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March 12, 2008

TO: Senator Tom Fischer, Chairman, and Members of the Administrative Rules Committee

FR: Al Jaeger, Secretary of State

RE: Amendment to the North Dakota Administrative Code, Section 72-06-01-02

In December 2007, the Secretary of State's office initiated the process of amending Section 72-06-01-02 of the North Dakota Administrative Code (N.D.A.C.). The following information substantiates the basis for the revisions and documents the agency's compliance with the procedures required by the North Dakota Century Code.

1. Did Adoption of Rules Result from Statutory Changes?

While the initial adoption of this Chapter of the Administrative Rules was related to the passage of SB 2409 by the 2003 Legislative Assembly (2003 Session Laws, Chapter 171), this amendment is not the result of legislative action taken since then.

2. Did Adoption of Rules Relate to Federal Statute or Regulation?

The passage of SB 2409 in 2003 and the initial adoption of these rules related to the passage of the Help America Vote Act of 2002 (HAVA). However, a specific federal law or regulation did not prompt the initiative for this particular amendment.

3. What Administrative Rulemaking Procedures Were Followed?

The procedures in Chapter 28-32, the Administrative Agencies Practice Act, were followed according to the following timeline and as documented by the listing at the bottom.

Date	Action
December 10, 2007	<ul style="list-style-type: none"> Notice of Intent to Adopt Administrative Rules submitted to Code Revisor along with Notice of Intent to Amend and Adopt Abbreviated Notice of Intent to Adopt Administrative Rules submitted to North Dakota Newspaper Association for publication in official county newspapers
None Mailed	<ul style="list-style-type: none"> Notice of Intent to Adopt Administrative Rules mailed to interested parties along with proposed rules
Date Unknown	<ul style="list-style-type: none"> It is unknown to the Secretary of State if the Code Revisor mailed out copies of the Notice of Intent to Adopt Administrative Rules along with the proposed amendment.
December 21, 2007 through January 10, 2008	<ul style="list-style-type: none"> 20 days between publishing notice and public hearing

January 11, 2008, 3:00 p.m., Office of Secretary of State	<ul style="list-style-type: none"> Public Hearing conducted by Secretary of State to consider adoption of new rules No members of the public appeared to give comment nor were any public comments submitted
January 12, 2008 through January 22, 2008	<ul style="list-style-type: none"> Public comment period
December 6, 2007	<ul style="list-style-type: none"> Informally submitted proposed rules to Attorney General for preliminary review
January 22, 2008	<ul style="list-style-type: none"> Close of public comment period – no public comments were received
January 24, 2008	<ul style="list-style-type: none"> Secretary of State formally submitted rules and corresponding materials demonstrating compliance to Attorney General for approval and opinion
February 11, 2008	<ul style="list-style-type: none"> Attorney General issues opinion on legality of amended rule
February 13, 2008	<ul style="list-style-type: none"> Code Revisor is notified that Secretary of State has adopted the new rules
April 1, 2008	<ul style="list-style-type: none"> Date amended rule would take effect

During the statutory process to amend the rules, the following documents were generated and are available upon request.

- Letter to Code Revisor conveying Notice of Intent to Adopt Administrative Rules, December 10, 2007
- Letter to the North Dakota Newspaper Association (NDNA) requesting publication of the public notice of the proposed rules, December 10, 2007
- Published Abbreviated Notice of Intent to Amend Administrative Rules, which appeared in official newspapers between December 11, 2007 and December 21, 2007
- NDNA Affidavit of Publication, January 4, 2008
- NDNA Invoice, January 7, 2008
- Letter to Attorney General requesting Formal Opinion, January 24, 2008
- Attorney General's Formal Opinion, February 11, 2008
- Code Revisor informed of agency's adoption of rules, February 13, 2008

4. What Public Comments Were Offered?

No written or oral public comments were offered.

5. What were the Approximate Costs?

The only direct expense was \$1,347.96 for publishing the public notice in the state's official county newspapers.

6. Explanation of Rule Changes

Section 16 of SB 2409, which became N.D.C.C. § 16.1-06-26, requires the Secretary of State to adopt rules for certifying and decertifying electronic voting systems and electronic counting machines and to define what constitutes a vote. The adopted rules are in Chapter 72-06-01.

The intent of the amendment is to allow the Secretary of State the ability to certify the state's voting system by utilizing a voting system test lab accredited by the federal Election Assistance Commission (EAC) instead of linking the certification to the voluntary voting system guidelines of the EAC.

7. Was a Regulatory Analysis Required?

No. Under the provisions of N.D.C.C. § 28-32-08, the proposed amendment will not have an impact on the regulated community in excess of \$50,000 nor did the Governor or member of the Legislative Assembly request one.

8. Was a Regulatory Analysis or Economic Impact Statement of Impact on Small Entities Required?

No. They were not required under the provisions of N.D.C.C. § 28-32-08.1 because the amendment has no impact on small entities.

9. Was a Constitutional Takings Assessment Required?

No. It was not required under the provisions of N.D.C.C. § 28-32-09.

10. Were the Rules Adopted as an Emergency?

No.