordance with Minn. Laws 2013, Chapter 131, Article 1, Section 4 (amending Minn. Stat. § 203B.04, subd. 5), other permanent absentee voters receive an absentee ballot application before each election and only receive a ballot if they return the absentee

ballot application. Minnesota Laws 2013, Chapter 131, Article 1, Section 1, allows permanent absentee voters in Safe at Home to automatically be sent a ballot for each election in which they are eligible to vote, without having to return an absentee ballot application before each election.

Because the legislature changed the process for those voting through the Safe at Home program, it is necessary and reasonable to make changes to the rules to reflect the new process. This includes re-arranging some of the rule-parts so that the processes appear in the new order chronologically. Moving requirements found in the current rules from one subpart to another makes provisions appear as new text in the subpart to which they are being moved and like language being repealed in the subpart from which they are being removed.

The changes to **Minnesota Rule 8290.0200 and 8290.1100** are needed and reasonable to reflect the changes in Minn. Laws 2013, Chapter 131, Article 1, Section 1. This law changed the reference to those who vote through Safe at Home from “ongoing” absentee voters to “permanent” absentee voters, and it is needed and reasonable to amend the language in the rules to reflect the correct statutory language.

**Minnesota Rule 8290.1300, subpart 2**, contains the requirements for a program participant to register with Safe at Home as a permanent absentee voter. Many of these changes are necessary to reflect changes in Minn. Laws 2013, Chapter 131, Article 1, Section 1. This law changed the reference to those who vote through Safe at Home from “ongoing” absentee voters to “permanent” absentee voters.

The first full sentence of new language in subpart 2, as well as other provisions in this rule, are based upon the notion that voting through the special process provided by Safe at Home is to be used exclusively by current program participants in Safe at Home. As such, it is necessary and reasonable for the rules to make this eligibility requirement explicit and specifically state that an individual’s eligibility to vote through this special procedure ends if they withdraw or are cancelled from Safe at Home. The Office considered allowing a program participant to vote through the program if they were a participant at the time they applied for the absentee ballot, but not when the ballot was returned. Ultimately, the Office rejected this option because the participant would have severed ties with the program either voluntarily or through cancelation. Further, if a program participant was canceled, the participant may have been canceled for reasons that would affect voting eligibility such as moving without notifying Safe at Home.

Minnesota Laws 2013, Chapter 131, Article 1, Section 1 also, as described above, allows permanent absentee voters who vote through Safe at Home to be automatically sent a

ballot prior to each election in which they are eligible to vote. Because these voters will no longer be required to submit an absentee ballot application before each election, and because the requirements of the federal Help America Vote Act are conditions of voter registration, instead of casting an absentee ballot, it is necessary and reasonable to move the procedures for fulfilling the HAVA requirements to subpart 2 from current subpart 5, to reflect when they will occur in the voting process. The language that appears new in subpart 2 is comparable to the language found in current subpart 5, with the exception of references to parts 8210.0200, 8210.0500 and 8210.0700. It is needed and reasonable to strike the references to rule part 8210.0200 (which provides direction to local election officials for processing permanent absentee ballot applications), 8210.0500 (which provides the instructions to absentee voters), and 8210.0700 (which has been repealed), because none of these need to be disregarded for a program participant to submit a permanent absentee ballot application to the Secretary of State.

The new **Minnesota Rule 8290.1300, subpart 2a**, which relates to program participants not being listed in the Statewide Voter Registration System, is necessary and reasonable because it fulfills the statutory requirement found in Minnesota Statute, section 5B.06. It is necessary and reasonable to move the procedures to fulfill this statutory requirement from current subpart 4, that is proposed to be repealed, to the new subpart 2a so that the steps in this rule appear in chronological order. The proposed rule reflects the newly adopted session law, Minn. Laws 2014, Chapter 264, Section 5, which provides the Secretary of State the authority to maintain voter records of program participant voters.

The new **Minnesota Rule 8290.1300, subpart 2b**, establishes conditions under which the Safe at Home staff will mark a program participant's voter record as "challenged" or remove the challenge from a program participant's voter record. It is necessary and reasonable because it requires a voter's record to be challenged or a challenge to be removed based upon either information provided by the program participant themselves (or an applicant applying on their behalf) or from information sources used to challenge other voters. (See Minn. Stat. §§ 201.15, 201.155, 201.157, and 201.158.) The proposed rule is necessary and reasonable because it provides Safe at Home with the authority to challenge program participant voters' eligibility based upon information sources that are used to challenge other voters.

The new **Minnesota Rule 8290.1300, subpart 2c**, provides procedures for updating voter records. For other voters voting through the regular process, there are a variety of ways to update their voter record when they move or change their name. They can fill out an updated voter registration application either on or before Election Day (Minn. Stat. § 201.061). Alternatively, their voter record may be updated for them, if their

voter record is matched with data in the National Change of Address database (Minn. Stat. § 201.13, subd. 3) or with data from the state court administrator (Minn. Stat. § 201.14). Their address may also be updated if non-forwardable mail is returned with a forwarding address (Minn. Stat. § 201.12, subd. 2). In addition, under Minn. Laws 2014, Chapter 238, voters' addresses may also be updated based upon a match with Department of Vehicle Services' records or other states' voter records.

Because state policy allows for voter records to be updated based upon other reliable data, without requiring voters to separately take action to update their voter record by filling out a new voter registration application, it is necessary and reasonable for the same standard to apply to program participant voters in Safe at Home. If a program participant voter has notified the program that they have changed their address or changed their name, it is reasonable to have this change apply to their voter record as well as all other records in the Safe at Home office. This process is needed and reasonable because it is more efficient for both the program participant and the program and in alignment with processes used for other voters.

The new **Minnesota Rule 8290.1300, subpart 3**, requires Safe at Home to identify the participants who have registered as permanent absentee voters in a jurisdiction at least 60 days before an election. It is necessary and reasonable to change the deadline for identifying these voters, because the absentee ballot period has been extended from 30 to 46 days since this rule was originally adopted. Leaving the deadline, and allowing Safe at Home to identify voters in a jurisdiction as late as 45 days before the election would shortchange those voting through Safe at Home, depriving them of the full period during which they should be allowed to vote. Identifying the voters 60 days before the election should allow ballots to be mailed to them at least 46 days before the election—the same timeline on which other absentee voters are sent ballots.

The current subpart 4, which provided the prior process for checking SVRS for voter records, is proposed to be repealed. Most of the requirements of this subpart have been moved to the new subpart 2 (see explanation above). There is one exception which has not been moved and is proposed to be repealed. The current rules require the Safe at Home staff to review the statewide voter registration system multiple times to ensure that a program participant voter does not have an active voter record. It is necessary and reasonable to repeal one of the several required checks so that Safe at Home staff would no longer be required to check SVRS prior to each election in which the program participant voter is eligible to vote.

First, it should be noted that this check is conducted manually, with Safe at Home staff looking up each voter individually. While it may be technologically possible to automate

this check, doing so would require sharing sensitive private data about program participants beyond the immediate Safe at Home staff. Safe at Home has been designed to ensure that as few people as possible have access to, or even know the location of, Safe at Home data as a safety measure.

Conducting this check of SVRS for each voter takes a considerable amount of time and will continue to take more and more as the number of program participant voters in Safe at Home grows. More importantly, the program ensures that program participants do not have an active record in SVRS when they join the program by using the procedures described above in subpart 2a. In addition, if the program participant voter votes through Safe at Home, staff are required annually to ensure that he or she did not also cast a ballot in the same election using a traditional voting process by checking SVRS (Minnesota Rule 8290.1300, subpart 11). These annual checks have never led to the discovery of a program participant voter who voted more than once. Both the check upon enrollment and the annual check for those who voted are proposed to continue.

Once a program participant voter has had their record in SVRS suppressed, it is highly unlikely that Safe at Home staff would find an active record for them, as a program participant would have to seek out an opportunity to register to vote and provide their actual residential address, which they have gone to great lengths to hide and are instructed to never provide. Registering to vote at their actual address would be particularly dangerous for a Safe at Home participant, because voter registration data is widely available. Voter registration data is provided to candidates, interest groups and political parties on a regular basis.

Since they are allowed to have their Safe at Home address printed on their driver's licenses, they could not become inadvertently registered when updating their driver's license. Similarly, even if they forward their mail from their previous address to the Safe at Home designated address, their registration would not be updated, both because it has been suppressed, and because voters are not allowed to be registered to vote at non-residential addresses (the designated address is a P.O. Box).

Requiring that SVRS be checked before each election in which a program participant is eligible to vote requires thousands of checks each election cycle. Each program participant voter's record has to be checked before each state primary and each state general election. It also needs to be checked before March township elections, for participants who live in townships that hold these elections, as well as prior to city primaries and city general elections held in the odd year. It also needs to be checked before any special primary elections and special elections, including legislative special elections, school board referenda, and County special elections.



Because Safe at Home participants are highly unlikely to register to vote after being certified as program participants, and Safe at Home staff have never found a program participant who has voted more than once, and because staff check SVRS when participants are certified as well as annually in years in which they have voted, there are necessary safeguards for participants and for election integrity without this check before each election in which a participant is eligible to vote. For the foregoing reasons it is necessary and reasonable to repeal this requirement.

The new **Minnesota Rule 8290.1300, subpart 5**, requires the Safe at Home staff to provide program participant voters with ballots for elections in which they are eligible to vote. Most of the stricken text in this subpart relates to the requirements for complying with the Help America Vote Act and have been moved to subpart 2 (*see* explanation for 8290.1300, subp. 2, above). Two other changes to this subpart are needed and reasonable because they reflect the change made in Minn. Laws 2013, Chapter 131, Article 1, Section 1, which allows permanent absentee voters in Safe at Home whose records are not challenged to be automatically mailed ballots for each election in which they are eligible to vote, instead of absentee ballot applications. Finally, it is needed and reasonable to strike the references to rule part 8210.0500, which provides the instructions to absentee voters, and 8210.0700, which has been repealed, because neither of which need to be disregarded for the county auditor to provide the ballots to the Secretary of State.

The new **Minnesota Rule 8290.1300, subpart 6**, specifies the materials that must accompany a ballot being sent to a program participant voter. Absentee voters casting a ballot through any other process are reminded of the requirements for being eligible to vote when they fill out the absentee ballot application. Because Safe at Home voters will no longer need to fill out absentee ballot applications prior to each election, it is needed and reasonable to send program participant voters a notice with the criteria for being eligible to vote with their ballot as a reminder. It is needed and reasonable to update the names used for elections materials, from “secrecy envelope” to “ballot envelope” and from “return envelope” to “signature envelope” to match the terms used in the election rules (*see* Minnesota Rule Chapter 8210).

The new **Minnesota Rule 8290.1300, subpart 6a**, requires the Secretary of State to send a notice to a challenged voter and specifies the information to be included in the notice. It is necessary and reasonable to require this notice to be sent and to include information about the challenge and how a voter can overcome the challenge, because this process mirrors the notice requirement for challenged voters in mail ballot precincts – another population that would otherwise expect to automatically be sent a ballot (*see* newly adopted Minnesota Rule 8210.3000, subpart 4). In mail ballot precincts,

challenged voters who have been challenged in error have the opportunity to apply for absentee ballots. This requires that they sign a sworn statement that they are eligible to vote, and allows them to vote through an established process. Similarly, it is necessary and reasonable to allow challenged voters in Safe at Home to overcome a challenge by providing a sworn statement that they are eligible, and to otherwise go through the usual Safe at Home voting process. Please note that a voter's record may be challenged in error if the Safe at Home staff mistakenly believed that a felony conviction for an individual with a similar name was the program participant or if the program participant's circumstances have recently changed: if, for example, a program participant has recently completed the terms of probation.

The new **Minnesota Rule 8290.1300, subpart 7**, requires the Secretary of State to return undeliverable ballot materials to the appropriate county auditor. Changing the term used for what the United State Postal Service does from "declared" to "returned" is needed and reasonable, because it is a more accurate descriptor.

The new **Minnesota Rule 8290.1300, subpart 8**, requires program participant voters to return their ballots to the Secretary of State and provides procedures for the Safe at Home staff upon receipt of a voted ballot from a program participant voter. It is necessary and reasonable to provide clear guidelines for Safe at Home staff to follow so that everyone can be assured that individuals are not casting ballots through Safe at Home if they are not entitled to do so and that program participants are being treated fairly and uniformly.

**Minnesota Rule 8290.1300, subpart 8, paragraph A**, requires program participant voters to return their ballots to the Secretary of State. It is necessary and reasonable to strike the reference to rule part 8210.0200, which provides direction to local election officials for processing permanent absentee ballot applications, and 8210.0700, which has been repealed, because neither of these need to be disregarded for program participant voters to return their ballots to the Secretary of State.

**Minnesota Rule 8290.1300, subpart 8, paragraph B**, provides a procedure for Safe at Home staff to use upon receipt of a voted ballot. It is necessary and reasonable to update the terminology used in this paragraph to reflect the names for ballot materials used in other election rules. It is also necessary and reasonable to require Safe at Home staff to check the voter's record to ensure that there are no issues or questions about the program participant voter's eligibility to vote through the program. It is necessary and reasonable for the staff to ensure that the program participant voter is still an active participant in the program, in accordance with the proposed explicit requirement of subpart 2. It is necessary and reasonable for the staff to ensure that the voter record

is not challenged, indicating that there is reason to believe that the individual is not eligible to vote and that the voter has not returned a sworn statement that they are eligible. In most cases, a challenged voter would not have received a ballot if they have not already returned the required statement, but it could happen if Safe at Home learned of circumstances making the participant ineligible to vote after the ballots were sent.

It is reasonable to have the Safe at Home rules reflect regular absentee ballot verification procedures and first have staff attempt to match identification numbers, and only match signatures if the identification numbers do not match (*See* Minn. Stat. § 203B.121, subd. 2). It is also needed and reasonable to correct the references to other subparts.

**Minnesota Rule 8290.1300, subpart 8, paragraph C**, provides a procedure for Safe at Home staff to use when removing information that would identify the program participant and certifying whether the signature envelope met the conditions under which it should be accepted by the absentee ballot board. The proposed changes are necessary and reasonable since they mirror the changes made in paragraph B, updating terminology, certifying whether the voter is an active program participant and whether the voter's record is challenged, referencing identification number matching, and correcting references to other subparts. It is necessary and reasonable to require that the ballot materials be forwarded to the county auditor by first class mail to ensure that all program participant voters receive equal treatment. Without this requirement, the method of return could be left to the Safe at Home staff. The Office considered allowing Safe at Home staff to hand deliver ballots, but declined this option. Allowing staff to hand deliver ballots would result in disparate treatment of voters, which is contrary to the Office's goal of treating all eligible voters in the program equally. The proposed requirement would ensure that all Safe at Home voters are treated equally.

The new **Minnesota Rule 8290.1300, subpart 9**, directs the county auditor to forward the ballot to the absentee ballot board. It is necessary and reasonable to update the entity to which ballots should be given in accordance with statutory changes made in 2010 to Minnesota Statutes, section 203B.121.

The new **Minnesota Rule 8290.1300, subpart 10**, provides direction to the absentee ballot board for accepting and rejecting ballots from program participant voters. It is necessary and reasonable to remove references to any entity other than the absentee ballot board, since this is the entity that now processes all absentee ballots and to remove references to the polling place, since they are no longer sent there for processing. It is also necessary and reasonable to add a reference to the fact that it is

now possible under subpart 10e for the secretary to notify a county auditor that a ballot from a program participant voter that originally should have been accepted should now be rejected.

The new **Minnesota Rule 8290.1300, subpart 10a**, provides direction to the Secretary of State and the county auditor for providing replacement ballots to voters. It is necessary and reasonable for Safe at Home to request a replacement ballot for a voter if the program participant voter's ballot is going to be rejected by the ballot board for reasons under which and during the time period that any other voter would receive a replacement ballot. Minnesota Statutes, section 203B.121, subdivision 2(c)(2), require local election officials to be sent replacement ballots to voters whose ballots are rejected at least 5 days before the election.

The new **Minnesota Rule 8290.1300, subpart 10b**, requires the Secretary of State to notify voters by phone if their ballots are forwarded to the county auditor with an indication that the ballot should be rejected within 5 days of the election. It is necessary and reasonable to require the Secretary of State to attempt to provide this notification to voters, since it resembles the notification guaranteed to other voters by Minnesota Statutes, section 203B.121, subdivision 2(c)(3). It is necessary and reasonable to require the Secretary of State to provide this notification by telephone, not by email, because Safe at Home staff do not ever communicate with participants by email, because it not a secure medium. In addition, program participants are statutorily required to keep Safe at Home apprised of their telephone number, which should make this a reliable method of communication.

The next several subparts provide procedures for Safe at Home staff to follow in a variety of circumstances, specifically those in which there are questions about a program participant voter's eligibility to vote at different stages of the voting process. While Safe at Home staff have not encountered these scenarios to date, it is prudent, as well as necessary and reasonable, to spell out what should happen should any of these situations arise, as they are more likely to occur as the program continues to grow.

The new **Minnesota Rule 8290.1300, subpart 10c**, requires Safe at Home to notify those who withdraw or are cancelled from the program that they are no longer eligible to vote through Safe at Home. If a former program participant was sent a ballot that has not yet been returned at the time that they withdrew or were cancelled from the program, it is necessary and reasonable to provide notice to the voter that they should now vote using the regular process and not to return their ballot to Safe at Home, because it will be rejected. As explained in the rationale for subpart 2, the Safe at Home voting process is only open to current participants in the program. If an individual is no longer in Safe

at Home, he or she must vote using balloting procedures available to other voters. It is reasonable to exempt the secretary from having to provide this notice (or any notices required by this section) to a participant if the participant was cancelled from the program due to undeliverable mail, since there is a high probability that the notice would be similarly returned as undeliverable, making the public funds spent on preparation and postage of questionable value.

The new **Minnesota Rule 8290.1300, subpart 10d**, addresses situations in which a program participant voter is challenged after the voter has been sent a ballot.

**Minnesota Rule 8290.1300, subpart 10d, paragraph A**, requires that Safe at Home notify program participants that the voter's eligibility is in question and that the voter's ballot will not be counted unless the voter takes further action. This is necessary and reasonable, because it alerts the voter to the situation and provides the voter with the opportunity to rectify it if the voter's record has been challenged in error. As in subpart 6 above, it is necessary and reasonable for a voter in Safe at Home to be able to overcome a challenge by providing a sworn statement that they are eligible, because this is the same standard used with other challenged voters.

**Minnesota Rule 8290.1300, subpart 10d, paragraph B**, requires that if the voter returns the required sworn statement, that Safe at Home remove the challenge from the voter's record and process the returned ballot in accordance with subpart 8. This requirement is necessary and reasonable as it mirrors the requirements of subpart 6a and a program participant voter who has overcome a challenge should be treated the same regardless of the point in the process at which their voter record was challenged.

**Minnesota Rule 8290.1300, subpart 10d, paragraph C**, provides direction to Safe at Home in cases in which a challenged voter's ballot has already been forwarded to the county when Safe at Home receives the sworn statement that the voter is eligible. It is necessary and reasonable in this case for the secretary to submit a revised certification and for the ballot board to review it to determine whether the program participant voter's ballot should be accepted or rejected, because this is analogous to a voter submitting a replacement ballot that the absentee ballot board would similarly examine.

The new **Minnesota Rule 8290.1300, subpart 10e**, provides direction to Safe at Home staff in cases in which a program participant voter's situation changes in a way that would impact their eligibility to vote through Safe at Home after their ballot has been forwarded to the county auditor for processing with a certification indicating that the ballot should be accepted. This new subpart is needed and reasonable because it

requires the secretary to promptly provide the appropriate county auditor in writing that the ballot should be rejected, if it is still possible to do so.

The new **Minnesota Rule 8290.1300, subpart 10f**, requires Safe at Home to notify program participant voters if their ballot was rejected. This requirement is necessary and reasonable because it resembles the requirement of Minnesota Statutes, section 203B.121, subdivision 2, paragraph (d), which requires local election officials to provide written notification to voters whose ballots were rejected.

The changes to the **Minnesota Rule 8290.1300, subparts 11, 12, 13 and 14**, are needed and reasonable because they simply update terminology as required by Minn. Laws 2013, Chapter 131, Article 1, Section 1.

Finally, it is needed and reasonable to repeal **Minnesota Rule 8290.0100, subpart 17**, which defined a "Program participant voter." This definition is unnecessary, because both statute and Minnesota Rule 8290.1300 establish in detail the requirements to vote through the Safe at Home program. As this definition was superfluous, and such superfluous defined terms can cause confusion, it is needed and reasonable to repeal subpart 17 defining program participant voter.

For an explanation of the repeal of **Minnesota Rule 8290.1300, subpart 4**, see the discussion beginning on page 14.

## CONCLUSION

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

7/10/2014



MARK RITCHIE  
Secretary of State