

# EXHIBIT D

000026



## OFFICE OF THE SECRETARY OF STATE

### *Statement of Need and Reasonableness*

**Proposed Rules Governing Presidential Nomination Primary Election Administration and the Proposed Amendment of Rules Governing Election Administration, Voter Registration, Petitions, Absentee Ballots, Election Judge Training Program, and Ballot Preparation, *Minnesota Rules*, 8200, 8205, 8210, 8240, and 8250, and proposed new Rule Chapter 8215; Revisor's ID Number R-04487**

#### **Introduction**

In 2016, the Minnesota Legislature passed a law creating a Presidential Nomination Primary system in Minnesota beginning in 2020. As part of that legislation, the Office of Secretary of State was granted rulemaking authority in order to provide the procedures to implement the Presidential Nomination Primary. The rulemaking authority went into effect July 1, 2017. Although this rulemaking primarily governs the administration of the Presidential Nomination Primary, the Office is also proposing a few small changes to other administrative rules governing elections.

A Request for Comments was published in the State Register on July 24, 2017, and a number of responses were received. The Request for Comments was also sent to a broad spectrum of interested parties pursuant to a Notice Plan described in this Statement of Need and Reasonableness ("SONAR"). The Additional Notice Plan was approved by Administrative Law Judge Jessica A. Palmer-Denig in a July 13, 2017 order. The Secretary's staff used these comments received in response to the Request for Comments as well as comments and suggestions received prior to the rulemaking to draft the proposed rules.

#### **Alternative Format**

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or audio file. To make a request, contact Bert Black at the Office of the Secretary of State, 180 State Office Building, 100 Rev. Dr. Martin

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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 711.

### Statutory Authority

*Minnesota Statutes*, section 207A.11, Minnesota Laws 2016, chapter 162, section 9, requires the Office of the Secretary of State to adopt rules to implement the provisions of *Minnesota Statutes*, chapter 207, Minnesota Laws 2016, chapter 162, establishing a Presidential Nomination Primary election in Minnesota. In addition, *Minnesota Statutes*, sections 201.022, 201.061, 201.071, 201.091, 201.221, 203B.04, 203B.08, 203B.09, 203B.125, 204B.071, 204B.45, 204C.361, 204D.08, 204D.11, 205.17, 205A.08, and 206.84, authorize the Office: to adopt rules for the administration of the statewide voter registrations system; to define documentation sufficient for election day registration; to define the form of the voter registration application and the voter certificate of eligibility; to provide for public information list or statewide information system requests; governing the general administration of voter registration and the format and use of polling place rosters; governing absentee ballot procedures for persons permanently unable to go to the polling place due to illness or disability; providing procedures for the accurate and timely return of absentee ballots; establishing methods and procedures for issuing ballot cards and related absentee ballot forms; establishing the form, content and type size and style for the printing of blank applications for absentee ballots, absentee voter lists, return envelopes, certificates of eligibility to vote by absentee ballot, ballot envelopes and directions for casting an absentee ballot; governing the manner in which petitions required for any election are circulated, signed, filed and inspected; providing for the conduct of mail balloting, including instructions to voters, procedures for the challenge of voters, public observation of the counting of ballots, and procedures for the proper handling and safeguarding of ballots to ensure the integrity of the election; providing for the format and preparation of the state primary ballot and the state general election ballot as well as municipal and school district ballots; providing for procedures to instruct election judges and voters in the use of electronic voting systems and electronic ballot markers, as well as standard ballot formats for electronic voting systems; and governing the rotation of candidate names.

The Secretary's statutory authority to adopt rules governing election administration and voting is set forth in:

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

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

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

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

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

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

(3) presenting one of the following:

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

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

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

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

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

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

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

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

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

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

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

A county auditor who receives a registration application indicating that an individual was previously registered in a different county in Minnesota shall

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

The Minnesota Election Law is applicable to mail balloting except as provided by this section or by rules adopted by the secretary of state, but only paper ballots may be used. The secretary of state shall adopt rules for the conduct of mail balloting, including instructions to voters, procedures for challenge of voters, public observation of the counting of ballots, and procedures for proper handling and safeguarding of ballots to ensure the integrity of the election.

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



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

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

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

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

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

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

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

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

*Minnesota Statutes*, section 206.84, subdivision 2, which provides:

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

Ballot cards may contain special printed marks as required for proper positioning and reading of the ballots by electronic vote counting equipment. Ballot cards must contain an identification of the precinct for which they have

been prepared which can be read visually and which can be tabulated by the automatic tabulating equipment.

*Minnesota Statutes*, section 207A.11, paragraph (c), which provides:

(c) The secretary of state must adopt rules to implement the provisions of this chapter. The secretary of state shall consult with the party chairs throughout the rulemaking process, including seeking advice about possible rules before issuing a notice of intent to adopt rules, consultation before the notice of comment is published, consultation on the statement of need and reasonableness, consultation in drafting and revising the rules, and consultation regarding any modifications to the rule being considered.

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

## Regulatory Analysis

*Minnesota Statutes*, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and give the Office's response.

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

Where applicable, this factor is discussed in the rule-by-rule section of the analysis. In addition to the discussion in the rule-by-rule section of the analysis, the proposed rules will benefit multiple classes of persons including voters, election officials and local governments, the major political parties, and the Office of the Secretary of State. While local governments and the Office of the Secretary of State will bear costs associated with the administration of a Presidential Nomination Primary, the costs associated with the Presidential Nomination Primary are imposed by statute.

**Eligible voters** will benefit from the proposed rule amendments because the rules clarify and create forms and instructions to guide voters in voting, particularly by absentee or by mail.

**Election officials and local governments** will benefit from the proposed rule amendments because they address issues and points of potential confusion for voters. Responding to voter questions takes government staff time and often requires the resending of voting materials at a cost to the local governments.

Further, the proposed rule changes allow for flexibility in the size of absentee ballot transmittal envelopes which allows for some potential cost savings for local election officials and their respective local governments.

The proposed rule changes also update local government reporting requirements, specifically the reports required by County Attorneys. County Attorneys will benefit from these changes by increased clarity about what is required within the report and by creating a single annual deadline for reporting.

Finally, the proposed rules provide additional guidance and procedural specificity to election officials and local governments in the administration of the Presidential Nomination Primary.

The **Office of the Secretary of State** will benefit from the proposed rules because they increase clarity, provide for clear administrative procedures for the operation of the Presidential Nomination Primary, and increase election security.

Many of the groups that benefit from the proposed rules will also bear some of the costs associated with implementing the rules. However, the primary costs associated with the rules are associated not with the rules themselves, but the legislation mandating the enactment of a Presidential Nomination Primary.

The **Office of the Secretary of State**, for example, will bear some of the costs of the proposed rules. The Office will incur staff costs, for example, to prepare new sample instructions and materials that comply with the proposed rules. Because the Office has not yet prepared any materials or guides related to the new Presidential Nomination Primary, there will be no additional costs associated with the new Presidential Nomination Primary rules.

**Election officials and the local governments for whom they work** may bear some costs related to printing new forms. However, because no local government has printed any materials associated with the Presidential Nomination Primary, there will be no additional costs imposed by the rules in preparing these Presidential Nomination Primary materials.

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

The Secretary of State will be required to provide training materials and local government resources related to the rule changes, but because the passage of the Presidential Nomination Primary law already requires the Secretary of State to provide these training materials and resources, any additional costs imposed by the proposed rules would be negligible. As discussed in factor (1), the Secretary’s office already provides samples of the

material discussed in the rules to local governments and does not expect to incur any additional costs due to the proposed rules.

To the best of the knowledge and belief of the Office of the Secretary of State, there will be no impact on state or local revenues, nor will the proposed rules cause any other state agency to incur costs. Where applicable, this factor is also discussed in the rule-by-rule section of the analysis.

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

Where applicable, this factor is discussed in the rule-by-rule section of the analysis. However, the Office in drafting the rules consulted with election officials, representatives of local government associations, and other entities to determine if there were less intrusive methods for achieving the purpose of the rules. The Office also looked to how other states conducted a Presidential Nomination Primary to determine if any of the methods used by other states could be used in Minnesota. The Office evaluated all options to determine the best option to achieve the policy purpose of the proposed rule and Presidential Nomination Primary law, while reducing costs for state and local governments.

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

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

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

Where applicable, this factor is discussed in the rule-by-rule section of the analysis. In addition to the discussion in the rule-by-rule section of the analysis, there will be some very limited one-time cost increases to county, city, township, and school district election officials due to the need to re-print the voucher form (for those that have leftover stock remaining to be used). However, this should be minimal as the voucher form is generally printed prior to each election. The remaining costs are required as a result of the Presidential Nomination Primary law, and are not imposed by the rules themselves.

**“(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”**

Where applicable, this factor is discussed in the rule-by-rule section of the analysis. In addition to the discussion in the rule-by-rule section of the analysis, the majority of the proposed rule language is in direct response to the enactment of the Presidential Nomination Primary statute. Without these proposed rules, there would be no administrative guidance for the Presidential Nomination Primary. Further, these changes reduce the cost of printing some materials, such as absentee ballot envelopes. Finally, there would be non-financial costs with respect to voter confusion, reduction in election integrity, and additional burdens carried by election administrators.

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

Nothing in the proposed rules is in conflict with federal regulations. Various federal laws and regulations govern election administration, but the proposed changes do not conflict with nor modify any federal regulation or law.

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

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

### **Commissioner of Management and Budget Review**

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

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

### **Cost of Complying for Small City or Small Business**

As required by Minn. Stat. 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 small business and the Office has determined that it will not. The Office has made this determination after analyzing the proposed rules in relation to the underlying statutory obligations. In addition, through the League of Minnesota Cities, the Office also asked a small city to estimate whether the cost to the city of complying with the proposed rules during the first year would exceed \$25,000.

As discussed in the Regulatory Analysis section of the SONAR, there are significant costs associated with administering the Presidential Nomination Primary but those costs are imposed by the enabling legislation and not the administrative rules

### **Determination About Rules Requiring Local Implementation**

As required by Minn. Stat. section 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 elections in Minnesota are governed by federal and state laws. Thus, no local ordinance or local regulatory changes are required.

## **Performance Based Rules**

Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the Office, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the Office in meeting those goals. The proposed rules are specifically designed to improve performance in election administration, with specific emphasis in the most efficient and accurate way to achieve the goals of the Presidential Nomination Primary law. Details of these considerations can be found in the rule-by-rule analysis.



## **Additional Notice**

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

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

The Additional Notice Plan is to send a copy of the Proposed Amendments to Rules and the Statement of Need and Reasonableness for those Proposed Amendments, the Dual Notice, and a transmittal letter to the following persons by electronic mail wherever possible and by United States mail where electronic mail addresses are unavailable:

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

House Government Operations and Elections Committee  
Senate State Government Finance and Policy and Elections Committee

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

House State Government Finance and Veterans Affairs Committee  
House Ways and Means Committee  
Senate State Government Finance and Policy and Elections Committee  
Senate Finance Committee

House and Senate Leadership from the Majority and Minority Caucuses

Governor Dayton

Former Secretaries of State:

Mark Ritchie  
Mary Kiffmeyer  
Joan Anderson Growe  
Arlen Erdahl

Minnesota County Election Officials





**Chairs of Minnesota's major political parties:**

**Democratic-Farmer-Labor Party  
Republican Party of Minnesota**

**Chairs of Minnesota's minor political parties:**

**Grassroots-Legalize Cannabis Party  
Green Party of Minnesota  
Independence Party of Minnesota  
Legal Marijuana Now Party  
Libertarian Party of Minnesota**

**The following election attorneys:**

**Alan Weinblatt  
Brian Rice  
Charles Nauen  
Daniel Cragg  
David Asp  
David Zoll  
Eric Magnuson  
Erick Kaardal  
Fritz Knaak  
Jared Reams  
Jay Benanav  
Jeffrey Holth  
John Knapp  
Julia Dayton Klein  
Matthew Haapoja  
Michael Murphy  
Rebecca Kanninen  
Reid LeBeau  
Richard Morgan  
Steven Reitenour  
Tony Trimble  
Vince Reuter  
Virginia Stark  
William Mohrman**

**Representatives of voting equipment and service vendors:**

Clear Ballot Group, Inc.  
Dominion Voting System Corp.  
Election Systems & Software, Inc.  
Everyone Counts, Inc.  
Sequoia Voting Systems  
Synergy Graphics  
Hart Intercivic, Inc.  
Knowink  
Data Card  
Election Administrators  
SOE Software  
TruVote International

Representatives of local government associations:

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

Representatives of public-interest groups:

AARP  
ACLU of Minnesota  
Catholic Charities  
Citizens for Election Integrity Minnesota  
Center of the American Experiment  
Common Cause Minnesota  
Education Minnesota  
FairVote Minnesota  
League of Women Voters of Minnesota  
Minnesota Board on Aging  
Minnesota Citizens Concerned for Life  
Minnesota Council of Nonprofits  
Minnesota Department of Veteran's Affairs  
Minnesota Majority  
Minnesota Taxpayers League  
Minnesota Voters Alliance  
Minnesota Public Interest Research Group  
Minnesota School Employees Association  
Minnesota Neighborhoods Organizing for Change

TakeAction Minnesota

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

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

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

Council on Asian-Pacific Minnesotans  
Council on American-Islamic Relations, Minnesota Chapter (CAIR-MN)  
Council on Black Minnesotans  
Council on the Affairs of Chicano/Latino People  
Hmong American Partnership  
Immigrant Law Center  
International Institute of Minnesota  
Karen Organization of Minnesota  
Minnesota Indian Affairs Council  
Minneapolis Urban League  
NAACP – Minneapolis  
NAACP – St. Paul  
Native Vote Alliance of Minnesota  
Somali Action Alliance

The Office of the Secretary of State believes that this Additional Notice Plan complies with the statute because the notice materials – described above – provide the principal representatives of the affected parties with ample notice and opportunity to provide suggestions, proposals, and comments regarding possible rule amendments. In addition to the entities outlined in the additional notice plan, the Secretary of State has chosen to send the proposed rules to the Minnesota National Guard and the U.S. Department of Defense's Federal Voting Assistance 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 the major and minor political parties in Minnesota 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;  
Local governments and elections administrators;  
Former Secretaries of State;  
Lawyers with expertise in elections matters; and  
Public-Policy groups representing a spectrum of populations and views held within the general public.

The scope of persons to receive notice and the main points of this Additional Notice Plan include everyone from those included in the Additional Notice Plan for the Request for Comments that was reviewed by the Office of Administrative Hearings and approved by Administrative Law Judge Jessica A. Palmer-Denig in a July 13, 2017 order.

The Notice Plan also includes giving notice required by statute. The Office will send the proposed rules and Notice of Intent to Adopt to everyone who has registered to be on the Office's rulemaking mailing list under Minn. Stat. section 14.14, subd. 1a. The Office will also give notice to the Legislature per Minn. Stat. section 14.116.

## List of Witnesses

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

Gary Poser, Director of Elections, Office of the Secretary of State

## Rule-by-Rule Analysis

The Secretary is proposing relatively few amendments to the current rules, and the bulk of the proposed rule text is in response to the Presidential Nomination Primary law.

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

### 8200 Voter Registration

The proposed changes to **8200.1100** are needed and reasonable because the change simply removes the language allowing the use of pre-2008 voter registration stock. The Office allowed for the use of pre-2008 stock following a now almost decade-old rule change. The purpose of allowing the use of pre-2008 stock was to allow counties to exhaust their old

stock before requiring new stock. At the time of the initial rule change, this made sense as voter registration applications are often printed *en masse* and extra copies may remain even after a large election. However, since nearly a decade has passed since the changes were made to the voter registration stock, counties have exhausted this pre-2008 stock.

Although the Office, after consultation with county officials, believes that all pre-2008 stock has been consumed, the Office considered the possibility that a county may find an unused box of pre-2008 stock. The Office determined that the negative impact to voters of allowing the continued use of pre-2008 stock, as well as the administrative burden on county election officials, outweighed the marginal cost-savings that would be associated by allowing pre-2008 stock to continue to be used (assuming any exists at all). The negative impact on the voter would be likely confusion due to the pre-2008 stock's different appearance and format to the current voter registration forms. The negative impact on county election officials would be related to the processing of the voter registration forms. Counties process hundreds if not thousands of voter registration applications in the lead up to a general election. Uniformity in these materials is essential to the efficient and accurate processing of voter registration applications, and ensures accurate data entry into the Statewide Voter Registration System (SVRS). After analysis, the Office considered that the marginal cost-benefit that may be achieved if a county were to find an unexpected box of pre-2008 voter registration cards was outweighed by the impact to voters and election officials that would be charged with processing those forms.

Because the Office believes that all pre-2008 stock has been consumed, and because the Office determined that even if a small amount of pre-2008 stock may be found, use of the pre-2008 stock would have negative consequences, removing the ability to use pre-2008 stock is needed and reasonable for the above-described reasons.

The proposed changes to **8200.7200** are needed and reasonable to improve the accuracy of the County Attorney reports on voting crimes provided to the Office, provide clarity to county attorneys on their reporting obligations, and create a clear reporting timeline for counties. The current rule requires that county attorneys report the "outcome of any investigation of alleged violations of voter registration laws within ten days of the determination." This rule formulation has resulted in inconsistent reporting for several reasons. First, there has been confusion about what needs to be reported and the point in time at which a county attorney needs to report. Specifically, there have been questions about the meaning of the term "outcome" in relation to an investigation. The first proposed change to rule part 8200.7200 would clarify that a county attorney needs to report the outcome of any "charging decision based on an investigation." This clarifies at what point the county attorney must report (at the time they charge or decline to charge in relation to an investigation) and clarifies what "outcome" they must report (in this case, the "outcome" is what charging decision resulted from the investigation). After consulting with

representatives from the County Attorneys Association, the Office believes this change will provide needed clarity and consistency.

The next change related to this rule part is a proposed clarification that county attorneys must submit reports related to not just alleged violations of voter registration laws, but also voting laws in general. Under the current law, the Office was receiving questions about whether county attorneys should report just crimes related solely to voter registration, or if the counties should also report information related to crimes around voting itself (such as voting when ineligible). While in many cases a voting crime is also a voter registration crime, that is not always the case. For example, an individual may have lawfully registered to vote, but then unlawfully voted if they were convicted of a felony prior to voting but after registering to vote. After consulting with representatives of the County Attorney Association, the Office is proposing clarifying that reports must include both voter registration crimes and voting crimes.

The Office also proposes changing the timing of county reports. Currently, the rule requires a rolling reporting timeline mandating counties report within 10 days of the aforementioned "outcome" of an investigation. Because counties do not have any similar rolling state reporting requirement, the consistency of these reports has varied widely from county to county. While there are a small number of counties that provide regular reports to the Office of the Secretary of State, the vast majority of counties have not been reporting on a regular basis. The Office has sent reminders to counties of their obligation to provide these reports within 10 days of the outcome of investigations, but the Office has still not seen consistent reporting. After discussing this requirement with representatives from the County Attorney Association, the Office is proposing moving this to an annual report.

An annual report will benefit the counties by providing a date certain for reporting on crimes committed in the previous calendar year, and it will benefit the Office of Secretary of State, the public, and policy makers by providing a comprehensive annual report. Currently, there is no requirement that a county report if there are no crimes related to voter registration. Because of this, that means that the absence of a report implies that there were no voter registration crimes from those counties not reporting. However, from charging and conviction data obtained from the State Court Administration, it is clear that in some cases the absence of a report may in fact mean that a county simply forgot to report or misunderstood their reporting obligations. By setting a date-certain for reporting, the Office will have comprehensive reporting from all counties by October 1. The Office believes that this will result in more comprehensive and accurate reporting.

The Office considered requiring the annual report much earlier than October 1, or requiring a preliminary report earlier in the year and a supplemental report in the fall. However, after speaking with a representative for the counties, the Office learned that many counties are still at the beginning stages of investigations in the spring, and that any reporting in the first



half of the year following an election would likely result in significant underreporting. A report due in April, for example, would likely underreport because investigations may be ongoing by law enforcement, including at the city level, and county attorneys may not be aware of the number or extent of investigations. Because it was determined that a report in the first-half of the year would have little value because of lack the lack of information at this stage, the Office is proposing setting the reporting deadline at October 1.

Even with an October 1 reporting date, the Office realizes that there is still a possibility that some counties may not have completed their investigations from the previous calendar year. In order to capture information on those investigations related to voting crimes from the previous calendar year that may not be completed by October 1, the Office is proposing that the report contain a summary of any pending investigations not yet completed by the October 1 deadline. This will ensure that the Office, and public officials and policymakers that seek this information from the Office of Secretary of State, have information on any pending investigations. This would provide notice that would allow for follow up if the county reports that not all investigations were complete by the October 1 deadline.

In addition, the Office is proposing adding language in the rule that specifies the minimum information required in the county attorney reports. The proposed required information is information that is currently provided by most counties in their county attorney reports, but is not provided uniformly. The key data that the Office is proposing be included in the report are: (1) the name or initials of the individual under investigation, (2) a brief description of the allegation, (3) the voting precinct if available, and (4) the outcome of the charging decision. While this information is generally provided by most counties in their current reports, specifying the minimum required information will improve the consistency of the reports.

Finally, the Office is proposing clarifying the data classification of the information contained in the report. This is particularly important because the Office is requiring that the county attorney's provide information in the reports on ongoing investigations, which may not yet be public data. This language would protect the non-public data, while still providing the Office with the key data. This would ensure that the Office is aware of the full scope of investigations and charges related to the previous calendar year, and would allow the Office to report complete summary data while protecting any non-public underlying data.

The Office believes these changes to the county attorney reports will benefit the public, county attorneys, and policy makers by providing a full and comprehensive data set on the outcome of investigations related to voting crimes. The deficiencies in the current rule undermining its usefulness are outlined in the 2018 Legislative Audit Report on Voter Registration. Specifically, the report stated:

In theory, the county attorney reports could allow collection of data on all registration related investigations and their outcomes.



However, their usefulness for this purpose is limited for a few reasons. First, the administrative rule does not specify the information county attorneys should report. Some reports we reviewed were very detailed, including the original allegation, the investigation report, and the county attorney's charging decision. Other reports included only summary information or information on charges (for example, "we have charged one individual with a violation of the election laws"). These reports may not give complete information on all investigations. Second, as we described above, some county election officials refer allegations to law enforcement agencies. In these cases, county attorneys might report only investigations they considered prosecuting, rather than all investigations. Finally, the reports we reviewed covered more than investigations into alleged violations of voter registration laws. Reports included investigations into other election-related offenses, such as voting more than once, and appeared to include investigations into whether county election staff should "challenge" registered voters in SVRS due to felony convictions.

See Voter Registration 2018 Evaluation Report, Program Evaluation Division, Office of the Legislative Auditor, 58-59 (<https://www.auditor.leg.state.mn.us/ped/pedrep/voterreg.pdf>) (footnotes omitted). The Office, after consultation with representatives of the County Attorneys Association, believes that these proposed rule amendments will help address current issues with the County Attorney Reports and will result in more useful reports for post-election analysis for the state, local election officials, the public, and policy makers.

The proposed changes to **8200.9939** are needed and reasonable in order to clarify the voucher oath form, particularly as it relates to its use in conjunction with absentee balloting. The voucher oath is used for registering with a voucher both in the polling place and in conjunction with absentee voting. Following the 2014 election, the first election where no-excuse absentee voting was used, the Office made several changes to the form to address common voter-errors when using this form to register in conjunction with casting an absentee ballot. Following these changes, the Office heard far fewer complaints and questions about the voucher oath form. However, because this form is sent to all unregistered absentee voters, counties and election officials still received questions about whether or not the voter had to complete the voucher oath if the voter was registering with something other than a voucher. To address this confusion and to make clear that a voucher oath is not required if a voter is registering with one of the other approved proofs of residence, the Office is proposing adding a statement at the top of the form to clarify that the form is only required to be used if the voter is registering in conjunction with a voucher.

The Office considered alternatives to adding this statement at the top of the form, including the possible alternative of requiring one form for polling place use only and one form for absentee voting only. The Office rejected this two-form solution, however, because it would require election officials to print two sets of voucher oath stock and would not allow election officials to utilize extra absentee stock in polling places on election day. The Office determined that the ability for election officials to use the same form would allow election officials to achieve cost savings by allowing the excess stock to be used in the polling place and, with the additional instruction at the top of the form, would address voter confusion resulting from the use of the form in absentee balloting materials.

### **8205 Petitions**

The proposed changes to **8205.1050** are needed and reasonable to correct two erroneous cross references in the rule part. Because the rule parts that the rule currently cross-references are not in existence, it is needed and reasonable to strike these erroneous rule parts.

### **8210 Absentee Ballots**

The proposed change to **8210.07100** strikes the minimum size requirement for absentee ballot envelopes. This change was requested in order to reflect that this size requirement is no longer needed as new voting equipment is being used in many jurisdictions in Minnesota and this minimum size is no longer needed in order to accommodate some of the ballots produced by the new equipment. This change will benefit counties by allowing the flexibility to purchase and use the envelopes that meet the county needs and ballot size in use in the county. For some counties, this could result in reduced costs because the current envelope size prescribed in rules exceeds what is needed to mail voters their absentee and mail balloting materials.

The proposed new language in **8210.2900** was requested by a county in order to provide clarity around the role of election judges' assistance to voters in health care facility or hospital. This clarifies that a voter needs to affirmatively request assistance before anyone will assist the voter in voting an absentee ballot in a healthcare or hospital facility. The Office considered not including this rule change because the Office believes that this change is not necessary – under current law an election judge does not have authority to assist a voter without the voter requesting assistance. See Minn. Stat. section 203B.11 (citing Minn. Stat. section 204C.15). However, because the request to include this rule part came from an election official, it is clear that there is at least some confusion about whether an election judge can assist a voter if the voter doesn't request the assistance. For this reason, the Office determined that adding this rule part would provide clarity to election officials in administering health care facility or hospital voting.

## **8215 Presidential Nomination Primary**

Pursuant to 2016 Minnesota Laws, Chapter 162, section 9, the Office of Secretary of State is required to adopt rules to implement the newly created Presidential Nomination Primary. In proposing rules, the Office of the Secretary of State is required to consult with the chairs of the major political parties in all aspects of the rulemaking process. The Office met with the political party chairs, and has consulted with the chairs at each stage of the process. In addition, the Office has also consulted with election officials who would be administering the Presidential Nomination Primary, particularly in those counties that would be administering mail balloting in the Presidential Nomination Primary. The Office is recommending the promulgation of these new rules following these discussions.

In recommending the promulgation of the following rules, the Office notes that it is constrained by the legislative framework established in law for the Presidential Nomination Primary. The key requirements of the Presidential Nomination Primary statute are as follows:

- Unless otherwise provided by the Presidential Nomination Primary law, the Presidential Nomination Primary is required to be conducted in the same manner as the state primary;
- The Presidential Nomination Primary will take place on the first Tuesday in March of a presidential election year, unless the major party chairs agree on a different date by March 1 of the previous year;
- Only major parties are eligible to participate in the Presidential Nomination Primary;
- Each major party must have a separate ballot;
- The chair of each party must submit a list of candidates that will appear on the party's ballot, no later than 63 days before the date of the Presidential Nomination Primary;
- The chair of each party has the option of including on the ballot language that would allow a voter to indicate a preference for having delegates to the party's national convention remain uncommitted or contain a space for a write-in vote;
- Just as with a regular primary, registered voters will be able to vote at their polling place on Presidential Nomination Primary day or by absentee up to 46 days before Presidential Nomination Primary day. However, in order to vote in the Presidential Nomination Primary a voter must request which party's ballot they want and will be given a ballot containing only that party's candidates; and
- A voter's choice of party ballot will be recorded in the Statewide Voter Registration System and will be public information.

See Minnesota Laws 2016, Chapter 162. These proposed rules are designed to provide the additional procedural clarity to elections administrators and voters in the administration of the Presidential Nomination Primary.

The proposed rule part **8215.0100** is needed and reasonable in order to identify that, except as provided in this new rule chapter, the Presidential Nomination Primary will be conducted in the same manner as provided in law and rule for the state primary. In developing the proposed rules for the Presidential Nomination Primary, the Office considered adding new rule parts throughout the current rule chapters. However, because the Presidential Nomination Primary only occurs every four years, the Office was concerned that adding new information to the existing chapters would cause confusion when administering all other elections. Instead, the Office is proposing mirroring the statutory language, which places the unique Presidential Nomination Primary language in its own chapter and references the other portions of Minnesota election law and states that “[e]xcept as otherwise provided by law, the Presidential Nomination Primary must be conducted, and the results canvassed and returned, in the manner provided by law for the state primary.” Minn. Stat. section 207A.12 (2016).

The proposed rule part **8215.0200** is needed and reasonable to provide clarity around the form of the ballot. The proposed rule specifies that the ballot must be printed in the same manner as the state primary ballot as far as practicable, except that as required by statute there must be separate ballots for each major political party. This proposed rule specifies the ballot heading, and references the statutory requirement that the political party chairs are required to provide the names of the candidates to appear on the ballot. See Minn. Stat. section 207A.13. In addition, the proposed rule references the statutory requirements in §204B.35, which provide additional detail on the manner and preparation of ballots, including the prohibition on listing a candidate name “in any way that gives the candidate an advantage over an opponent, including words descriptive of the candidate’s occupation, qualifications, principles, or opinions, except as otherwise provided by law.” Minn. Stat. section 204B.35, subd. 2.

Further, because the candidates for the Presidential Nomination do not file affidavits of candidacy, but instead names are submitted by chairs of the political party, the proposed rule incorporates a portion of Minn. Stat. section 204B.06 governing candidate names. Minnesota Statute section 204B.06, subdivision 1, governs the submission of candidature names for the state primary states that “[a]n affidavit of candidacy must include a statement that the candidate's name as written on the affidavit for ballot designation is the candidate's true name or the name by which the candidate is commonly and generally known in the community.” Incorporating this provision of section 204B.06 is consistent with the requirement in Minnesota Statute, section 207A.12, paragraph (a) that the Presidential Nomination Primary be conducted in the same manner as the state primary unless otherwise provided by law.

Finally, this proposed rule part provides clarity in subpart four on the procedures for placing the option of uncommitted on the Presidential Nomination Primary ballot. Minnesota Statute, section 207A.14, paragraph (b) states:

If requested by a party chair, the ballot for that party must contain a place for a voter to indicate a preference for having delegates to the party's national convention remain uncommitted. If requested by a party chair, the ballot for that party must contain a blank line printed below the other choices on the ballot so that a voter may write in the name of a person who is not listed on the ballot.

While this rule states where the write-in candidate option is to be listed if requested, the statute does not specify where the choice to select uncommitted delegates must be placed nor does it state whether the choice for uncommitted delegates be referred to as "uncommitted", "uncommitted delegates," or some other formulation.

With respect to ballot order placement, the Office considered two options: allowing the uncommitted selection to rotate with candidate names or fixing the uncommitted option at the bottom of the candidate selections. After consulting with representatives from the major parties and with county election officials, the Office is proposing having the choice of uncommitted rotate with the candidate names. First, allowing uncommitted to rotate with candidate names will save significant costs to counties. Current election equipment owned by local governments is only programmed to fix write-in candidate options at the bottom of the candidate choices. If the Office were to require the uncommitted choice to be fixed at the bottom of the candidate choices, voting equipment used in the state would have to be re-programmed to accommodate this requirement. This would increase costs for both local governments and the state, as the equipment would have to be re-certified. In addition to the cost-savings associated with allowing the uncommitted choice to rotate, because this is an approved delegate choice by the political party, it is reasonable to rotate the uncommitted choice with the other candidate-specific delegate choices.

In addition to the question of rotation, the statute did not specify what words should be placed on the ballot for the uncommitted choice. Instead of specifying the words, the statute merely states: "[i]f requested by a party chair, the ballot for that party must contain a place for a voter to indicate a preference for having delegates to the party's national convention remain uncommitted." Minn. Stat. section 207A.14. The Office considered specifying that this must be done by placing only the word "Uncommitted" on the ballot, but concluded it would be more appropriate to allow the political parties to determine the words to be used on the ballot. This would allow a party to use the terminology specific to its party process. For example, a party may choose "uncommitted delegate" or another phrase such as "unbound delegate." Allowing the political parties to choose the appropriate terminology for their political process will benefit both the political parties and their voters.

The proposed rule also limits the phrase that the political parties can use to indicate the uncommitted choice to three words. This is needed and reasonable because current voting equipment in use in the state is programmed and certified to be able to accept up to three



words in the candidate choice field, and operating within the current programming will avoid reprogramming costs for local governments. Allowing political parties to use up to three words to describe their uncommitted choice is needed and reasonable because it gives the parties maximum flexibility while limiting any costs to local jurisdictions.

The proposed rule part **8215.0300** is needed and reasonable to provide guidance and procedures for polling place voting in the Presidential Nomination Primary. Subpart one of the rule part governs the polling place roster, and incorporates the language required by Minn. Stat. section 204C.10, and requires the statement to be separate from the statement required in rule part 8200.9115, subp. 1. This is needed and reasonable to ensure the rule requirements for the roster are consistent with the statutory provisions regarding the Presidential Nomination Primary's roster oath.

The language in **8215.0300, subpart 2**, governs the recording of the political party ballot choice, which is needed and reasonable to comply with Minn. Stat. section 207A.12. Minnesota Statutes section 207A.12 requires that a voter request the ballot for the political party of their choice, and that the county auditor record that choice so that it can be posted along with the voter's history of voting in the Presidential Nomination Primary election. This rule part outlines the polling place procedures needed and reasonable to comply with Minn. Stat. section 207A.12.

This rule part first requires every voter wishing to vote in a Presidential Nomination Primary to read the statement required by Minn. Stat. section 204C.10 on the roster. This statement, as required by statute, outlines the requirement that a voter must be in general agreement with the principles of the party for whose candidate the voter intends to vote, and also requires an affirmative statement that the voter understands that her or his party ballot choice will be public information. Under the proposed rule, once the voter has read the statutorily-required statement, the election judge then asks the voter which political party's ballot he or she requests. The rule does not specify how the voter indicates her or his ballot preference, but instead requires that the roster include a place to record the voter's choice and requires that the election judge record the voter's party choice in the roster. Only after the roster has been marked with the political party choice will the election judge instruct the voter to sign the roster.

This procedure is needed and reasonable because it provides guidance to both the election judge and the voter on the roster procedures. Although the proposed rule provides a structure to ensure that the statutorily required acts of a voter selecting a ballot choice, reading the oath, and recording the choice on the roster, occur, the proposed rule leaves key flexibility with respect to how the voter indicates her or his ballot choice. The Office contemplated requiring the voter to verbally state her or his ballot choice, but ultimately determined that allowing the voter flexibility in indicating her or his ballot choice would benefit both voters and election administrators. This would benefit voters by allowing a

voter to either verbally state her or his party choice, or point to the party choice in the roster. While most voters may be comfortable stating her or his party choice out loud, the Office has heard concerns from election administrators that some voters may be hesitant to orally stating her or his preference. By allowing this flexibility, the voter has the option of choosing how they are most comfortable indicating party preference.

The language in **8215.0300, subpart 3**, is needed and reasonable to establish the procedure for when a voter refuses, even with the flexibility to indicate orally or by physically pointing to the roster, a party preference. The Presidential Nomination Primary law requires that a voter must select a political party ballot and that the voter's selection must be recorded in the Statewide Voter Registration System. Under this rule part, if a voter refuses to indicate her or his ballot choice, the election judge may refer the voter to the statutorily-required polling place informational posters but must not allow the voter to vote if the voter continues to refuse to indicate a party preference.

The language in **8215.0300, subpart 4**, is needed and reasonable to specify the type of voter receipt that the election judge would issue to the voter upon signing the roster in a Presidential Nomination Primary. A voter receipt is issued to every voter upon signing the roster; the voter then uses that voter receipt in order to be issued a ballot. Under Minnesota law, "[t]he voter shall deliver the voter's receipt to the judge in charge of ballots as proof of the voter's right to vote, and thereupon the judge shall hand to the voter the ballot." Minn. Stat. section 204C.10. Because the Presidential Nomination Primary requires multiple ballots, one for each major political party, the voter's receipt must indicate to the ballot judge which ballot to issue the voter. This proposed rule requires that the ballot receipt indicate the voter's major party choice, but limits how the voter receipt can indicate the choice.

In developing the rules, election officials expressed concerns that voter receipts that were color coded (blue and red, for example) or otherwise obviously showed the voter's party preference could cause issues within the polling place. Election officials expressed concerns that voters carrying voter receipts that indicate party choice by color, shape, or size could unduly influence voters – for example, a voter may not feel comfortable selecting a ballot of party "A" if the voter can see that all other voters in the polling place are carrying receipts for party "B." Preventing the voter receipt from identifying the voter's political party by size, shape, or color, is needed and reasonable to minimize any undue influence in the polling place and to protect voter anonymity as best as possible when the voter is voting.

To address this concern the Office also considered specifying exactly how the voter receipts must be printed. However, under current law, local jurisdictions are allowed to develop their own voter receipt so long as it otherwise meets state legal requirements. Because voter receipts in all other elections are currently not uniform across jurisdictions, the Office determined that exact uniformity was not required in the Presidential Nomination Primary either. This rule balances the need for some minimum standards to ensure that there is no



undue or unintended influence on voters at the polls, while allowing local jurisdictions the maximum flexibility consistent with current law in developing the form of voter receipts.

The proposed rule part **8215.0400** is needed and reasonable to provide guidance on the administration of absentee balloting in a Presidential Nomination Primary. **Subpart one** specifies that, unless otherwise provided, absentee balloting is conducted as it would be for the state primary in both rule and statute. While absentee balloting in the Presidential Nomination Primary can be almost exclusively governed by the current rules and statute, additional guidance is needed and reasonable to govern the requirement for multiple ballots and the related instructions to both voters and election administrators associated requesting and processing absentee ballots in an election with multiple ballots for the same election.

In developing the rules regarding absentee balloting and the Presidential Nomination Primary, the Office considered two primary methods for conducting absentee balloting in a Presidential Nomination Primary: requiring the absentee voter to request her or his party's ballot before it is sent out, or sending all absentee voters all major party ballots and requiring that the voter return only one voted major party ballot. After discussions with elections administrators and the major political parties, the Office concluded that requiring an absentee voter to request the party's ballot was the preferred method.

In making the determination that requiring the absentee voter to request her or his party's ballot on the initial application, the Office considered both the impact to the voter and to elections administrators. With respect to elections administrators, requiring the absentee voter to request the party's ballot initially would reduce costs to the state and elections administrators by reducing the number of ballots needed, reducing postage, and reducing staff time in processing ballots when returned. With respect to the voters, requiring the absentee voter to request the party's ballot initially would not add additional burdens to the voter because every absentee voter – whether in person or by mail – is already required by state law to complete an absentee ballot request. Minn. Stat. section 203B.04. Further, requiring the voter to request their party's ballot as part of their application provides an additional benefit to the voter by avoiding the confusion of receiving two or more ballots in the mail. As is discussed in the proposed rule 8215.0500 governing mail balloting, the Office and elections administrators expressed strong concerns about the potential for voter confusion if a voter receives two blank ballots. Voter confusion in that case could lead to disenfranchisement in the form of spoiled ballots due to voter overvotes. For these reasons, the Office concluded that the requiring an absentee voter to request her or his party's ballot on the absentee ballot application was needed and reasonable.

The first needed and reasonable change to the absentee process is in proposed rule part **8215.0400, subpart 2**, which contains needed and reasonable changes to the absentee ballot application. In order for an absentee voter to request her or his political party's ballot in the Presidential Nomination Primary, the absentee application must incorporate additional

information. The first required piece of information is a statement that the application contain a heading indicating that the application is for the Presidential Nomination Primary only. The Office considered integrating the required Presidential Nomination Primary information into all applications, regardless of election. However, after consulting with county election administrators who process these absentee applications, the Office concluded that because of the infrequency of the Presidential Nomination Primary (once every four years) compared to elections within the state (at minimum five election dates per year), it would be more efficient and less confusing to voters to have an application specific to the Presidential Nomination Primary.

The next required piece of information on the application is both the place for the voter to indicate her or his major party choice and an instruction that a voter must select a major party ballot and can only receive one ballot. This is needed and reasonable to ensure the voter requests only one major party ballot, and understands that he or she can only request one ballot.

Finally, the proposed rule part includes the oath that would otherwise be required on the polling place roster under statute. The Office considered adding this oath to the absentee return envelope, but because the absentee envelopes (particularly the absentee envelope for unregistered voters) already contains significant information, the Office concluded that it was preferable to add this oath to the application because of space-issues on the absentee return envelope. Further, unlike the mail ballot voters, the absentee voters are requesting their major party ballot in an application and it is logical to include the oath at the time that they request the major party ballot. This is very similar to the process of a voter requesting a major party's ballot when they sign the election roster. For these reasons, it is needed and reasonable to add the oath to the application.

The Office also considered the costs to local election officials in requiring changes to the absentee ballot application form. While changing the absentee application form would require local election officials to require some costs, it is significantly less expensive to change the absentee ballot application than the alternative, which would require changing the absentee envelopes. Unlike the absentee envelopes, the absentee ballot application can be printed on demand. Further, with the increase in voters using the online tools available on [mnvotes.org](http://mnvotes.org), local jurisdictions are printing and processing fewer paper applications. Finally, if the proposed rules did not change the absentee ballot application, there would be additional increased costs in the form of requiring multiple ballots to be sent to every absentee voter. Therefore, in addition to the benefit to voters described above, the Office determined that changing the absentee ballot application was preferable and less costly than the alternative requiring the change to the absentee ballot envelopes.

The proposed rule part **8215.0400, subpart 3**, is needed and reasonable to provide guidance to election administrators in processing absentee ballot applications for the Presidential

Nomination Primary. The proposed rule part first simply requires that a county inspect the application, as they would any other application, for completeness. The proposed rule part further states that, if the voter does not specify her or his party ballot choice, the application must be returned to the voter. Returning the application to the voter is needed in order to ensure the voter has notice that her or his application cannot be processed without additional information.

The proposed rule part **8215.0400, subpart 4**, is needed and reasonable to provide guidance and procedures for accepting and processing absentee applications governed by the Federal Uniformed Overseas Citizen Absentee Voting Act (UOCAVA). Under UOCAVA, military and overseas voters have the ability to access certain procedures, use uniform federal forms, and have certain additional rights, in all federal elections. One of the key provisions of UOCAVA is that voters covered by UOCAVA have the right to register and apply for an absentee ballot at the same time through the Federal Post Card Application (FPCA). The FPCA is a form created by the federal government, which all states are required to accept in all federal elections. While the FPCA does have a place for voters to indicate a political party preference, UOCAVA voters voting in Minnesota have not been required to complete this section of the application. Further, federal law requires that the application be valid for all federal elections for at least a calendar year. Because of this, it is likely that elections administrators will receive federally-governed applications without an indication of political party preference and this proposed rule is needed and reasonable to provide guidance to elections administrators on how to process these applications consistent with both state and federal law.

The Office considered several options with respect to handling UOCAVA absentee applications that do not contain political party preference, including rejecting and returning the application. However, because of often experienced difficulty or delay in transmitting materials to UOCAVA voters through the U.S. Mail, the Office, in consultation with election administrators, determined that outright rejection is not the preferred method for UOCAVA voter applications missing political party preference. The proposed rule part instead requires the county auditor to attempt to collect the voter's political party preference via email, U.S. Mail, or telephone. The rule part sets a timeline for making this attempt at between 63 and 48 days before the election. This time period is needed and reasonable because 46 days before the election is the date no later than which county election officials first transmit ballots for the Presidential Nomination Primary for all validly completed UOCAVA and absentee ballot applications. This gives counties a full two weeks prior to the start of the absentee balloting period to attempt to collect this information. This proposed rule part is needed and reasonable because it allows counties the ability to process the federally-mandated UOCAVA FPCA in a manner consistent with the Presidential Nomination Primary statute's requirement that all voters in the Presidential Nomination Primary only vote one political party's ballot.

The proposed rule part **8215.0400, subpart 5**, is needed and reasonable to address an additional federal form required under UOCAVA, the Federal Write-in Absentee Ballot (FWAB). The FWAB allows a UOCAVA voter to submit a written name of a candidate, instead of completing a pre-prepared Minnesota ballot. The proposed rule part outlines the three potential circumstances where a county would receive a FWAB, and provides a procedure for processing the FWAB.

The first potential circumstance is outlined in paragraph A: where a UOCAVA voter submitted a FPCA form indicating the voter's political party choice, but returns a FWAB voting the candidate of another political party. The proposed rule requires counties reject these FWAB ballots, because their stated party preference does not match their returned ballot. The second potential circumstance is outlined in paragraph B: where a voter did not submit a FPCA but did return a FWAB, and the political party preference associated with the FWAB can be ascertained. In these circumstances, the county election official would accept the FWAB and record the voter's political party preference. The final circumstance is in paragraph C: where a voter does not submit a FPCA, and the election official cannot tell from the FWAB the voter's political party preference. Because the voter's political party preference cannot be ascertained, the county election official must reject this ballot. This rule part is needed and reasonable to provide uniform guidance to county election administrators on how to process a FWAB consistent with both the federal UOCAVA law and consistent with the requirement of the Presidential Nomination Primary statute that all voters casting a ballot in the Presidential Nomination Primary have their party preference recorded.

The proposed rule part **8215.0400, subpart 6**, is needed and reasonable to provide the procedure for entering the additional Presidential Nomination Primary data into SVRS. This proposed rule part states the general requirements of Minn. Stat. section 203B.065 regarding the entry of data on absentee ballot applications into SVRS, but adds the additional requirement that the county auditor or municipal clerk enter the voter's political party choice. This rule part is needed and reasonable to add the requirement to enter the political party choice in SVRS at the time the absentee ballot application is processed to ensure that the political party choice is included in each absentee voter's history as required by Minnesota Statutes, section 207A.12.

The proposed rule part **8215.0400, subpart 7**, is needed and reasonable to provide the procedures governing a situation where a voter may wish to change her or his party preference after requesting an absentee ballot.

Under current Minnesota law, a voter has the ability to request that a county official spoil their submitted absentee ballot and request a replacement ballot up until seven days before the election. At the seven-day mark before the election, election officials begin the process of separating the absentee ballots from the voter's signature envelopes. Once a voter's

ballot is separated from the signature envelope, it cannot be identified with the voter and therefore a county election official cannot mark the voter's ballot as spoiled and issue a new ballot.

Just as with any other election, a voter has the option to use this process to spoil a submitted ballot and request a replacement in the Presidential Nomination Primary. However, additional guidance is needed and reasonable to provide for how a county official handles a request to spoil a submitted absentee ballot when the purpose is to request an absentee ballot for a different political party. The proposed rule part states that, in order to change the voter's political party preference, the voter must submit a new absentee ballot application. This is needed and reasonable because, as discussed above, the absentee ballot application in a Presidential Nominating Primary contains the required oath and the place for voters to indicate political party preference. Requiring that a voter submit a new absentee ballot application ensures that the voter has signed the statement that the voter is in agreement with the principles of the party of the candidate for whom the voter intends to vote before being issued a ballot for that party. Further, this is consistent with the new rule part 8215.0400, subpart 6, which specifies that the receipt of application is the point at which the county must enter the voter's political party choice in SVRS.

The proposed rule part **8215.0400, subpart 8**, is needed and reasonable because it provides the procedure for marking the polling place roster for those Presidential Nomination Primary voters who voted absentee. The proposed rule part requires that, just like in any primary election, the roster be marked to reflect that the voter already voted. However, in addition to marking the roster with the information that the voter already voted, the rule requires that the roster be marked with the voter's major political party choice. Requiring that the roster be marked with the voter's major party choice is needed because the roster provides a paper record of both the fact that the absentee voter has voted and the record of their party choice, both of which must be recorded according to the Presidential Nomination Primary statute. The Office considered only requiring that the roster be marked with "AB", which is all that is required in every other state election. However, because Minnesota Statutes, section 207A.12, requires that the roster be marked with every voter's choice, the Office determined it was needed and reasonable to include the absentee voter's party choice on the roster as well as in SVRS.

Finally, the proposed rule part **8215.0400, subpart 9**, is needed and reasonable to provide an additional instruction in the required absentee ballot instructions to absentee Presidential Nomination Primary voters. Because the Office is not proposing changing any of the information on the absentee envelopes, very little in the absentee voter instructions needs to change in order to comply with the Presidential Nomination Primary statutes. However, the Office considered a scenario where the county or local election official provided the absentee voter with the incorrect party ballot, or the voter may have forgotten which party's ballot they requested. The Office determined that adding language to the instructions that



provided voters with the contact information for their elections official was needed and reasonable to give them the tools to contact the county to determine if the wrong ballot was sent in error.

In requiring this additional instruction, the Office considered that this would require that counties print new absentee instructions for voters voting in a Presidential Nomination Primary. However, because these instructions can be printed on demand – allowing the counties to print only as many as are needed for the Presidential Nomination Primary, and because any leftover general election instructions could be used in any other state election, the Office determined that any additional cost to counties would be minimal, if any. Further, adding this instruction would reduce costs to counties in the form of staff time in addressing voter questions and concerns. For these reasons and the reasons stated above, the Office determined that modifying the instructions for absentee voters in the Presidential Nomination Primary was both needed and reasonable.

The proposed rule part **8215.0500** is needed and reasonable to provide guidance on the administration of all mail balloting in a Presidential Nomination Primary. All townships and cities with less than 400 registered voters located outside of seven-county metropolitan area can choose to hold elections by mail. In mail ballot jurisdictions, there is no polling place for pre-registered voters; instead every registered voter is automatically mailed a ballot. Subpart one specifies that, unless otherwise provided, mail balloting is conducted as provided in both rule and statute for the state primary.

The first needed and reasonable change to the mail balloting process is in proposed rule part **8215.0500, subpart 2**, which governs how multiple ballots are handled in the mail balloting process. Unlike absentee voting, where a voter is required to request a ballot, in mail ballot jurisdictions registered voters are entitled to have a ballot mailed to them automatically for every election. Since mail ballot voters do not apply for a ballot, they cannot make a party selection prior to receiving the ballot. This proposed rule part specifies that a mail ballot voter in a Presidential Nomination Primary will receive ballots for each major political party, but will be instructed to vote and return only one ballot. The Office considered mailing a mail ballot voter an application for a Presidential Primary Ballot, similar to the application for an absentee voter. However, mailing a mail ballot voter an application would be inconsistent with Minnesota's statutes, which specify that voters in mail ballot jurisdictions receive the ballots automatically and not through an application. See Minn. Stat. section 204B.45, subd. 2. Because Minnesota law requires that a mail ballot voter receive ballots without any intervening application, and because the Presidential Nomination Primary statute requires that there be separate ballots for each major party, the Office concluded that the only option consistent with state law is to require that mail ballot voters receive a ballot for each major political party.

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The Office had significant discussion with all stakeholders regarding whether to instruct mail ballot voters to return both ballots or their single voted ballot. As discussed in the rule-by-rule analysis for the proposed rule part 8215.0500, subpart 3, 8215.0500, subpart 5, and rule part 8215.0500, subpart 8, the Office determined that instructing a mail voter to only return her or his voted ballot combined with processing procedures to minimize the instances of spoiled ballots, was needed and reasonable. The Office made this determination after concluding that returning one ballot would ultimately benefit voters by reducing the potential for overvotes and simplify processing for election officials, while also meeting the requirements of the Presidential Nomination Primary law. For these reasons and the reasons outlined below, the Office determined that instructing mail ballot voters to return one ballot was needed and reasonable.

In order to administer mail balloting with multiple political party ballots sent to voters, the mail balloting materials that accompany the ballot will also require changes. Specifically, the mail ballot materials must allow election administrators to meet the requirement of the Presidential Nomination Primary statute that a voter only vote one major party ballot. To meet this requirement, the proposed rule part requires that the mail voter certificate that a voter is required to complete and return with their voted ballot contain a place for the voter to indicate which major party ballot the voter has voted and returned. This is needed and reasonable, to comply with the Presidential Nomination Primary requirement that there be an individual ballot for each major party, and that the voter's choice of major party ballot be recorded in SVRS and made part of the public information list. Without this information on the voter's certificate, election administrators would not be able to identify and record the mail ballot voter's major party choice without compromising ballot secrecy. For these reasons, the changes proposed to the to the voter's certificate are needed and reasonable.

The proposed rule part **8215.0500, subpart 3**, outlines the needed changes to the mail balloting instructions and return materials for mail ballot voters. Although this rule part contains a significant amount of text, much of this text mirrors the language for mail ballot voting in chapter 8210. The first piece of new language is in the "**1 Vote!**" portion of the instructions. The instructions now direct a voter to "[c]hoose the ballot of the party you are in general agreement with the principles of" and then show the voter's witness this blank ballot. This instruction is needed and reasonable to direct voters in how to respond to multiple ballots. Further, the instruction to show the voter's witness the blank ballot of the voter's choice mirrors the requirement in the state primary where the voter is required to show her or his ballot to the witness. In this portion of the instruction the voter is also instructed to only vote one ballot, and to discard the extra ballot.

In developing this instruction, the Office considered instead instructing the voters to return the blank, unvoted ballots in addition to their voted ballot. However, after consulting with county election officials, the Office determined it would be simplest to instruct voters to discard the unvoted ballots. Instructing the voter to discard the unvoted ballots would



reduce the costs of returning the mail ballot materials and simplifies the processing of mail ballots at the county level. In addition, although these instructions if followed will result in the simplest mail ballot process to administer, the proposed rules in 8215.0500, subpart 8, provide a procedure to minimize ballot rejection if the voter makes an error in following this portion of the instruction.

Similar to the changes in instruction one, the second instruction is changed to state **“2 Seal only one voted ballot in the tan ballot envelope.”** Again, this instruction directs voters to only return one voted ballot in the ballot secrecy envelope.

The next change in instructions is in the section entitled **“4 Fill out the white signature envelope completely”** in the section governing completing the oath on the signature envelope. Because a voter must select a major party’s ballot, and because the choice of major party must be recorded in SVRS and included on the public information list, the voter must indicate their ballot choice. Further, this instruction reflects and informs the voter of the procedure in the proposed rule part in 8215.0500, subpart 8, which would require rejecting the voter’s ballot if the voter returned a ballot of a different party choice than the voter specified on the signature return envelope. These instructions are needed and reasonable to ensure that voters have the information necessary to complete the signature envelope and minimize any errors that could cause rejection of the mail ballot.

The remainder of the language in the instructions are identical to the instructions for mail ballots in the state primary. As described above, these changes are needed and reasonable to ensure that a mail ballot voter has accurate instructions to properly cast a Presidential Nomination Primary ballot by mail.

The proposed rule part **8215.0500, subpart 4**, outlines the needed changes to the instructions where a third mailing envelope is used. Although most mail jurisdictions use only two envelopes (the brown secrecy envelope for the ballot and the white signature envelope), and allow the signature envelope to double as the outer mailing envelope. The signature envelope often doubles as the mailing envelope for mail balloting materials because, unlike the absentee signature envelope, the mail balloting signature certificate/envelope contains no private data that needs to be protected from view. While the signature/certificate envelope in Presidential Nomination Primary elections would contain additional information, that information is also public data. Although the signature envelope does not contain any private data, the Office has heard that some mail ballot jurisdictions may choose to use a third mailing envelope to protect the voter’s political party preference from being publically viewed. The instructions for a third envelope in the mail balloting materials are simply an incorporation of the third-envelope instructions from the absentee balloting instructions in rule part 8210.0500. Although the voter’s political party choice is included in the public information list and a third envelope is not required, these

instructions are needed and reasonable to provide county election officials with the proper instructions if the county chooses to provide an additional return envelope.

The proposed rule part **8215.0500, subpart 5**, provides the additional language related to the Presidential Nomination Primary required on the voter's certificate contained on the mail ballot signature envelope. The proposed rule part requires adding to the voter's certificate the additional roster oath for the Presidential Nomination Primary specified in Minnesota Statute, section 204C.10, with a space for the voter to indicate the party of her or his choice. This is needed and reasonable for two reasons. First, it is needed to incorporate the additional oath required in a Presidential Nomination Primary. Second, requiring the voter to indicate the political party of her or his choice on the voter's certificate is needed to allow the county election official to record the party's voter choice in SVRS and include it as part of the public information list as required by Minnesota Statutes, section 207A.12.

The Office considered other alternatives to requiring a voter to self-report their political party choice on the voter's certificate. For example, as discussed above, the Office considered allowing election administrators to open the secrecy envelope and view the ballot to confirm the party choice. As discussed above, the Office discarded this option because it would have compromised the secrecy of a voter's ballot. The Office also considered alternative procedures, such as the possibility of including a window in the ballot secrecy envelope to allow the county election to see the ballot type without seeing the voter's voted choice. However, this option would have added significant material costs and county election officials would still have to determine the voter's ballot choice if a voter failed to insert the ballot into the envelope in a way that the party could be seen through the window. The Office determined that this option was too costly and would still leave many ballots where voter party choice cannot be determined.

After significant discussion with election officials, the Office determined the best approach to meet the requirements of Minnesota Statutes, section 207A.12, would be to require the voter to mark her or his ballot choice on the voter's certificate, in combination with the proposed procedure for sorting and processing mail ballots in the proposed rule part in 8215.0500, subpart 8.

The proposed rule part **8215.0500, subpart 6**, provides a checklist to be included on the third mailing envelope in jurisdictions where a third mailing envelope is used. This checklist is similar to those used for returning absentee ballots in state primaries, but includes a modified first instruction that states "[H]ave you ... Included only your voted ballot and destroyed the ballot you did not vote?" These checklist instructions are designed to be a simpler and streamlined version of what is provided in the full instruction contained with the mail ballot materials. Adding additional language to this checklist about including only the voted ballot and destroying the ballot that was not voted is needed and reasonable because

it is the one Presidential Nomination Primary step that is not already addressed by the items in the standard state primary checklist for absentee voters.

The proposed rule part **8215.0500, subpart 7**, provides the procedure for a mail ballot voter to spoil her or his ballot and request a new ballot. Similar to absentee voters, mail ballot voters can spoil their submitted ballot and request a new ballot up to seven days before the election. However, because mail ballot voters do not apply for their ballot and because the mail ballot return materials have the needed oath and space for indicating political party preference, a mail ballot voter does not need to submit an application to request replacement ballots. The process in this proposed rule part for requesting to change the voter's party preference is the same process for requesting a replacement ballot in a state primary; the only difference is that the voter will receive multiple major party ballots and will follow the procedures for mail ballot voters. This rule part is needed and reasonable to provide guidance to both election administrators and voters in cases where a mail ballot voter wishes to spoil her or his ballot and cast a new ballot.

The proposed rule part **8215.0500, subpart 8**, outlines the additional procedures for processing and accepting Presidential Nomination Primary mail ballots. All mail ballots, including Presidential Nomination Primary ballots, are processed as required by Minn. Stat. section 204B.45, subd. 2. However, it is needed and reasonable to add additional processing procedures for Presidential Nomination Primary ballots because of the additional requirements for the Presidential Nomination Primary. The two key additional requirements mandated by the Presidential Nomination Primary are that (1) that the voter's major party ballot choice must be recorded and (2) a voter must vote only the ballot of the political party with which they are in general agreement.

This proposed rule part meets these requirements by first requiring that the ballot board review the voter's certificate to determine that the voter has identified a major party. If the voter has identified a major political party, the ballot board must record the political party in the voter's record in SVRS. The rule part further specifies that if a major political party was not indicated, or more than one party was indicated, the ballot board must reject the ballot. This rule part language is needed and reasonable to ensure that mail balloting processing meets the requirement that the voter's major party choice be recorded so it can later be part of the public information list.

The next requirement in the rule part requires that a jurisdiction spoil and not count a ballot if the ballot inside the secrecy envelope does not match the choice on the voter's certificate, or if a voter returns two voted ballots in the secrecy envelope. This ensures that a voter only votes one ballot and is only able to vote the ballot of the party the voter indicated on their voter's certificate. In discussing this rule requirement with county election officials, it was determined that this rule part could be achieved by sorting all incoming secrecy envelopes by the ballot choice indicated on the voter's signature certificate. Sorting by political party

ensures that, when the ballots are removed from the secrecy envelope, an election official can spoil a ballot that is of a different political party than the voter indicated. Once the ballots are sorted and within seven days of an election, an election official may begin opening the ballot secrecy envelope. This proposed rule part provides that a ballot can be spoiled if the election official opens the envelope and sees either a ballot of a different party or multiple voted ballots. Spoiling these ballots ensure that a voter is not able to cast either multiple ballots in the Presidential Nomination Primary or cast a ballot different than the voter indicated on the voter's certificate.

This rule part ensures that the requirements of Minnesota Statutes, section 207A.12 are met, and balances the need to create an efficient process for election administrators while limiting those ballots that need to be spoiled to only cases where a voter's indicated political party preference does not match the returned ballot or in the cases where a voter returns two voted ballots. For these reasons this rule part is needed and reasonable.

The proposed rule part **8215.0600**, outlines additional election judge training requirements for the Presidential Nomination Primary. Requiring additional training for election judges to serve in a Presidential Nomination Primary is needed and reasonable to ensure that election judges understand the additional Presidential Nomination Primary procedures and requirements. After consulting with county election officials, the Office concluded that requiring an additional hour of training for election judges, head election judges, and health care facility judges, would be sufficient as a minimum requirement. This additional hour of training would be the minimum amount of additional training required, and nothing prevents a jurisdiction from requiring additional training hours if the jurisdiction feels additional hours should be required.

In addition, this rule part requires that the training be conducted within 60 days of the Presidential Nomination Primary. The Office considered allowing the additional training to be conducted at the same time as the general training for election judges. However, because that training could be conducted well over a year prior to the Presidential Nomination Primary, the Office determined that it would benefit the election judges, municipalities, and the voters for election judges to receive this Presidential Nomination Primary training closer to the Presidential Nomination Primary itself. This would ensure that the election judges conducting the Presidential Nomination Primary are able to use the skills from this additional training within a reasonable time from the date of the training.

### **8240 Election Judge Training Program**

The first proposed change to **8240.1655** is in subpart 2, and merely updates a cross reference. This change is needed and reasonable because rule part 8240.1650 has been repealed, and rule part 8240.1600 is now the correct cross reference. The second proposed change to 8240.1655 is in subpart 6. This change removes language that is inconsistent with

state statute. Specifically this change is needed and reasonable because this language is now in direct conflict with Minnesota Statutes, section 204B.22, subp. 4.

The proposed changes to **8240.2700**, **8240.2800**, and **8240.2900** add a requirement to all municipal, school district, and county election official training, specifically requiring that all election officials be trained on security practices related to voting and election administration. This is in response to the heightened need not only for cybersecurity but also physical and data security practices generally. Requiring additional security training for election officials is a recommendation of the U.S. Department of Homeland Security. The Office will be providing this training regardless of any rule change, but requiring that this subject be incorporated into the current election training is needed and reasonable to ensure that all necessary and relevant information is incorporated into the training and that Minnesota's election administrators are equipped with needed information to secure Minnesota's elections.

### **8250 Ballot Preparation**

The proposed change to **8250.1810** corrects the omission of school districts in the lists of candidacies that may be on a special election ballot. This change is needed because the current rule part erroneously omits school districts as a possible candidate vacancy special election. Because school districts may conduct a special election to fill a vacancy in office, it is needed and reasonable to include the omitted school district as a type of special election for a vacancy in office.

### **Conclusion**

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

April 26, 2018



Steve Simon  
Secretary of State