



STATE OF MINNESOTA
Office of Minnesota Secretary of State
Mark Ritchie

August 13, 2009

Robbie LaFleur
Director
Legislative Reference Library
645 State Office Building
100 Rev. Dr. Martin Luther King, Jr. Boulevard
Saint Paul, Minnesota

PERSONAL DELIVERY

Dear Director LaFleur,

Enclosed is the Statement of Need and Reasonableness (SONAR) for Proposed Permanent Rules Governing Safe at Home, Minnesota Rules, Chapter 8290.

This enclosure is provided to the Legislative Reference Library to comply with the provisions of Minnesota Statutes, sections 14.131 and 14.23.

The Dual Notice and the Proposed Rules themselves will be published in the State Register on Monday, August 17, 2009.

Please contact me if you have any questions regarding this SONAR.

Thank you for your assistance in this process.

Best regards,

Bert Black
Legal Advisor and Agency Contact Person
Office of the Secretary of State

Secretary of State
Statement of Need and Reasonableness

Proposed Permanent Rules Governing Safe at Home Minnesota Rules, Chapter 8290

INTRODUCTION

The Secretary of State is responsible for administering the Safe at Home address confidentiality program, established by Minnesota Statutes, chapter 5B. The program has been in operation since September 1, 2007 and has been governed by temporary rules adopted using the exempt process. The Office is now undertaking the task of adopting permanent rules to govern the program. The Secretary asked his staff, the public, and program stakeholders to review the temporary rules and to suggest amendments, additions, or deletions that would improve the rules. The secretary's staff used these suggestions and the legislative requirements to draft the proposed rules.

ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape or other audio file. To make a request, contact Bert Black at Office of the Secretary of State, 180 State Office Building, 100 Rev. Dr. Martin Luther King, Jr. Boulevard, Saint Paul MN 55155, 651-201-1326, 651-215-0682 (fax). TTY users may call the Minnesota Relay Service at 1-800-627-3529.

STATUTORY AUTHORITY

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

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

The rulemaking authority granted in Minnesota Statutes, sections 5B.08 was effective on September 1, 2007. *See* 2006 Minn. Laws, ch, 242. The Secretary's office published notice of its intention to adopt rules under these provisions in the State Register on September 10, 2007 at 32 SR 462 and posted notice of submission of these initial rules on October 17, 2007, well within the 18-month time limit specified in Minnesota Statutes, section 14.125. The authority to promulgate rules under 14.388, an expedited procedure for adopting temporary rules, presumes that the office will eventually undertake this more detailed process of adopting permanent rules and therefore authorizes this process.

REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out seven factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (7) below quote these factors and give the Office's response.

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

The **Secretary of State's office** will benefit from the proposed rules because they provide the framework governing the Safe at Home address confidentiality program.

Participants in Safe at Home will benefit from the proposed rules because they provide clarity as to the process for applying to the program, how the program works, the circumstances under which a participant can be cancelled from the program, the processes for renewing certification and for withdrawing from the program, as well as the voting process.

Application Assistants at community based programs will benefit from the proposed rules because they provide clarity as to the role of application assistants and the requirements as to which community based programs are eligible to have application assistants, which staff within the organizations are eligible to serve as application assistants, the training and certification requirements for application assistants, and the requirements for submitting applications that will result in participant certification.

Stakeholders that interact with participants will benefit from the proposed rules because they provide clarity as to how the program works.

Election officials will benefit from the proposed rules because they clarify the procedure that is used for requesting ballots, submitting ballots and for election judges to accept or reject ballots.

The **Secretary of State's Office** is the primary entity that will bear the costs of the proposed rules, as the office bears the cost of administering the program generally. However, since the rules are similar to the temporary rules adopted in November 2007, these permanent rules will not result in measurable increases in cost to the office as compared to implementing the current temporary rules.

Similarly, several **stakeholders**, including application assistants and local election officials, will bear costs under the rules, but these costs are not increasing from the costs stemming from the temporary rules.

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

The **Secretary of State's Office** is the primary entity that will bear the costs of the proposed rules, as the office bears the cost of administering the program generally. However, since the rules are similar to the temporary rules adopted in November 2007,

these permanent rules will not result in significant increases in cost to the office. One cost will be the need to reprint the application. Since the requirements of the application in the proposed permanent rules vary slightly from those in the temporary rules under which the program has been operating, there may be a need to reprint the application. This will cost approximately \$600 to print 1,000 applications. Another cost will be the need to transfer school records, as required by proposed rule 8290.0800. However, it is not anticipated that this requirement will add significant postage costs.

Not adopting the rules, on the other hand, could lead to increased costs to the Office, without the structure that the Rules provide.

The proposed rules probably will not cause any other state agency to incur any costs above and beyond the costs already required by complying with the statute.

To the best of the knowledge and belief of the Office of the Secretary of State, there will be no impact on state or local revenues.

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

This factor is discussed in the rule-by-rule section of the analysis.

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

This factor is discussed in the rule-by-rule section of the analysis.

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

The cost to the office are outlined in the answer to question (2). The office is not aware of any other costs that any public or private entity will incur to comply with the proposed rules that are not necessary to comply with the underlying statute or existing temporary rules.

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

The cost of not adopting the proposed rule would be that the prior rules would expire, and the office would implement the program under the statutory language.

This would increase costs for the office, as many of the procedures now in place under the existing rules would no longer be available to the office to ensure that participants were in compliance with program requirements. Most notably, not adopting the rules would result in the loss of the role of the application assistants based in community based programs around the state. These individuals help eligible people decide if Safe at Home is a good fit for them as part of their safety plan, explain how the program works, answer questions about the program, and help with the application. Not having application assistants fulfilling this role would put an increased burden on the small program staff. They would spend significantly more time answering questions, following up with applicants to obtain information missing from applications, and addressing issues with individuals who enroll for whom the program is not a good fit. The staff estimate that it would take an extra 2.5 to 3 additional full time equivalent staff at the program's current size to manage the additional workload. As the program grows, this additional staffing need would grow as well and could double during this biennium.

There would also be inconveniences and decreases in services available to program participants. Even with the increased staffing noted above, it is likely that the Safe at Home staff would not be able to be as responsive to participants and that the turnaround time for processing applications, renewals and the mail would lengthen. These changes could make participants dissatisfied with the services that they receive through the program or deter applicants from entering the program, either of which could have dire personal safety consequences.

(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.

COMMISSIONER OF MANAGEMENT AND BUDGET REVIEW OF CHARGES

As required by Minnesota Statutes, section 14.131, the Department has consulted with the Commissioner of Management and Budget. We sent copies of the draft rules and draft SONAR on July 28, 2009. The Department of Management and Budget concluded that “[t]here is not likely to be any measurable cost to the Secretary of State’s office,” and that the “proposed rule revisions will have minimal or no fiscal impact on local units of government.”

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

As required by Minnesota Statutes, section 14.127, the Office has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small city or any small business. The Office has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small city or small business, based on consultations with the League of Minnesota Cities and a manager of a small business.

The Office asked League of Minnesota Cities to estimate the cost to a city of complying with the proposed rules during the first year. Scott Kelly of the Research and Inquiry Department, stated “I don’t see how the Minnesota Rules Chapter regulating the Safe at Home Program would cause a financial burden to cities with ten or less employees an amount in excess of \$25,000.” (email dated August 5, 2009)

The Office asked Carol Bertram, a representative of Mainstreet Communications (a small business potentially affected by the proposed rules) to estimate the cost to the business of complying with the proposed rules during the first year. She stated that she did “not see it costing over \$25,000 to comply as you are actually leaving it up to each business to find the best way that works for their situation but still giving suggestions to help protect the client.” (email dated July 30, 2009)

PERFORMANCE-BASED RULES

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

Secretary Ritchie and his staff have taken the further step of searching for, and finding, ways to structure Safe at Home, as governed by the rules, to achieve superior achievement and the cost-effective delivery of services. Moreover, the office has worked with stakeholders to identify areas for improvement. Some of the most valuable additions, revisions, and deletions proposed in this document were drawn from these sorts of discussions about our rules.

For example, at the suggestion of program participants, we have removed the requirement that withdrawals be completed in the presence of an application assistant. Program participants explained that finding time to have this meeting creates a disincentive to withdrawing from the program when they are ready to stop using the services. Instead, they are more likely to simply stop using the program to receive their mail, which means that Safe at Home will continue to incur costs to send them periodic updates and other items. As an alternative, the proposed rule part 8290.1000 allows program participants to complete withdrawal requests by themselves, but ensures that the requests are genuine by requiring Safe at Home to conduct a signature match. This change brings the withdrawal process for Safe at Home into line with the withdrawal processes used by other state’s address confidentiality programs.

ADDITIONAL NOTICE

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

Here is: 1) a description of our proposed Additional Notice Plan and (2) an explanation of why we believe our Additional Notice Plan complies with Minnesota Statutes, section 14.131, i.e., why our Additional Notice Plan constitutes good faith efforts to seek information by other methods designed to reach persons or classes of persons who might be significantly affected by the proposal.

The Additional Notice Plan requires sending a copy of the Proposed Permanent Rules Governing Safe at Home, the Statement of Need and Reasonableness for those Proposed Rules, the Notice of Hearing, and a transmittal letter to the following persons by electronic mail wherever possible and by United States mail where electronic mail addresses are unavailable:

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

- House Civil Justice Committee
- Senate Judiciary Committee

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

- House State Government Finance Division
- House Finance Committee
- Senate State Government Budget Division
- Senate Finance Committee

House and Senate Leadership from the Majority and Minority Caucuses

Governor Pawlenty

Victim Advocacy Groups, including:

- MN Coalition for Battered Women
- Sheila Wellstone Institute
- Battered Women's Legal Advocacy Project (BWLAP)

The Business and Banking Community, including:

- MN Business Partnership
- MN Chamber of Commerce
- National Federation of Independent Business – MN

Independent Community Bankers
MN Bankers Association
Minnesota Credit Unions
Wells Fargo
TCF
US Bank

Utility Companies and Landlords, including:

Xcel Energy
Dept of Commerce
Centerpoint Energy
West Central MN Community Action
Connexus Energy
MN Rural Association
Dakota Electric Association
MN Community Action Partnership
MN Municipal Utilities Association
Qwest
MN Telecom Alliance
Onvoy
Comcast
MN Cable Comm Association
MN Multi Housing Association (MHA)

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

Department of Human Services
Department of Public Safety, Division of Vehicle Services
Department of Revenue
Department of Transportation
MN Inter-County Association (MICA)
Association of Minnesota Counties
Minnesota Association of County Officers
County Recorders
League of Minnesota Cities

Schools, including:

MN Association of School Administrators
MN Catholic Schools
MN Nonpublic School Accrediting Association (MNSAA)
MN Independent School Forum

Law Enforcement, County Attorneys, the Courts and Corrections, including:

MN Sheriffs' Association
MN Police & Peace Officers Association
MN Board of Peace Officer Standards & Training

MN Chiefs of Police Association
Department of Public Safety, Bureau of Criminal Apprehension
MN County Attorney Association
MN Legal Services Advocacy Project
State Courts
Department of Corrections

Data Practices

Department of Administration, IPAD

US Postal Service

The Office of the Secretary of State believes that this Additional Notice Plan complies with the statute because the notice materials described above provide the principal representatives of the affected parties with ample notice and opportunity to provide suggestions, proposals and comments regarding the rules governing Safe at Home.

The listed persons and organizations receiving the Additional Notice together represent the vast majority of persons interested in these rules. They frequently comment on (or make) public policy. They represent several parties and a number of different positions on the spectrum of political thought, and will adequately represent the views of a diverse group of Minnesota citizens, which is a central purpose of the rulemaking process. They represent:

- Legislators and the Governor
- Victim advocates who represent those who serve as application assistants and have experience working with the populations most likely to become program participants
- Private businesses, including utilities and others that are most likely to have participants' actual addresses
- State and local agencies with which participants interact
- Schools
- Law Enforcement
- Courts
- US Postal Service

The scope of persons to receive notice and the Additional Notice Plan for the Request for Comments were reviewed by the Office of Administrative Hearings and approved in a letter dated November 5, 2008 by Administrative Law Judge Lipman. The Additional Notice Plan listed above was approved in a letter dated August 4, 2009, by Administrative Law Judge Barbara L. Neilson.

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

LIST OF WITNESSES

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

Beth Fraser and Dianna Stair of the Office of the Secretary of State

RULE-BY-RULE ANALYSIS

Rule 8290.0100 DEFINITIONS, which provides definitions for the program, is necessary to establish a common vocabulary for the rest of the chapter. A number of the definitions in this rule part are the same as those found in Minnesota Statutes, chapter 5B, but are reproduced here to ensure that an individual reading these rules has the definition within the rules document without having to refer to the statute. Other definitions are not in the statute but are necessary in order to understand other rule parts.

Subpart 1 is reasonable, because it explains that this is a definitions section.

Subp. 2, which defines “**actual address**,” is reasonable, because it reflects the statutory definition of “address” and clarifies that the address must be in Minnesota, which is reasonable, because Minnesota statutes, chapter 5B only applies to residents of Minnesota. This is the address (or addresses) to be protected above all else by this entire program, as this is where the program participant can be found and disclosure could lead to injury or death.

Subp. 3, which defines “**applicant**,” is reasonable because it is taken verbatim from Minnesota Statutes, section 5B.02 (c). Each fully capable adult applies for certification as a program participant. As part of the application process, minors and incapacitated persons as defined in Minnesota Statutes, section 524.5-102 may wish to apply to be certified for the program but lack the legal ability to do so. This term defines who may apply on behalf of these persons.

Subp. 4, which defines “**application assistant**,” is reasonable because it allows for the establishment of a structure, similar to those used in other states with similar programs, including Washington, Maine, Oklahoma and North Carolina, in which individuals employed by community based programs around the state, with expertise in working with survivors of domestic violence, sexual assault, stalking and other crimes of violence as well as with developing safety plans, will be the primary individuals working with applicants to assess if the program is right for them and to suggest alternatives for those for whom this program is not appropriate. Application assistants will need to be accredited, see proposed rule 8290.1500. Basing the application process in community-based programs located throughout the state makes it more convenient for potential participants than applying through a central office. This structure also provides an extra layer of protection for the participants and the staff administering the program, as the actual location of the program office need not be revealed; potential participants will not

need to come to that place. This definition also allows the secretary of state to designate staff to serve as application assistants, which is reasonable because it will allow the Safe at Home staff to assume this role when necessary. For example, there may be cases in which high profile individuals are interested in joining Safe at Home for professional reasons, but would prefer to apply in a way in which they have to reveal this to as few people as possible and would feel most comfortable meeting directly with program staff.

Subp. 5, which defines “**certification**,” is reasonable because the statute requires that program participants be certified by the secretary of state before obtaining any of the benefits of the Safe at Home program.

Subp. 6, which defines “**change of identity**,” is reasonable because the statute provides different consequences for those who have changed their identity than for participants who have merely changed their names. In a change of name, the new name can be traced back to prior names, as in the case of a marriage or divorce where one or both spouses adopt a new name. Rather, change of identity refers to those circumstances in which a person actually leaves their prior identity behind and starts anew in major respects. This definition follows the model used in other states.

Subp. 7, which defines “**community-based program**,” is reasonable because it limits the organizations that are authorized to house application assistants to those that already work in the field of victim services and already have a knowledge of the various issues common to survivors of domestic violence, sexual assault, stalking and other violent crimes.

Subp. 8, which defines “**criminal justice system management**,” is reasonable because this program is not a means of escaping probation or parole supervision for sentences being served during the time a person is in the program. This term refers to any form of supervision and management imposed in response to a crime that has residency related restrictions. It is reasonable to limit this definition to circumstances under which there are residency related restrictions, because those are the circumstances in which the court has established that the supervising jurisdiction needs to know the whereabouts of the individual. If, on the other hand, the court has not established that the supervising jurisdiction needs to know the whereabouts of an individual generally, then the program participant should not be held to a higher standard than an individual not in the program.

Subp. 9, which defines “**designated address**,” is reasonable because it provides a name for the address given to program participants by Safe at Home which is used in transactions with government and private sector persons in everyday life.

Subp. 10, which defines “**domestic violence**,” is reasonable because it reflects the definition found in Minnesota Statutes, section 5B.02 (d). Survivors of acts of domestic violence are within the scope of persons eligible for this program.

Subp. 11, which defines “**eligible person**,” is reasonable because it reflects the definition in Minnesota Statutes, section 5B.02 (e). This subpart defines the persons who may

participate in the program and includes those who may not be legally capable of applying on their own behalf.

Subp. 12, which defines “**lot number**,” is reasonable because it provides a name for the participant-specific portion of the designated address.

Subp. 13, which defines “**mail**,” is reasonable because it reflects the definitional limitations found in Minnesota Statutes, section 5B.02, para. (f).

Subp. 14, which defines “**mailing address**,” is reasonable because it only allows mail to be sent to an address other than the participant’s residential address in cases in which USPS will not deliver mail to that address, which will assist the program in ensuring that participants continue to reside at the address on file with Safe at Home. Sending mail to the actual residential address will also assist in preventing any voting irregularities under rule 8290.1300, as the ballot will only be sent to the address in the appropriate jurisdiction and will not be forwarded.

Subp. 15, which defines “**minor child**,” is reasonable because minors are eligible to participate in the program, but not to apply or to make changes on their own behalf. Transactions between the Safe at Home program and minor children in the program are handled by their parent or guardian.

Subp. 16, which defines “**program participant**,” is reasonable because it is taken verbatim from Minnesota Statutes, section 5B.02 (f). Program participants are the people whose names, addresses and other data are being protected by this program.

Subp. 17, which defines “**program participant voter**,” is reasonable because it makes rule part 8290.1300 much easier to understand, since not all participants are eligible to vote or will choose to vote.

Subp. 18, which defines “**Safe at Home**” is reasonable because it simply defines the program name, used frequently throughout the Rules.

Subp. 19, which defines “**Safe at Home card**,” is reasonable because it provides a method for participants to demonstrate to those with whom they interact that they are in Safe at Home. The card is helpful for participants because persons in both the public and private sectors are often not aware of the program or that the individual in the program is entitled by statute to use the designated address for all purposes. It is reasonable to require that the participant’s name, date of birth, designated address, certification expiration date and a space for the signature be on the card because these data will provide others with the information that they need to contact the participant, to know that the participant’s certification has not expired, and the signature provides another way to verify the individual’s identity. Requiring the date of birth to be printed on the Safe at Home card is reasonable because it further ensures all adults are properly certified as program participants and cannot be added as a minor can through the procedure outlined in 8290.0700, subp. 3.

Subp. 20, which defines “**school**,” is reasonable because it is limited to primary and secondary educational institutions, and thus it provides safety to minor children program participants and their family members. See discussion of rule part 8290.0800.

Subp. 21, which defines “**sexual assault**,” is reasonable because it links this term which is not defined in statute with similar terms used elsewhere in statute (“criminal sexual predatory conduct,” “criminal sexual assault,” and “solicitation of children to engage in sexual conduct”). This definition mirrors the statutory and rule definitions of “domestic abuse” and “stalking” in that a survivor of this type of crime is an eligible person, even if they have not reported the acts or threats to law enforcement.

Subp. 22, which defines “**stalking**,” is reasonable because it reflects the definition found in Minnesota Statutes, section 5B.02 (g). Survivors of stalking are within the scope of persons eligible for this program.

8290.0200 APPLICATION is necessary because Minnesota Statutes, section 5B.03 requires that eligible persons submit applications to be certified as program participants. Therefore it is necessary to lay out the required elements in the application, the process for submitting an application, and the consequences for providing false information or for submitting an incomplete application.

Subpart 1, Certification of program participant lays out the content of the application and the elements that must be included for the secretary of state to certify an application.

Clause A, which requires the eligible person’s full legal name, is reasonable because this information is required by Minnesota Statutes, section 5B.03, subd. 1. It is reasonable to also require the eligible person’s date of birth because this datum is printed on the Safe at Home card and is useful in checking for participants’ records in the statewide voter registration system.

Clause B, which requires the name and contact data of the applicant, if different, is reasonable because there may be cases in which a guardian or parent is applying on behalf of a ward or a minor and the secretary of state may need to contact the applicant related to the application.

Clause C, which requires a listing of all minor children, their dates of birth and their relationship to the applicant, is reasonable because minors cannot apply on their own for program participant status. Instead a parent or guardian must apply for them on their behalf. Their names and birthdates are necessary to issue them Safe at Home cards and to know when they turn 18 years old.

Clause D, which requires a statement that the eligible person is not applying in order to avoid prosecution for a crime and that he or she is either a survivor of domestic violence, sexual assault or stalking or otherwise fears for her or his safety, is reasonable because it is required by Minnesota Statutes, section 5B.03, subd. 1.

Clause E, which requires the designation of the secretary of state as agent for the purposes of service of process and receipt of mail, is reasonable because it is required by Minnesota Statutes, section 5B.03, subd. 1.

Clause F, which requires the mailing address and telephone number of the eligible person, is reasonable because it is required by Minnesota Statutes, section 5B.03, subd. 1.

Clause G, which requires the actual address of the eligible person, is reasonable because it is required by Minnesota Statutes, section 5B.03, subd. 1.

Clause H, which requires the eligible person to affirm that they will not disclose the actual address to the person whom they fear, is reasonable because it helps to ensure that the program will be used as effectively as possible.

Clause I, which requires a listing of the number of motor vehicles owned by eligible persons, is reasonable because summary data is needed by the Departments of Public Safety and Transportation to calculate state-aids to counties that are based proportionally to the number of cars owned by persons residing in a county.

Clause J, which requires a statement that the applicant understands that program participants may not have records in the statewide voter registration system, is reasonable because it is required by Minnesota Statutes, section 5B.06.

Clause K, which requires disclosure of whether the eligible person is currently the subject of any pending or ongoing criminal actions, and if so, the prosecuting authority, as well as consent for the secretary of state to disclose the program participants' designated address and how to send service of process, is reasonable because it helps to ensure the prosecuting authority can continue to communicate with any participants involved in ongoing criminal disputes who are joining the program (see proposed rule part 8290.0300, subp. 5).

Clause L, which requires that program participants acknowledge that they understand that if they are subject to criminal justice system management that they will disclose their actual address to the supervising person, upon request, is reasonable because it ensures that applicants are aware of this condition of program participation, as required by proposed rule part 8290.0400, subp. 6, clause (C).

Clause M, which requires disclosure of whether the eligible person is required to register as a predatory offender in any jurisdiction, is reasonable because it helps ensure that anyone who is required to register will not be certified as a program participant, now required by Minnesota Laws 2009, Chapter 105, section 1, amending Minnesota Statutes, section 5B.02.

Clause N, which requires the signature of the applicant and the date signed, is reasonable because it affirms that the applicant agrees with the conditions of the program and that all information provided is truthful.

Clause O, which requires the application assistant's signature and date signed, is reasonable because it provides assurance that the application was filled out in the presence of the application assistant as required by subp. 2 of this part.

Subp. 2, Completion which requires that applications be completed in the presence of an application assistant, is reasonable because it ensures that applicants will have been fully informed of the benefits and drawbacks of the program before joining. This is the model used in many other states with similar programs.

Subp. 3, which lays out the **duties of applicant**, is reasonable because it requires the applicant to supply all of the required information. It is reasonable to require the applicant to disclose their relationship with the eligible person, because there are situations in which parents and guardians will be applying for minors and wards. It is reasonable to require the applicant to affirmatively accept each item on the application for the application to be considered complete, because this ensures that the applicant understands the conditions of the program.

Subp. 4, which requires applicants to provide **proof of identity** or to state that they do not possess such an identification, is reasonable because it is standard practice to verify an applicant's identity before providing social services in Minnesota (e.g., see Minnesota Rules, part 9500.1215, subp. 4 (A) (1)). Before providing this mail forwarding service, Safe at Home should be sure that the individual (or their parent or guardian) is the one making the request, if at all possible. Applicants state their names on their applications and certify whether they have photo identification.

There are cases in which an applicant may not have photo identification. In fact, eligible persons are more likely than the average person to not have photo identification, because, for example, they may have had to flee a violent or potentially violent situation in a hurry. Not having photo identification should not bar them from receiving the service, as it does not bar an individual from receiving other social services (see Minnesota Rules, part 9500.1215, subp. 2). As the application is subject to Minnesota Statutes, section 5.15, an applicant is subject to the penalties of perjury for false statements.

Subp. 5 which provides for **notification to prosecuting authority**, is reasonable because it provides for a notice process to inform any prosecuting authority of the designated address, which ensures that participants do not use the program to avoid their legal responsibilities. Failure to follow the notice process is grounds for being cancelled from the program. The notice itself will not indicate that the individual is a program participant in the Safe at Home program or reference the Safe at Home program at all.

Subp. 6 Submission by application assistant, which requires application assistants to submit completed applications to the secretary of state by first class mail, is reasonable

because applications for certification must be filed with the secretary of state, under Minnesota Statutes, section 5B.03, subd. 2. The anonymity of the first-class mail system and the presence in that system of postal inspectors and other enforcement officials makes for a more secure communication process than electronic transmissions. The applications should not be submitted by facsimile because the program will need a clean copy and a clear signature, as the signature will be used for signature matches when the program participant submits changes to their information or withdraws.

Subp. 7 Missing Information, which provides a process for obtaining required information that is missing from an application, is reasonable because an application cannot be certified unless it contains all of the required information. The secretary must contact the applicant directly, not the application assistant, as all data on applicants is classified as private data. Having the secretary of state reach out to applicants to obtain missing information, as opposed to simply rejecting the application and doing no follow-up, is reasonable because it has not been found to be overly burdensome, and provides needed assistance to eligible persons in need of the program.

Subp. 8 Effective date, which provides that a new participant's certification is effective on the day that the participant's application is certified by the secretary of state, is reasonable because it provides the program's protection to the participant as quickly as possible.

Subp. 9 Voter registration through secretary of state, which requires that applicants be given the opportunity to register to vote when they apply, is reasonable because Minnesota Statutes, section 5B.06 provides that program participants vote through the secretary of state. It is reasonable to provide an opportunity to register to vote at the time that applicants are applying to the program, since they are already filling out other paperwork. Other steps in the voting process are addressed in proposed rule 8290.1300.

It is reasonable that for the purposes of the Help America Vote Act, personal submission of the registration application to the application assistant is the equivalent of personal submission to the secretary of state, since applicants are required to meet with the application assistant in person and do not have the opportunity to have in person interactions with the Safe at Home staff of the secretary of state.

Subp. 10 Penalties, which provides that knowingly providing false or incorrect information on an application is subject to cancellation or penalties under Minnesota statutes, section 5.15 or both, is reasonable because it reflects Minnesota Statutes, sections 5B.03, subd. 2, and 5B.04, para. (d).

8290.0300 CERTIFICATION OF PROGRAM PARTICIPANT is necessary because Minnesota Statutes, section 5B.03, subd. 3 requires a certification process.

Subpart 1 Certification, which requires the secretary of state to certify eligible persons who have submitted properly completed applications as well as any minor children listed

on the application, is reasonable because it conforms with Minnesota Statutes, section 5B.03, which requires the secretary of state to operate on a ‘must certify’ basis for those persons filing proper applications or renewals. Minnesota Statutes, section 5B.02 (e) contemplates that program participants include competent adults, incapacitated persons and minors. This section is reasonable because it assures the coverage of minor children as program participants, both for their own protection as well as to prevent collateral leaks that would undermine the security of the information on the parent, guardian or other responsible person. An additional application is not needed as the information will be the same for both the child and the adult.

Subp. 2 Duration, which authorizes a four year term, is reasonable because it mirrors Minnesota Statutes, section 5B.03, Subd. 3.

Subp. 3 Duties of secretary of state and program participant, which requires that program participants be issued Safe at Home cards, specifies the procedure for distributing Safe at Home cards to program participants and requires participants to sign the card, is reasonable because it ensures that new program participants will receive the Safe at Home cards in a timely fashion. It is reasonable to require the card to be signed because it may need to be presented with other identification, and matching signatures on more than one type of identification will reassure public and private persons that the designated address and Safe at Home card are legitimate. It is reasonable to allow minors who have not yet reached the age of eleven to have their parent or guardian sign for them, because they may not be able to sign their names or may find that their signature changes greatly during this age range.

Subp. 4 Communication; verification of identity, which requires the secretary to verify a program participant’s identity before revealing any private data, is reasonable because it is in accord with Minnesota Statutes, chapter 13. Private data may be discussed with the subject of the data, but the program must first verify that the person with whom the program is communicating is in fact the subject of the data.

Subp. 5 Notification to other parties, which requires the secretary of state to mail notices to the appropriate prosecuting authority for participants who disclose on their applications that they are involved in on-going criminal actions, is reasonable because it helps ensure that participation in the program does not impede any criminal legal actions.

The form letters bear no indication that they are from the Safe at Home program nor that the subject is a program participant. Rather, they simply indicate that the contact address for the individual has changed to the designated address.

The secretary considered delaying certification until the notice to the prosecuting authority had been submitted but rejected this idea because it could potentially put individuals in need of the program’s services at risk.

Certifying participants who are required to provide the forms but did not do so with the application and requiring that participants submit the forms within 5 business days or be

cancelled is reasonable because it balances the safety of the applicants while still holding participants responsible for providing the required information in a timely manner.

Subp. 6 Lost or stolen card, which requires the secretary of state to issue a replacement card whenever notified that a participant's card has been lost or stolen, is reasonable because program participants will need to carry their card at almost all times. If the card is lost or stolen, they will need to request a new card immediately, simply as a matter of proving their designated address in daily living. The program participant is the person best able to notify the program, and if the card is later found, to return the card so that extra cards are not out in the public domain.

The secretary considered requiring an affidavit from the participant that the card had been lost or stolen before issuing a new card, but rejected this idea because there is no value in having additional cards. The cards cannot be used as forms of identification. The cards simply facilitate the use of the designated address. It can only be used by those certified in the program.

8290.0400 DESIGNATED ADDRESS is necessary because it establishes guidelines for the use of the designated address, which is the central service afforded by participation in Safe at Home.

Subpart 1 Address and program status, which requires the acceptance of the designated address as the participant's true address is reasonable because Minnesota Statutes, section 5B.05 (a) specifically requires the acceptance by all of the designated address and use of that address in their records from that time forward. No exceptions or options are provided in the statutory language. In fact, the statutory language of section 5B.02 (b) defines address to include residence address, school address and work address – the designated address substitutes for all of these.

Having the presentation of a Safe at Home card create a rebuttable presumption that the individual is a program participant is reasonable because only program participants will be issued cards. Those with doubts may call Safe at Home to confirm an individual's status as a program participant (see Minnesota Statutes, section 5B.03, subd. 1, para (7)).

Subp. 2 Request, which states that the program participant is responsible for requesting use of the designated address, is reasonable because the statute places the responsibility for this action step on the program participant. See for example, Minnesota Statutes, 5B.05, para. (a). The classification of program participant data as private prevents Safe at Home from requesting the use of the address for program participants. In addition, it is not possible for the secretary of state to act on behalf of each program participant in this statewide program. Program participants must be proactive in protecting their security and that means approaching public and private persons with whom they have transactions and presenting the designated address to each of them, one at a time.

Subp. 3 Secretary of state as agent, which makes the secretary of state the agent for program participants' mail, is reasonable because it is required by Minnesota Statutes, section 5B.03, subd. 1, clause (3).

Subp. 4 Mail to be forwarded, which requires mail to be forwarded every second business day, is reasonable because it ensures that important notices are not unduly delayed. The program typically forwards the mail every business day, but the rule requires that it be sent every other business day to accommodate times when employees may be sick or otherwise unavailable.

It is reasonable to require that mail from the secretary of state to program participants be sent with instruction that it should not be forwarded because it helps ensure that the program is always aware whether the program participant has moved. If mail is returned because the participant no longer lives there, it will alert the program to start cancellation procedures. At the same time, it will also ensure that program participants remain Minnesota residents, and eligible to remain in the program.

Allowing the secretary to not forward mail not specifically addressed to program participants is reasonable because it enforces the requirement that program participants keep the secretary informed of any changes to their name.

Subp. 5 Short term mail hold, which allows the secretary of state to hold a participant's mail for up to 3 days based upon a participant's request, is reasonable because participants may need to leave their housing without advance notice. This could happen if a participant has to go on an unexpected trip to care for a sick relative, has an unforeseen change of address, or is located by the abuser. Allowing the mail to be held for this short time will give them a chance to find a place to stay to which mail can be forwarded and mean that they won't have to worry about returned mail triggering the cancellation process during this short period.

Allowing the secretary to hold a participant's mail for up to three weeks upon a written request that acknowledges that the participant bears the responsibility for any consequences that result from the delay in receipt of mail is reasonable because it provides the participant an option similar to everyone who receives their mail directly from the US Postal Service. This proposal is actually more limited because USPS allows its customers to sign up for a temporary mail hold for up to 30 days.

It is reasonable to require participants to provide Safe at Home with a way to contact the participant during this period in case service of process is received. It is reasonable to require the secretary of state to attempt to contact the participant in cases in which service of process is received because there is usually a limited response period and the clock starts when the secretary has received the service.

It is reasonable for the secretary of state to conduct a signature match prior to holding a participants mail for more than three days because it helps ensure the authenticity of the request to have mail held.

The effective date is reasonable because it allows the participant to designate the start date, but also sets a default start date in cases in which the participant does not specify.

Subp. 6 Limited circumstances of use of actual address

Clause A, which requires a program participant to provide the actual address when required by federal law, is reasonable because state statute cannot overrule federal law.

Clause B, which limits the portion of an actual address that can be requested to the portion necessary in cases in which service is tied to residency in a particular jurisdiction or at a particular address, is reasonable because there are certain situations in which public and private persons will already have or need to have the actual address, i.e., utilities. However, use of the actual address should be as limited as possible, because access to the actual address greatly increases the risk of disclosing the location of, and therefore the risk of physical danger to, the program participant.

It is reasonable to limit the disclosure of the actual address to the parts that are needed, (e.g., there are cases where there is a need to know the jurisdiction (county, city) but no need to know the entire actual address), to protect the program participants as much as possible.

Clause C, which requires program participants who are subject to criminal justice system management to disclose their actual addresses upon request, is reasonable because program participants are prohibited from using their participation in the program to avoid their legal responsibilities.

Clause D, which requires the use of the designated address whenever possible, is reasonable because use of the participant's actual address increases the risk to the participant.

Clause E, which requires the secretary of state to assist other persons upon request to protect program participants' actual addresses, is reasonable because the secretary is aware of ways that other stakeholders are protecting program participants' addresses and may be able to provide useful ideas.

Subp. 7 Availability to law enforcement, which requires Safe at Home staff to be on call at all times, is reasonable because it helps ensure that program participation never hampers an exigent law enforcement situation.

8290.0500 SERVICE OF PROCESS is necessary because it is required by Minnesota Statutes, section 5B.03, Subd.1, para. (3).

Subpart 1 Secretary of state as agent, which states that the secretary of state is the agent for service of process to program participants and prohibits the secretary of state

from charging a fee for the service, is reasonable because there is no statutory requirement to charge a fee for accepting service.

Subp. 2 Service by mail, which requires service by mail to be sent to the designated address, is reasonable because then it can be handled as a Safe at Home service, not as service of process under other statutory provisions on service (i.e., section 5.25). It is reasonable to require service by mail to be legended because it will ensure that Safe at Home staff can recognize, without opening the mail, the need for special treatment to forward that mail to the program participant on an especially expedited basis, as there are deadlines for responses to such service. As with other services accepted by the secretary of state as agent for service, it is reasonable to begin the time for responding when the Safe at Home program is served.

Subp. 3 Service in person, which allows any document which must be served in person to be served at any public counter of the Secretary of State, is reasonable because it allows documents to be served to program participants without endangering them by releasing their whereabouts. Service in person does not need to be legended in the same way as service by mail, because only services of process will be delivered in this manner. This subpart otherwise mirrors the previous subpart. See above for further explanation.

Subp. 4 Record, which requires the secretary of state to maintain documentation of the actions taken on services of process is reasonable because these records could be necessary down the road to resolve potential issues raised in legal proceedings. The secretary of state is already the agent for service of process for many businesses under Minnesota Statutes, section 5.25, and the internal records outlined here are similar to those maintained for services made under that section.

8290.0600 ATTAINING AGE OF MAJORITY is necessary because many of the program participants are minor children and some will attain the age of majority while program participants and therefore there needs to be an explanation of the impact that their 18th birthday has on their program participation.

Subpart 1 Certification continued, which allows program participants who are minors and turn 18 to continue their certification, is reasonable because it is in the best interest of the program participant's safety to remain within the program until their current term expires rather than be terminated abruptly simply because the participant reaches the age of majority, absent other changes.

Subp. 2 Responsibility for information changes, which makes these program participants responsible for updating their information if it changes, is reasonable because as an adult, he or she must bear the responsibility of maintaining their own information.

Subp. 3 Address change; reapplication or withdrawal, which requires participants who were certified as minors who have reached the age of majority and are moving to a new address to reapply or withdraw, instead of simply filling out a change of information

form, is reasonable because reapplication will require the participant to discuss the pros and cons of program participation with an application assistant before enrolling on their own. This helps ensure that they are fully considering their choice to participate and whether they are ready for the responsibilities of program participation on their own. It also ensures that Safe at Home is just one part of an overall safety plan. In addition, once they have moved to a different household, Safe at Home may want to change their lot number, which will be facilitated by receiving an application, as opposed to a change of address form. Reapplication also ensures that participants who are moving out on their own will receive information sent to all new participants about how to establish a new address with utility companies and other services in a way that is as safe as possible.

If the participant no longer wants to use Safe at Home's services when they move, it is reasonable to require them to withdraw, as we require other adult participants to withdraw.

Subp. 4 Reapplication, which allows these program participants to reapply for certification after they have withdrawn or expired, is reasonable because there should not be an automatic bar to reapplying if program participants leave the program in good standing.

8290.0700 CHANGES IN PROGRAM PARTICIPANT INFORMATION is necessary because Minnesota Statutes, section 5B.03, subd. 4 requires program participants to inform the secretary of state of any changes in the information submitted on their application.

Subp. 1 Notification of personal contact information changes, which requires program participants to notify the secretary of state in writing of changes in their contact data, is reasonable because it requires program participants to update their contact data in real time as it changes, not in a periodic way. The Safe at Home program must always know how to reach the program participants.

Subp. 2 Additional minor children, which requires the secretary of state to certify minor children who have been added to the household as program participants when a program participant sends signed notification, is reasonable because minor children are affected by this program in several ways and an un-enrolled minor child could put at risk the security of the entire household. Thus, it is necessary to cover all minors joining the household as soon as possible.

Subpart 3 Notification of name changes, which requires submission of a copy of the court order, is reasonable because it requires proof that a participant has changed her or his legal name. It is reasonable to require participants to return the Safe at Home cards with the previous legal names, or provide signed statements that they have lost the cards, because this will help ensure that participants only use cards that reflect their legal names. It is reasonable for the secretary of state to send the participant a Safe at Home card with the participant's new legal name within two business days because this ensures

that the participant will not be without a card for an extended period of time. This is the same timeframe required for providing Safe at Home cards to new participants, see 8290.0300, subp. 3.

Subp. 4 Signature verification, which requires the secretary of state to conduct a signature match before making any change of information effective, is reasonable because it helps ensure the authenticity of the information change. This step should prevent the person who perpetrated the domestic violence, sexual assault, stalking or other violent crime from simply signing the name of the program participant and change the information so that future mail would come to that person.

Subp. 5 Change of identity, which requires program participants who are changing their identities to withdraw from the program and allows them to reapply using their new identities, is necessary and reasonable because Minnesota Statutes, section 5B.04 (a) requires the cancellation of any participant's certification who changes her or his identity. In the classic change of identity situation, the program participant is actually creating a firewall between all prior information and the new identity, under which all relationships must be reestablished, in order to prevent linkage between the two identities and to make it more difficult for the abuser to find the program participant. Even Safe at Home should not know of the link between the old and new identity. This subpart is consistent with the statute and creates that separation. It is reasonable to allow program participants who change their identity to reapply under their new identity, if they still believe this step is needed to ensure their safety, because when they reapply the secretary would not necessarily know of the link between the two identities and reapplying would ensure that the Safe at Home records associated with the old identity and the new records were not linked.

8290.0800 TRANSFER OF SCHOOL RECORDS, which provides a process for a program participant's school records to be transferred from one school to another through the secretary of state, is necessary and reasonable because it allows families with school age children who are program participants to transfer from one school to another in a way that provides as much protection as possible. Abusers have tried to find their families by convincing well-intentioned staff at the former school to reveal the school to which the children's records transferred. Establishing a process in which the staff at the children's former school do not have this information eliminates one of the avenues that abusers can use to locate program participants. Address confidentiality programs in Colorado and Washington facilitate the transfer of program participant's school records in this way.

8290.0900 CANCELLATION is necessary because Minnesota Statutes, section 5B.04 requires program participant's certification to be cancelled under certain circumstances.

Subpart 1 Warning by secretary of state, which requires the secretary of state to contact program participants to warn them that they may be cancelled due to returned mail or failure to submit a notice to a prosecuting authority, is reasonable because it helps ensure that program participants are aware of the consequences of moving without

notifying the secretary and/or of failing to provide the notices for prosecuting authorities required by 8290.0300, subp. 5.

Subp. 2 Cancellation, which requires cancellation five business days after the warning required by the previous subpart is sent, is reasonable because it provides time for the participant and program staff to address the reason for pending cancellation, such as allowing the participant time to submit a change of information form possibly because of an unexpected change of address, or determining that the postal carrier simply made a mistake in mail delivery. Cancelling the program participant from the program immediately in such a situation could create additional hardships and risks for the program participant contrary to the goals of the program.

However, after the five business day period proposed in this rule, in the case of undeliverable mail, it is reasonable to cancel the participant's certification because the secretary needs to know how to contact the participants for service of process or in case law enforcement needs to get in contact with them. It is preferable, at that time, to cancel the certification and wait until the program participant surfaces and reapplies for certification at a new address or with new information.

Please note that Minnesota Statutes, section 5B.04 (b) which allows the secretary of state to cancel the program participant's certification if the program participant does not give at least two days prior notice of a change in mailing address, is permissive, not mandatory. As such, allowing more time to the program participant to inform the secretary of that change is within the authority of the secretary of state.

It is reasonable to cancel a program participant after five days for failure to inform a prosecuting authority in a criminal legal action of the designated address for service of process because this is the penalty required by 8290.0300, subp. 5.

It is reasonable to cancel a program participant's certification if the application contains false information because this is required by Minnesota Statutes, section 5B.04, para. (d). It is reasonable to have this same standard apply to renewals and change of information forms since these documents, similar to the original application, provide the basic information on which the secretary relies to administer the program services.

Subp. 3 Cancellation of program certification without recourse, which applies in cases in which a court has found that a participant knowingly provided false information, is reasonable because a person who has knowingly provided false information should be barred from future participation in the program.

Subp. 4 Return of mail, which requires that mail addressed to a program participant who has been cancelled is returned to sender, is reasonable because it informs the sender that they can no longer reach the program participant at this address and stops providing services to participants who have been cancelled from the program.

8290.1000 WITHDRAWAL OF PROGRAM CERTIFICATION is required because Minnesota Statutes, section 5B.03, subd. 3 anticipates that withdrawal can occur. Some participants find, after using the program for a period shorter than the full four-year certification, that they no longer need the services and want to voluntarily withdraw from the program. The temporary rules require program participants who want to withdraw to meet with an application assistant. We considered maintaining this requirement, but rejected doing so, based upon input from program participants, who explained that requiring an in-person meeting created a disincentive to actually withdrawing. Instead we are verifying the authenticity of the request by conducting a signature match as required by subpart 2.

Subpart 1 Withdrawal request

Clause A, which requires the participant to submit a signed request to withdraw, is reasonable because withdrawing from the program is a serious step that could jeopardize a participant's safety. The secretary should not stop providing the mail forwarding service simply upon an oral request to do so. In addition, requiring the request to be in writing allows for the signature verification required by subp. 2. It is reasonable to require the return of any Safe at Home cards or a statement that the cards have been lost because a participant who withdraws will no longer have use for the Safe at Home cards.

Clause B, which requires the request to state that the participant wants to withdraw and that the participant understands that it is the participant's responsibility to notify others, is reasonable because it requires participants to state in writing that they understand the consequences of withdrawing.

Clause C, which requires the participant to list the minor children who are also withdrawing, is reasonable because Safe at Home needs to know whether all of the participants in a household are withdrawing or only the primary applicant.

Clause D, which allows participants to designate a period of up to 30 days immediately following withdrawal during which they would like their mail forwarded and the address to which they would like it sent, is reasonable because the program participant may want the mail forwarded for a period of time less than the 30 days allowed, and will often be moving their residences concurrent with the withdrawal.

Clause E, which allows program participants to choose the date of their withdrawal, is reasonable because if they plan ahead, the day on which they want their withdrawal to be effective will not necessarily be the day on which the withdrawal request is received by the secretary of state.

Subp. 2 Signature verification, which requires a signature match before a withdrawal is effective, like the requirement for changes to contact information, is reasonable because it helps ensure the authenticity of the withdrawal request. This step should prevent the person who perpetrated the domestic violence, sexual assault, stalking or other violent crime from simply signing the name of the program participant to withdraw them from the program and to have all of the mail forwarded to them.

Subp. 3 Termination, which states that certification is terminated upon withdrawal, is reasonable because it defines when active status in the program ends.

Subp. 4 Mail forwarding, which allows mail to be forwarded to participants who have withdrawn for up to 30 days, is reasonable because it provides for an orderly transition out of the program. There will often be a period of time after a program participant's withdrawal during which others will continue to send mail to the designated address. It is reasonable to stop forwarding the mail after 30 days, because the withdrawal is an event scheduled by the participant and he or she can plan for this transition period. Also, forwarding mail to participants provides an incentive to participants who no longer are using the program to officially withdraw, which could otherwise artificially inflate program participation numbers.

Subp. 5 Reapplication, which allows participants who have withdrawn to reapply, is reasonable because withdrawal is an orderly form of ending the relationship with the program in good standing and should not prevent the person from reapplying should it be necessary in the future.

8290.1100 RENEWAL OF PROGRAM CERTIFICATION is necessary because Minnesota Statutes, section 5B.03, subd. 3 requires the secretary of state to propose rules for renewal.

Subp. 1 Notification of option to renew, which requires the secretary of state to notify participants of the option to renew their certifications at least 30 days before they are due to expire, is reasonable because it requires the secretary of state to provide the program participant with ample notice of the option to complete and return the renewal. If no renewal has been received as the renewal date approaches, the rule reasonably provides for a reminder, in case the program participant has mislaid or forgotten the original notice. It is reasonable to provide the program participant with other information about the actions necessary after and consequences of allowing the certification to simply run out, so that participants can make informed decisions about whether or not to renew their certification. Since Safe at Home has to send the renewal form to be filled out, it is reasonable to require the secretary to provide the program participant an additional opportunity to register to vote at the same time.

Subp. 2 Application, which lays out the required and optional elements contained in an application to renew, is reasonable because it collects nearly the same information as the original application. Only two clauses found in 8290.0300 do not appear in this part. Proposed rule 8290.0300, clause K, which requires a program participant to notify a prosecuting authority of the designated address, is unnecessary in renewal because the program participant would have provided the designated address as the place for service of process for any actions commenced after entering the program.

Proposed rule 8290.0300, clause O, which requires the signature of an application assistant, is not necessary because in the proposed renewal process the program

participant will be the submitter, not an application assistant. This is reasonable because program participants will have successfully completed four years in the program by the time they renew, and will be very familiar with the benefits and limitation of the program. As such, it is reasonable to not require an application assistant's involvement in the renewal process.

For an explanation of the specific clauses, see the explanation for part 8290.0200.

Subp. 3 Duties of Applicant, which requires the applicant to provide the required information and to sign and date the renewal application, is reasonable because an incomplete application cannot be certified.

Subp. 4 Completed renewals to be mailed, which requires renewal materials to be submitted by mail, is reasonable for the same reasons that it is reasonable to require that the original applications be submitted by mail. See the explanation for 8290.0200, subp. 6 for detailed explanation.

Subp. 5 Missing information, which provides a process for obtaining required information that is missing, is reasonable because it provides the same process for a renewal as for an original application. See the explanation for 8290.0200, subp. 7 for a detailed explanation.

Subp. 6 Effective date, which makes renewals postmarked on or before the expiration date effective upon certification, is reasonable because it creates an incentive for them to get it in on time. If they miss this date, then their certification will expire and they will have to submit a new application by working through an application assistant.

Subp. 7 Duties of secretary of state and program participants, which requires the secretary of state to send new Safe at Home cards, is reasonable because it ensures that program participants will have to spend as little time as possible with only an expired Safe at Home card. It is reasonable to require renewing participants to sign the cards upon receipt for the same reasons that it is reasonable to require new participants to do so. See the explanation for 8290.0300, subp. 3 for detailed explanation.

Subp. 8 Penalties, which provides that a participant can be cancelled or be subject to the penalties of Minnesota Statutes, section 5.15 or both, is reasonable because it imposes the same penalties for falsifying renewal applications as for original applications. See the explanation for 8290.0200, subp. 10 for detailed explanation.

8290.1200 EXPIRATION OF PROGRAM CERTIFICATION, which requires the secretary of state to forward mail to a program participant whose certification has expired and to return the mail to sender thereafter, is necessary because there needs to be an explanation of what happens when the four-year certification is over, for participants who choose not to renew. It is reasonable to continue forwarding the mail to program participants for 5 days after the date of their expiration because the previous rule part allows the secretary of state to accept renewals as long as they are postmarked by the date

of expiration. The secretary cannot be entirely sure that a participant's certification will truly expire until enough time has passed to ensure that all mail postmarked on the expiration date has arrived. Five days should provide the necessary time-frame. After the five day period, it is reasonable to return mail to its sender to alert senders that this address is no longer valid for the former participant.

8290.1300 VOTING BY PROGRAM PARTICIPANT is necessary because Minnesota Statutes, section 5B.06 provides for an alternative secure voting mechanism for Safe at Home program participants through an ongoing absentee balloting process with the secretary of state.

Subpart 1 Internal procedures, which requires the secretary of state to have internal procedures that protect both the program participant data and the integrity of the election process, is reasonable because it lets the public know that these procedures exist. As the procedures are internal to the secretary of state, the specific process is not included in these proposed rules.

Subp. 2 Absentee ballot recipient status, which requires records to be kept of program participant voters, is reasonable because it would be very hard to administer the voting without them.

Subp. 3 Identification of program participant voters, which requires the secretary of state to figure out for each election which program participant voters live in the jurisdiction, is reasonable because this is the group to whom the secretary of state must send absentee ballot applications. There are two typical situations in which the voters will need to be identified. In the case of the state primary and general elections, all of the program participant voters are eligible to vote in the election. However, in other elections, such as municipal or special elections, the number of program participant voters needing this function may be quite small.

Subp. 4 Review and removal from voter registration system, which requires the secretary of state to ensure that program participants do not have records in the statewide voter registration system when they are certified as program participants, is reasonable because Minnesota Statutes, section 5B.06 prohibits program participants from being listed in the statewide voter registration system. It is reasonable for the secretary of state to check again to see if a program participant voter is registered to vote at their current address prior to each election, because this ensures continued compliance with the prohibition on having a record in the statewide voter registration system. If the program participant voter does have an active record in the statewide voter registration system, it is reasonable for the secretary of state to refrain from sending an absentee ballot application until the record has been removed, because this provides a related consequence for violating this statutory prohibition. It is reasonable for the secretary of state to notify any program participant voters who are still registered at their actual address that they must have their registration deleted before they will be allowed to vote through the program and to provide them with instructions for doing so, because the

program participant needs to be aware that they are currently in violation of the statute and that having an active record in the statewide voter registration system with the program participant's actual address opens the participant to potential danger from having the participant's actual address accessible to every person with access to the statewide voter registration system, as well as others who have purchased public information lists for jurisdictions including the actual address.

Subp. 5 Absentee ballot request form, which requires the secretary of state to provide absentee ballot request forms to program participant voters, is reasonable because it follows as closely as possible the regular process used with absentee voters with ongoing absentee ballot status.

Applicants will have the opportunity to register to vote through Safe at Home during their meeting with the application assistant (see 8290.0200, subp. 9). If they do not register at this time, then they must be treated as a registrant by mail, which under the Help America Vote Act and state statute triggers additional requirements if they have not voted previously in a federal election in Minnesota. In this case, it is reasonable to require the program participant voter to provide a photocopy of a photo identification because this allows the secretary of state to fulfill the requirements of Federal and state election laws while also complying with Minnesota Statutes, section 5B.06. An alternative provided by both federal and state law, computerized verification, is not an option for these voters because this data can only be compared if it is included in the statewide voter registration system, which is prohibited under Minnesota Statutes, section 5B.06.

Please note that the state and Federal requirements, as well as this rule, only apply to those registering to vote who have indicated on their applications that they do possess a photo identification. Not having a photo identification makes them exempt from the verification requirement under both Federal and state law.

Subp. 6 Ballot distribution, which requires the secretary of state to send the appropriate ballots and accompanying materials to program participant voters by mail, is reasonable because this is how absentee ballots are normally transmitted and is the usual method for the secretary of state to provide materials to participants.

Subp. 7 Return of undeliverable ballots, which requires that ballots returned to Safe at Home as undeliverable be returned to the appropriate county auditor, is reasonable because it helps ensure that ballots are not loose, but can be secured and accounted for. Please note that only the ballot and materials are to be returned, not the mailing envelopes to prevent the disclosure of the name and address of the program participant to the election administrator.

Subp.8 Ballot handling

Clause A, which requires program participant voters to submit their voted ballots to the secretary of state, is reasonable because it reflects one of the requirements of Minnesota Statutes, section 5B.06.

Clause B, which requires the secretary of state to review the certification and conduct a signature match, is reasonable because it is as similar as practicable to the standard process used in accepting and rejecting absentee ballots. See Minnesota Statutes, section 203B.12, subd. 2.

Clause C, which requires the secretary to remove all identifying materials and to certify whether or not the ballot met the requirements necessary to be accepted, is reasonable because it ensures that private data is not released while providing election officials with the information that they need to determine whether or not the ballot should be counted.

Subp. 9 County auditor to forward ballot, which requires the county auditor to forward the ballot to the appropriate municipal or school district clerk, is reasonable because it provides a process for the ballot to be sent to the proper precinct.

Subp. 10 Receipt and counting of ballots, which require election judges to accept or reject the ballots based upon the secretary's certificate, is reasonable because it requires the election judges to base their assessment upon the only information that can be provided to them without the disclosure of any private data.

Subp. 11 Review and determination by secretary of state, which requires an annual review of voter records to detect any program participant who has cast more than one vote in the same election, is reasonable because it ensures that program participant voters are not voting both through the program and in person. Only the secretary of state is in the position to be able to conduct this check and maintain the privacy of program participant data. Referring a case in which someone has voted more than once to the county attorney is reasonable because it is what would happen to any other voter who cast multiple ballots. Participation in the program should not shield anyone committing this felony from appropriate legal action.

Subp. 12 Cessation of ongoing absentee ballot status, which prohibits the secretary of state from allowing program participants to vote through the program if it appears that they have cast more than one vote until the county attorney has resolved the situation in favor of the program participant, is reasonable because it ensures that there are not further opportunities for inappropriate action while the situation is under investigation.

Subp. 13 Record keeping, which requires the secretary of state to keep detailed records of the disposition of the ballots obtained for Safe at Home participants, is reasonable because it helps provide assurance that only the appropriate ballots legitimately requested by program participant voters are voted.

Subp. 14 Biennial report, which requires a report on the activities on program participant voters after each state election, is reasonable because it is useful in tracking usage and participation by program participant voters and provides the public with information about voting by program participants without jeopardizing their safety.

8290.1400 SUMMARY DATA, which requires the secretary of state to provide the Departments of Public Safety and Transportation with summary data about the number of motor vehicles owned by program participants, is necessary and reasonable because it allows for proper credit to counties for state aids they are otherwise entitled to be given without violating the status of data as private.

8290.1500 APPLICATION ASSISTANT ACCREDITATION is necessary because the secretary needs to ensure that individuals assisting potential participants with the application process are knowledgeable about the program.

Subpart 1 Role of community-based programs, which states that the role of community based programs is to identify appropriate individuals to serve as application assistants, is reasonable because, as noted previously (see explanations of parts 8290.0100, subp. 4 and 8200.0200, subp. 2), program intake is primarily conducted in the field.

Subp. 2 When awarded

Clause A, which requires that application assistants' applications include their contact information, is reasonable because it allows Safe at Home to communicate with them and provide them with updates. It is reasonable to require that application assistants be drawn from the pool of victim advocates so that they are already skilled at working with the populations of survivors who are most likely to participate in Safe at Home and can help the survivors accurately assess what strategies are best to keep the survivor safe. It is reasonable to require the potential application assistant to agree to the instructions and terms provided to them and to sign an agreement not to discriminate, since the program could not work effectively if application assistants did not adhere to the instructions or the terms. Requiring application assistants to take training before certification is reasonable because it ensures that the application assistant will understand the operations of the program and conduct effective evaluations in the intake process.

Clause B, in combination with Clause A, item (2), which requires community based programs to authorize their staff person to serve as an application assistant, is reasonable because it helps ensure that community based programs for which application assistants work support their employees serving as application assistants.

Subp. 3 Employment status, which states that serving as an application assistant does not create an employee / employer or agent role with the State of Minnesota, is reasonable because while the application assistants play an important role in advising applicants, that role does not by itself create a principal-agent relationship or any other relationship with the secretary of state. Rather, services as an application assistant are provided as part of the mission of the community-based program serving the survivors of domestic violence, sexual assault, stalking or other violent crimes.

Subp. 4 Term of accreditation, which requires a timeframe for maintaining the information and skill-set of the application assistants through refresher trainings, is

reasonable because there have already been and will continue to be adjustments to the program. Failure to take the refresher course once every three years and any other training required by the secretary of state could lead to serious knowledge gaps regarding the Safe at Home program and therefore could put the applicants or program participants at risk.

Subp. 5 Termination, which allows the secretary of state to terminate an application assistant's certification for failure to abide by any program requirement, is reasonable because doing otherwise could put applicants or program participants at risk. Requiring on-going employment at the community based organization to maintain certification is reasonable because it provides institutional credibility to application assistants.

Subp. 6 Employment with another community-based organization, which requires that application assistants that change employment from one community based organization to another to reapply and to have the new organization sign off, is reasonable because it ensures that the organization approves of the application assistant serving in this role. Allowing the secretary of state to determine what training, if any, is necessary for the application assistant who has changed employers is reasonable because the training needs could vary greatly. If the application assistant recently took a refresher course or frequently helped applicants in their previous position and there was only a short gap between the positions, little to no training may be necessary; requiring the training could serve as a disincentive to continuing in this role. If on the other hand, there was a long time lag, or changes had been made in the program, or the application assistant had little experience in helping applicants, then it may make sense to require the returning application assistant to take a full refresher training.

Subp. 7 Access to application assistants, which requires that the contact information for the community based organizations with application assistants be publically available, is reasonable because it provides potential applicants with the information needed to find an application assistant, while protecting the individuals who are application assistants from harassment themselves.

CONCLUSION

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

August 17, 2009



MARK RITCHIE
Secretary of State