

U.S. ELECTION ASSISTANCE COMMISSION



2012 Election Administration & Voting Survey

New Mexico

Statutory Overview

In order to better understand state laws governing federal elections, the U.S. Election Assistance Commission, as part of its biennial Election Administration and Voting Survey, is collecting information on state election laws and procedures. These answers will help EAC to better understand the quantitative data relating to the 2012 general election that we are collecting from all U.S. states and territories.

EAC understands that responding to this Statutory Overview may require significant staff time on the part of your office. Please be assured that we have attempted to minimize the burden, and we appreciate your cooperation in this very important project.

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DIRECTIONS AND EXAMPLE

Please provide your state's legal citation for the responses to these questions (where applicable). Prior to beginning the Statutory Overview, please ensure that "track changes" is turned on; this will provide a record of all changes that are made including insertions, deletions, and formatting changes. To turn on track changes hold down "Control" and "Shift" and "E" at the same time. For additional assistance in working with "track changes" please contact your Technical Assistance point of contact at ICF International.

We have provided you with your answers to the 2010 Statutory Overview. If there has not been a change in your State's laws or legal citation in the response to a question, please mark No Change Since 2010 with an "X" as shown below:

X No Change Since 2010

If the response has changed since 2010, please mark Changed Since 2010 with an "X" and modify the answer as needed using track changes. If you need to replace the entire answer, please delete the 2010 response and record your 2012 response between the red bracketed text lines, as described below.

X Changed Since 2010

Please answer each question to the best of your ability. If terms are ambiguous or not relevant, please explain why. If a question is not applicable to your state, please explain why. If a definition or term lacks statutory reference but is widely understood in practice, please explain. If election procedures vary at the local level within your state, please explain to the best of your ability.

If state laws are currently enjoined or otherwise blocked from enforcement by a state or federal court, or executive decision, please specify.

Please keep your responses between the red, bracketed text lines. This will help us extract your answers into our central database.

Example:

A1. How does your state define the following terms related to votes and ballots? Please provide your state's legal citation defining these terms, where applicable.

- a. Over-vote

[Begin definition (a) below this line.]

There is no limit to the length of your response.

[End definition (a) above this line.]

SECTION A: GENERAL

A1. How does your state define the following terms related to votes and ballots? Please provide your state's legal citation defining these terms, where applicable.

a. Over-vote

☐ No Change Since 2010 ☒ Changed Since 2010

2010 Response:

[Begin definition (a) below this line.]

Over-vote means the selection by a voter of more than the number of alternatives allowed in a voting response are.

[End definition (a) above this line.]

b. Under-vote

☐ No Change Since 2010 ☒ Changed Since 2010

2010 Response:

[Begin definition (b) below this line.]

Under-vote means the failure of a voter to select any of the alternatives in a voting response area.

[End definition (b) above this line.]

c. Blank ballot

☒ No Change Since 2010 ☐ Changed Since 2010

2010 Response:

[Begin definition (c) below this line.]

Blank ballot means a paper ballot on which the voter has not selected any of the alternatives allowed in any candidate contest or ballot question.

[End definition (c) above this line.]

d. Void/Spoiled ballot

☐ No Change Since 2010 ☒ Changed Since 2010

2010 Response:

[Begin definition (d) below this line.]

A voter who accidentally spoils or erroneously prepares the voter's paper ballot may return the spoiled or erroneously prepared paper ballot to the presiding judge and receive a new paper ballot.

The voter shall mark the spoiled or erroneously prepared paper ballot with the word "SPOILED" and shall place it in a separate envelope marked "**SPOILED BALLOTS**", which shall be returned to the county clerk.

[End definition (d) above this line.]

e. Provisional/Challenged ballot

 No Change Since 2010 X Changed Since 2010

2010 Response:

[Begin definition (e) below this line.]

Provisional ballot means a ballot that is marked by a provisional voter.

[End definition (e) above this line.]

f. Absentee

 X No Change Since 2010 Changed Since 2010

2010 Response:

[Begin definition (f) below this line.]

Absentee ballot means a method of voting by ballot, accomplished by a voter who is absent from the voter's polling place on election day.

[End definition (f) above this line.]

g. Early voting

 No Change Since 2010 X Changed Since 2010

2010 Response:

[Begin definition (g) below this line.]

Early voting -Commencing on the third Saturday prior to an election and ending on the Saturday immediately preceding the election, an early voter may vote in person on a voting system at an alternate voting location established by the county clerk.

[End definition (g) above this line.]

h. Active Voter

☐ No Change Since 2010 ☒ Changed Since 2010

2010 Response:

[Begin definition (h) below this line.]

Active Voter *means* registered voter: (1) who has no change of address; (2) who has had a change of address and who has informed the county clerk of that change of address; (3) who has had a change of address, been sent a confirmation mailing, and who has voted in any election since the confirmation mailing was sent; or (4) is a registered voter who has not been declared to be an inactive voter.

[End definition (h) above this line.]

i. Inactive Voter

☐ No Change Since 2010 ☒ Changed Since 2010

2010 Response:

[Begin definition (i) below this line.]

Inactive Voter *means* means a voter who has been mailed a confirmation card in accordance with [42 U.S.C. 1993](#) gg 6(d) and who has either failed to respond or has failed to vote in any election conducted after the mailing of the confirmation card.

[End definition (i) above this line.]

j. Other terms (please specify) _____

☒ No Change Since 2010 ☐ Changed Since 2010

2010 Response:

[Identify each TERM and definition separately and begin below this line.]

[End TERM(s) and definition(s) above this line.]

A2. Please provide the legal citation for any *significant* changes to election laws or procedures that have been enacted or adopted since the previous Federal election. “Significant” does not include routine or technical changes (such as changes to election district boundaries or polling place changes). However, EAC would like to learn about any new identification requirements for voters or registrants; changes in eligibility for voting or registering; adoption of alternative voting methods; and other changes that you believe represent a significant change in the way your state runs its elections.

 No Change Since 2010 X Changed Since 2010

2010 Response:

[Begin response to above question (A2) below this line.]

In 2011, New Mexico adopted statutes allowing for voting convenience centers. By statute, when precincts are consolidated for a primary and general election, the resolution required by [Section 1-3-2 NMSA 1978](#), in addition to the other matters required by law, shall state therein which precincts have been consolidated and the designation of the polling place. In addition, when consolidating precincts for primary and general elections:

- (1) any voter of the county shall be allowed to vote in any consolidated precinct polling location in the county;
- (2) each consolidated precinct shall be comprised of no more than ten precincts;
- (3) each consolidated precinct shall comply with the provisions of [Section 1-3-7 NMSA 1978](#);
- (4) each consolidated precinct polling location shall have a broadband internet connection and real-time access to the statewide voter registration electronic management system;
- (5) the county clerk may maintain any alternative voting locations previously used in the same election open for voting on election day for any voter in the county, in addition to the polling location established in each consolidated precinct; and
- (6) the board of county commissioners may permit rural precincts to be exempted from operating as or being a part of a consolidated precinct; provided that if the precinct is not designated as a mail ballot election precinct pursuant to [Section 1-6-22.1 NMSA 1978](#) and the polling place for the rural precinct does not have real-time access to the statewide voter registration electronic management system, voters registered in a rural precinct as described in this paragraph are permitted to vote in any consolidated precinct polling location on election day only by use of a provisional paper ballot, which shall be counted after the county clerk confirms that the voter did not also vote in the rural precinct.

[End response to above question (A2) above this line.]

SECTION B: VOTER REGISTRATION

B1. Is your state's voter registration database system best described as a bottom-up, a top-down, or a hybrid? (Note: A bottom-up system generally uploads information retained at the local level and compiled at regular intervals to form the statewide voter registration list. A top-down system is hosted on a single, central platform/mainframe and is generally maintained by the state with information supplied by local jurisdictions. A hybrid is some combination of both systems described above.)

 No Change Since 2010 X Changed Since 2010

2010 Response:

[Begin response to above question (B1) below this line.]

New Mexico operates a top-down system. The statewide voter file is a single, central platform which is the ES&S Voter Registration Election Management System. Information is supplied to the system at the county level.

[End response to above question (B1) above this line.]

If your state uses a bottom-up or hybrid system, how often do local jurisdictions transmit registration information to the state list?

 No Change Since 2010 X Changed Since 2010

2010 Response:

[Begin response to above clarification question to B1 below this line.]

Not applicable. The system operates in real time.

[End response to above clarification question to B1 above this line.]

B2. Please describe the process used in your state to move voters from the active list to the inactive list, and from the inactive list to the active list. Is a different process used for UOCAVA voters?

 No Change Since 2010 X Changed Since 2010

2010 Response:

[Begin response to above question (B2) below this line.]

In 2007 and 2009, the Secretary of State's office failed to comply with the NVRA. Voters were incorrectly flagged as Inactive based on any undeliverable mailing, rather than based on an undeliverable confirmation mailing. In 2012, the Secretary of State, working with the

Department of Justice, sent out 177,700 confirmation mailings to voters who had previously had an undeliverable mailing. Those voters were flagged as Inactive. Upon either confirmation of address - by returning the confirmation postcard, or updating voter registration- the voters are returned to Active status. Additionally, a voter is returned to Active status upon voting in any election between the time of the confirmation mailing through the next two federal elections. These procedures are the same for UOCAVA voters.

[End response to above question (B2) above this line.]

B3. Please describe your state's process for removing voters from the voter registration rolls (not merely moving them from active to inactive). Please include information regarding notices and confirmations. Are these procedures the same for UOCAVA voters?

 No Change Since 2010

 X Changed Since 2010

2010 Response:

[Begin response to above question (B3) below this line.]

NMAC 1.10.26 was amended to comply with the NVRA following notification from the USDOJ that it contained invalid provisions.

1.10.35.9 FILE MAINTENANCE:

A. The secretary of state shall contract with a postal service approved vendor of the national change of address program (NCOA) pursuant to Section 1-4-28, NMSA 1978. The entire statewide voter file shall be compared to the NCOA listings for the confirmation mailing.

B. The secretary of state shall also create a file of all active voters designated NVRA on the statewide voter file due to an initial undeliverable mailing returned to the county clerk and so designated by the county clerk in the county voter file.

C. All active voters appearing in either the NCOA or the NVRA files shall be mailed a confirmation card to the voter's mailing address. The confirmation card shall be returned by the voter no later than twenty-eight (28) days prior to the next general election.

D. The secretary of state shall deliver returned and address corrected confirmation cards to the county clerk and the county clerk shall enter the corrected address into the voter file, scan the confirmation card and attach the scanned image to the voter's record in the voter file. The physical confirmation card shall be attached to the voter's certificate of registration to be filed in the county register.

E. The secretary of state shall return to the county clerk any confirmation card with an address indicating that the voter has moved to another state or county. If the voter has moved to another county, the county clerk shall forward a photocopy or scanned image of the confirmation card to the county clerk of that county and the voter shall be mailed a new certificate of registration by the county clerk of the county where the voter now resides.

F. If the voter's confirmation card indicates they have moved to another state or country, they shall be removed from the file and the voter's certificate of registration, with the

confirmation card attached, shall be removed from the county register, and retained for six (6) years.

G. A voter whose confirmation card is returned undeliverable shall be designated on the voter file as “inactive” The designation shall be carried out only by the secretary of state.

H. A voter is eligible for removal from the voter file if the voter has not been returned to active status, corrected the voter’s address on the certificate of registration and not appeared to vote during a period beginning on the date of the confirmation mailing and ending on the day after the date of the second general election that occurs after the date of the confirmation mailing.

I. Cancellation of voter registration shall be by the board of registration and subject to the provisions of the election code. Upon cancellation, the county clerk shall remove the certificate of registration from the county register and retain it for six (6) years.

O. List maintenance activities shall be conducted in a non-discriminatory manner and in no instance shall select groups of voters be targeted for cancellation or removal from the voter file.

[1.10.35.9 NMAC - N, 3-15-2012]

[End response to above question (B3) above this line.]

B4. Can your state’s voter registration database (or equivalent) share information electronically with your state’s driver’s license agency (for example, to match records or trace changes in address)? Can your voter registration database be similarly linked with databases in any other state or federal agencies? Please describe these links, including any use of database matching to verify voter registration applications.

 X **No Change Since 2010** **Changed Since 2010**

2010 Response:

[Begin response to above question (B4) below this line.]

No, the Voter Registration Election Management System does not currently interface with any other state or federal agencies.

[End response to above question (B4) above this line.]

B5. Please describe how your state uses National Change of Address (NCOA). What has been your state’s experience with NCOA?

 X **No Change Since 2010** **Changed Since 2010**

2010 Response:

[Begin response to above question (B5) below this line.]

The NCOA mailing is used as the confirmation mailing. **A.** The secretary of state shall contract with a postal service approved vendor of the national change of address program

(NCOA) pursuant to Section 1-4-28, NMSA 1978. The entire statewide voter file shall be compared to the NCOA listings for the confirmation mailing.

[End response to above question (B5) above this line.]

B6. Please describe your state's voting eligibility requirements as they relate to individuals with a felony conviction. (For example, are convicted felons allowed to vote while in prison or while on parole or probation? Are voting rights automatically restored or does the individual have to apply for a pardon, certificate of eligibility or other similar certificate? Does an individual whose voting rights have been restored have to produce documentation of his/her status when registering to vote?)

 X **No Change Since 2010** **Changed Since 2010**

2010 Response:

[Begin response to above question (B6) below this line.]

Pursuant to Section 31-13-1 N.M.S.A. 1978 as amended in 2005 and Section 1-4-27.1 of the Election Code provide that a convicted felon can vote if that person has:

- Completed the terms of their suspended deferred sentence; or
- Was unconditionally or conditionally discharged from a State correctional facility or unconditionally discharged from a federal correctional facility and completed all conditions of probation and parole; or
- Was granted a pardon or certificate by the Governor restoring their full rights of citizenship.

The Secretary of State is to notify all County Clerks when a convicted felon is eligible to register as a voter when:

- A State District Court notifies the Secretary of State that a person has completed the terms of that person's suspended or deferred sentence; or
- The New Mexico Corrections Department or the corrections department of another state or federal corrections agency issues the persons a certificate of completion.

To ensure compliance with the provisions of State law cited above, County Clerks are directed to:

- Permit anyone who states they have completed the terms of their sentence but who appears to be ineligible to vote because of a felony conviction to vote on a provisional ballot;
- Advise anyone who has received a letter of rejection – in writing if possible – that they can vote on a provisional ballot;
- Provide the Secretary of State with a list of all persons who have been sent a rejection letter or were not permitted to vote based on a felony conviction.

[End response to above question (B6) above this line.]

B7. Does your state currently use the Internet in any way to facilitate voter registration? If yes, please describe how your state allows voters to use the Internet in the registration process (e.g., entire registration completed online; completed online but then must be printed, signed, and mailed by voter, etc.).

 No Change Since 2010 **X** **Changed Since 2010**

2010 Response:

[Begin response to above question (B7) below this line.]

Voters may download the federal registration form. The Secretary of State's office does not provide a website for applications to be completed online but does accept applications that are completed online and then printed, signed and mailed by the voter. New Mexico does not have true online voter registration.

[End response to above question (B7) above this line.]

SECTION C: ELECTION ADMINISTRATION

C1. Please describe how all votes cast at a place other than the voter's precinct of registration are tabulated (for example, please include descriptions of such votes as absentee ballots, mail-in ballots, votes cast at vote centers, provisional ballots, early voting locations, etc.).

a. Are the votes counted centrally or at the precincts?

 No Change Since 2010 X Changed Since 2010

2010 Response:

[Begin response to above question (a) below this line.]

New Mexico votes are tabulated using M100 tabulators at the polling place. Tabulator totals are uploaded to a central statewide file.

[End response to above question (a) above this line.]

b. If centrally tabulated, are the votes redirected to the appropriate precinct for reporting in the canvass?

 No Change Since 2010 X Changed Since 2010

2010 Response:

[Begin response to above question (b) below this line.]

All vote totals are reported by precinct.

[End response to above question (b) above this line.]

c. Are the absentee, mail, etc., votes reported separately for each precinct, or are they added to the in-precinct results and reported as just a single number?

 No Change Since 2010 X Changed Since 2010

2010 Response:

[Begin response to above question (c) below this line.]

New Mexico statute, 1-12-70, provides "the county clerk shall maintain voting data by precinct that includes the number of voters who voted early in-person, absentee by mail and on election day and the number of voters who voted using each type of voting system"

[End response to above question (c) above this line.]

d. How are UOCAVA ballots counted and reported?

☐ No Change Since 2010 ☒ Changed Since 2010

2010 Response:

[Begin response to above question (d) below this line.]

UOCAVA ballots are counted and reported by precinct as absentee ballots. .

[End response to above question (d) above this line.]

C2. Does your state require a reason for voting absentee, or does your state allow no-excuse absentee voting? (If a reason is required, please provide the legal citation.)

☒ No Change Since 2010 ☐ Changed Since 2010

2010 Response:

[Begin response to above question (C2) below this line.]

No, a reason is not required.

[End response to above question (C2) above this line.]

C3. Does your state provide for in-person early voting? If so, how is early voting defined? When early voting is used, are the ballots counted at the precinct or at a central location? How are these votes reported?

☐ No Change Since 2010 ☒ Changed Since 2010

2010 Response:

[Begin response to above question (C3) below this line.]

Pursuant to Section 1-6-5.7., NMSA 1978, commencing on the third Saturday prior to an election and ending on the Saturday immediately preceding the election, an early voter may vote in person on a voting system at an alternate voting location established by the county clerk. Early voting ballots are tabulated using M-100 tabulators at each early voting site and reported by precinct.

[End response to above question (C3) above this line.]

C4. Do any jurisdictions in your state use a vote-by-mail system to replace (and not merely supplement) at-the-precinct voting in any elections?

☒ No Change Since 2010 ☐ Changed Since 2010

2010 Response:

[Begin response to above question (C4) below this line.]

Yes, a local government may elect to have an all mail ballot election. As used in the Mail Ballot Election Act [1-23-1 to 1-23-7 NMSA 1978], “local government” means any county, school district or incorporated municipality.

Pursuant to Section 1-23-3, NMSA 1978, notwithstanding any other provision of law and regardless of the number of eligible voters within its boundaries, a local government may, by resolution of its governing body, conduct by all-mailed ballot any bond election, any election on the imposition of a mill levy or a property tax rate for a specified purpose or any special election at which no candidates are to be nominated for or elected to office.

Pursuant to Section 1-6-22.1, NMSA 1978, states:

A. Notwithstanding the provisions of Section 1-1-11 NMSA 1978, a board of county commissioners may designate a precinct as a mail ballot election precinct if, upon a written request of the county clerk, it finds that the precinct has fewer than fifty voters and the nearest polling place for an adjoining precinct is more than thirty miles driving distance from the polling place designated for the precinct in question.

B. If a precinct is designated a mail ballot election precinct, in addition to the notice required pursuant to Section 1-3-8 NMSA 1978, the county clerk shall notify by registered mail all voters in that precinct at least forty days before an election that each voter will be sent an absentee ballot twenty-eight days before the election and that there will be no polling place for the precinct on election day. The county clerk shall include in the notice a card informing the voter that if the voter does not want to receive an absentee ballot, the voter should return the card before the date the county clerk is scheduled to mail out absentee ballots. The card shall also inform the voter that a voting system equipped for persons with disabilities will be available at all early voting sites before election day and in the office of the county clerk on election day in case the voter prefers to vote in person and not by mail.

C. The county clerk shall mail each voter in the mail ballot election precinct an absentee ballot on the twenty-eighth day before an election, unless the voter has requested otherwise, along with a notice that there will be no polling place in that precinct on election day.

D. The county clerk shall keep a sufficient number of ballots from a mail ballot election precinct such that if a voter from that precinct does not receive an absentee ballot before election day, the voter may vote on an absentee ballot in the office of the county clerk on election day in lieu of voting on the missing ballot.

[End response to above question (C4) above this line.]

C5. Please list each of the situations that require a provisional ballot in your state. Please provide the relevant legal citation for each situation.

 No Change Since 2010

 X Changed Since 2010

2010 Response:

[Begin response to above question (C5) below this line.]

Pursuant to 1-12-,8 NMSA 1978, states:

A person shall be permitted to vote on a provisional paper ballot even though the person's original certificate of registration cannot be found in the county register or even if the person's name does not appear on the signature roster, provided:

- (1) the person's residence is within the boundaries of the county in which the person offers to vote;
- (2) the person's name is not on the list of persons submitting absentee ballots; and
- (3) the person executes a statement swearing or affirming to the best of the person's knowledge that the person is a qualified elector, is currently registered and eligible to vote in that county and has not cast a ballot or voted in that election.

A voter shall vote on a provisional paper ballot if the voter:

- (1) has not previously voted in a general election in New Mexico or has been purged from the voter list;
- (2) registered to vote by mail;
- (3) did not submit the physical form of the required voter identification with the certificate of registration form; and
- (4) does not present to the election judge a physical form of the required voter identification.

A voter shall vote on a provisional ballot in accordance with the provisions of Section 1-12-7.1 NMSA 1978 if the voter does not provide the required voter identification to the election judge.

For voting convenience centers, voters registered in a rural precinct are permitted to vote in any consolidated precinct polling location (convenience center) on election day only by the use of a provisional paper ballot, which shall be counted after the county clerk confirms that the voter did not also vote in rural precinct (1-3-4 NMSA 1978)

[End response to above question (C5) above this line.]

C6. Does your state count provisional ballots of voters who are registered in different precincts, or are those ballots automatically rejected? Please describe the process used by local election officials in determining whether to count a provisional ballot.

X **No Change Since 2010** **Changed Since 2010**

2010 Response:

[Begin response to above question (C6) below this line.]

When counting provisional paper ballots, votes shall be counted for only those positions or measures for which the voter was eligible to vote in the precinct where the ballot was cast

1.10.22 NMAC is attached.

[End response to above question (C6) above this line.]

C7. Please describe your state's laws regarding post-election audits, if any. A post-election audit refers to hand-counting votes on paper records and comparing those counts to the corresponding vote counts originally reported, as a check on the accuracy of election results, and resolving discrepancies using accurate hand counts of the paper records as the benchmark.

If your state has post-election auditing, consider including in your response information such as the unit being audited (e.g., precincts, machines); the sampling method (e.g., fixed percentages); whether there is a specific trigger for the audit; the location of the random selection (e.g., state, county); and the races that can be audited.

X **No Change Since 2010** **Changed Since 2010**

2010 Response:

[Begin response to above question (C7) below this line.]

Pursuant to Section 1-14-13.2, NMSA 1978 states that a post-election voting system check shall be conducted.

A. At least ninety days prior to each general election, the secretary of state shall contract with an auditor qualified by the state auditor to audit state agencies to oversee a check on the accuracy of precinct electronic vote tabulators, alternate voting location electronic vote tabulators and absent voter precinct electronic vote tabulators. The voting system check shall be conducted for all federal offices, for governor and for the statewide elective office, other than the office of the governor, for which the winning candidate won by the smallest percentage margin of all candidates for statewide office in New Mexico.

B. For each selected office, the auditor shall publicly select a random sample of precincts from a pool of all precincts in the state no later than twelve days after the election. The random sample shall be chosen in a process that will ensure, with at least ninety percent probability for the selected offices, that faulty tabulators would be detected if they would change the outcome of the election for a selected office. The auditor shall select precincts starting with the statewide office with the largest winning margin and ending with the precincts for the statewide office with the smallest winning margin and then, in the same manner, select precincts from each congressional district. The size of the random sample for each office shall be determined as provided in Table 1 of this subsection. When a precinct is selected for one office, it shall be used in lieu of selecting a different precinct when selecting precincts for another office in the same congressional district, or for any statewide office. If the winning margin in none of the offices for which a voting system check is required is less than fifteen percent, a voting system check for that general election shall not be required.

C. The auditor shall notify the appropriate county clerks of the precincts that are to be included in the voting system check upon their selection. The auditor shall direct the appropriate county clerks to compare the original machine count precinct vote totals, including early absentee and absentee by mail machine count vote totals, for candidates for offices subject to the voting system check from the selected precincts for each office with the respective vote totals of a hand recount of the paper ballots from those precincts. The county clerks shall report their results to the auditor within ten days of the notice to conduct the voting system check.

D. Based on the results of the voting system check and any other auditing results, the auditor shall determine the error rate in the sample for each office. If the winning margin decreases and the error rate based on the difference between the vote totals of hand recounts of the paper ballots and the original precinct vote totals exceeds ninety percent of the winning margin for an office, another sample equal in size to the original sample shall be selected and the original precinct vote totals compared to the vote totals of hand recounts. The error rate based on the first and second sample canvassing board shall order that a full hand recount of the ballots for that office be conducted.

E. The auditor shall report the results of the voting system check to the secretary of state upon completion of the voting system check and release the results to the public.

F. Persons designated as county canvass observers may observe the hand recount described in Subsection C of this section. Observers shall comply with the procedures governing county canvass observers as provided in Section 1-2-31 NMSA 1978.

G. If a recount for an office selected for a voting system check is conducted pursuant to the provisions of Chapter 1, Article 14 NMSA 1978, the vote totals from the hand count of ballots for that office in precincts selected for the voting system check may be used in lieu of recounting the same ballots for the recount.

H. All costs of a voting system check or required hand recount shall be paid in the same manner as automatic recounts.

[End response to above question (C7) above this line.]

C8. Please describe any state requirements for poll worker training.

 X No Change Since 2010 Changed Since 2010

2010 Response:

[Begin response to above question (C8) below this line.]

Pursuant to Section 1-2-17, NMSA 1978, precinct board schools of instruction shall be conducted.

The secretary of state may supervise and the county clerk shall cause to be held a public school of instruction for all presiding judges, precinct boards and others who will be officially concerned with the conduct of elections.

The schools for instruction provided for in this section shall be as follows:

- (1) one school not less than seven days before the primary election;
- (2) one school not less than seven days before the general election; and
- (3) one school not less than seven days before any other statewide election.

All major details of the conduct of elections shall be covered by the secretary of state or the secretary's authorized representative or the county clerk or the clerk's authorized representative at such school, with special emphasis being given to recent changes in the Election Code [Chapter 1 NMSA 1978].

The school of instruction shall be open to any interested person, and notice of the school shall be given to the public press at least four days before the school is to be held. Each member of the precinct board shall be notified by mail at least seven days prior to commencement of the school .

A person shall not serve as a judge or member of a precinct board in any election unless that person has attended at least one such school of instruction in the calendar year of the election at which the person is appointed to serve or has been certified by the county clerk with respect to the person's completion of the school of instruction. This subsection shall not apply to filling of vacancies on election day as provided in Subsection B of Section 1-2-15 NMSA 1978.

[End response to above question (C8) above this line.]

SECTION D: ELECTION DAY ACTIVITIES

D1. Please describe your state's process for capturing "over-vote" and "under-vote" counts.

 X No Change Since 2010 Changed Since 2010

2010 Response:

[Begin response to above question (D1) below this line.]

Over voted ballots are rejected by the tabulator. A new ballot will be issued to the voter and the over voted ballot will be spoiled.

Under voted ballots are accepted by the tabulator.

[End response to above question (D1) above this line.]

D2. What identification does your state require from voters in the following situations:

a. registering to vote;

 X No Change Since 2010 Changed Since 2010

2010 Response:

[Begin response to above question (a) below this line.]

Any person who will be a qualified elector at the date of the next ensuing election shall be permitted within the provisions of the Election Code [Chapter 1 NMSA 1978] to register and become a voter, provided, however, he shall not register in New Mexico without canceling his registration in the state of previous residence if such there be.

Pursuant to Section 1-4-5.1, NMSA 1978, allows:

A qualified elector may apply for registration by mail, in the office of the secretary of state or county clerk or with a registration agent or officer. If the form is submitted by mail by the applicant and the applicant is registering for the first time in New Mexico, the applicant must submit with the form a copy of:

- 1) a current and valid photo identification; or
- 2) a current utility bill, bank statement, government check, paycheck, student identification card or other government document, including identification issued by an Indian nation, tribe or pueblo, that shows the name and current address of the applicant; and

If the applicant does not submit the required identification, the applicant will be

required to do so when voting in person or absentee; and

a statement requiring the applicant to swear or affirm that the information supplied by the applicant is true.

[End response to above question (a) above this line.]

b. casting an in-person ballot;

 No Change Since 2010 X Changed Since 2010

2010 Response:

[Begin response to above question (b) below this line.]

§ 1-1-24. Required voter identification

As used in the Election Code, “required voter identification” means any of the following forms of identification as chosen by the voter:

A. a physical form of identification, which may be:

(1) an original or copy of a current and valid photo identification with or without an address, which address is not required to match the voter's certificate of registration; or

(2) an original or copy of a utility bill, bank statement, government check, paycheck, student identification card or other government document, including identification issued by an Indian nation, tribe or pueblo, that shows the name and address of the person, the address of which is not required to match the voter's certificate of registration; or

B. a verbal or written statement by the voter of the voter's name, registration address and year of birth; provided, however, that the statement of the voter's name need not contain the voter's middle initial or suffix.

[End response to above question (b) above this line.]

c. casting a mail-in or absentee vote;

 No Change Since 2010 X Changed Since 2010

2010 Response:

[Begin response to above question (c) below this line.]

The voter is required to include the required voter identification set forth above - the voter's name, registration address and year of birth. For first time New Mexico voters who registered by mail, the NVRA identification is required.

[End response to above question (c) above this line.]

d. casting a ballot under UOCAVA;

 No Change Since 2010 __X__ Changed Since 2010

2010 Response:

[Begin response to above question (d) below this line.]

The identification requirements for UOCAVA voters are the same as for other voters. This has not changed since 2010, but the 2010 response was incorrect.

[End response to above question (d) above this line.]

e. any other stage in registration or voting process in which identification is required (please specify).

__X__ No Change Since 2010 Changed Since 2010

2010 Response:

[Begin response to above question (e) below this line.]

N/A

[End response to above question (e) above this line.]

D3. Please describe your state's laws regarding access to the polling place for election observers. Election observers are people allowed inside the polling place who are not poll workers, election officials or voters. If decisions on access to observers are left to local jurisdictions, please explain.

__X__ No Change Since 2010 Changed Since 2010

2010 Response:

[Begin response to above question (D3) below this line.]

Under our State law, in order to observe what is occurring at individual precincts, it is required to have a written request from the organization that specifies the polling locations that will be observed, and the names of the persons who will be observing. The State law also limits the number of watchers from any organization to one per polling place. This includes the "absent voter precinct" (for early voting and mail ballots). In addition, to observe the canvassing of the votes in any counties, a similar request will need to be made.

[End response to above question (D3) above this line.]

SECTION E: OTHER

E1. Under HAVA, Section 402, states are required to establish and maintain administrative complaint procedures to remedy grievances. Has your state revised its administrative complaint procedures since they were first implemented? If so, how?

☒ **No Change Since 2010** ☐ **Changed Since 2010**

2010 Response:

[Begin response to above question (E1) below this line.]

Pursuant to Section 1-2-2.1, NMSA 1978, the Administrative complaints procedures are mandated.

The secretary of state shall adopt rules for an administrative procedure for hearing complaints on violations of the provisions of Title III of the federal Help America Vote Act of 2002 [42 U.S.C. § 15481 et seq.], including provisions related to voting system standards, provisional voting procedures, voter registration procedures and operational standards of the statewide voter registration system. A person who determines that there is a violation or that a violation is about to occur pursuant to this section may file a complaint with the secretary of state. Complaints may be consolidated by the secretary. Complaints shall be in writing, signed and sworn by the person filing the complaint and notarized. The hearing shall be on the record if the complainant requests. If the hearing officer determines that there is a violation, an appropriate remedy shall be provided. If there is no violation, the complaint shall be dismissed and the results of the hearing made available to the public. A final decision shall be made within ninety days of the filing of the complaint unless the complainant consents to extending the deadline. If the deadline is not met, the complaint shall be resolved within sixty days through alternative dispute resolution procedures established pursuant to the Governmental Dispute Resolution Act [12-8A-1 to 12-8A-5 NMSA 1978]. Records and materials from the hearing shall be available for use in an alternative dispute resolution procedure.

Attached , please review NMAC 1.10.18, Administrative Complaint Procedure. This administrative rule was promulgated to implement a procedure for hearing complaints on violations of Title III of the Help America Vote Act of 2002, including provisions relating to voting system standards, provisional voting procedures, voter registration procedures and operational standards of the statewide voter registration system in New Mexico.

[End response to above question (E1) above this line.]

E2. Please add any additional comments or information about your state's election administration processes that would help to inform the EAC's interpretation of your data.

☒ **No Change Since 2010** ☐ **Changed Since 2010**

2010 Response:

[Begin response to above question (E2) below this line.]

n/a

[End response to above question (E2) above this line.]

* The information collection associated with the Election Administration and Voting Survey is required for the EAC to meet its statutory requirements under the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301), the National Voter Registration Act (NVRA) (42 U.S.C. 1973gg-1 et seq.), and the Uniformed and Overseas Citizens Absentee Voters Act (UOCAVA) (42 U.S.C. 1973ff-1). Respondent's obligation to reply to this information collection is mandatory as required under NVRA (42 U.S.C. 1973gg-1 et seq.) and UOCAVA (42 U.S.C. 1973ff-1). This part of the information collection is being requested to help the EAC to better understand state laws governing federal elections. Respondents include the fifty states, the District of Columbia, and the U.S. Territories. This information will be made publicly available on the EAC website (www.eac.gov). According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. 3265-0006 (expires 5/31/2013). The time required to complete this information collection is estimated to average 59 hours per state response. This estimate includes the time for reviewing the instructions, gathering information, and completing the form. Comments regarding this burden estimate should be sent the U.S. Election Assistance Commission – 2012 Election Administration and Voting Survey, 1201 New York Avenue, Suite 300, Washington, DC 20005.

D. If the bureau determines that the complaint is incomplete, the bureau shall promptly notify the complainant who may be permitted to amend the complaint, in the sole discretion of the bureau.

E. If the bureau receives duplicative or repetitive complaints, the bureau may consolidate these for assessment, investigation and resolution purposes.

[1.10.18.8 NMAC - N, 03-15-2004]

1.10.18.9 INVESTIGATION OF A COMPLAINT:

A. The bureau shall aspire to complete an initial investigation within thirty (30) days of the bureau's receipt of the complaint. If the complaint is made against the bureau, a representative of the district attorney shall aspire to complete an initial investigation within the same time period.

B. The investigation may include the following steps as deemed appropriate under the circumstances: sending an acknowledgement letter to the complainant; seeking a response from the election official against whom a complaint is made; providing the complainant with a copy of any response received from the election official against whom a complaint is made and give the complainant an opportunity to reply; engaging in informal resolution with the parties through a meeting, teleconference, or other means; or dismissing the complaint based on its clear failure to allege a Title III violation.

C. All written documents that are part of these administrative procedures, including the investigation, are public documents unless otherwise provided by law.

[1.10.18.9 NMAC - N, 03-15-2004]

1.10.18.10 HEARING ON A COMPLAINT:

A. If the complainant requests a hearing and the bureau does not dismiss the complaint, the bureau will appoint a hearing officer to conduct a hearing on-the-record.

B. If the complainant did not request a hearing and the bureau does not dismiss the complaint, the bureau shall make a final determination in accordance with the remedies provision of these administrative procedures.

C. If the complaint is made against the bureau, the office of the secretary of state shall provide a neutral hearing officer who has no working or personal relationship with the office of the secretary of state.

D. For all other complaints, the office of the secretary of state shall provide a hearing officer. It may be, but is not limited to, an employee of the office of the secretary of state.

E. The bureau shall provide a time, date and location for the hearing and shall send written notice to complainant and alleged violator at least fifteen (15) days prior to the hearing. If there is an expedited hearing, the hearing officer shall provide telephonic and facsimile notice.

F. Upon written request to another party, any party may ask to obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing and inspect and copy any documents that the other party will or may introduce in evidence at the hearing. The party to whom such a request is made should comply with it within ten (10) days after the receipt of the request. The hearing officer, however, has no statutory power to force the parties to comply with these requests.

G. If there is a hearing on the record, the record will include, at a minimum: the written complaint; written responses to the complaint; documentation provided in support of or in defense of the complaint; and written or audio record or any hearing or pre-hearing proceedings conducted by the hearing officer with regard to the complaint.

H. The hearing officer has the discretion to grant continuances, to take testimony or to examine witnesses. The hearing officer may also hold conferences before or during the hearing for the settlement or simplification of the issues.

I. The hearing officer may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The hearing officer may, in his discretion, exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

J. The bureau shall provide a tape recording of any on-the-record hearing. If a party wants a court reporter, that party must pay the cost.

K. If a person who has requested a hearing does not appear, and no continuance has been granted, the hearing officer may hear the evidence of such witnesses as may have appeared, and the hearing officer may proceed to consider the matter and dispose of it on the basis of the evidence before it. Where, because of accident, sickness or other cause, a person fails to appear for a hearing that he has requested, the person may, within ten (10) days, apply in writing to the hearing officer to reopen the proceeding, and the hearing officer upon finding sufficient cause shall immediately fix a time and place for a hearing and give the person notice as required above.

[1.10.18.10 NMAC - N, 03-15-2004]

1.10.18.11 REMEDIES:

A. The hearing officer shall make a final determination regarding the complaint within ninety (90) days after the complaint has been filed with the bureau unless the complainant agrees in writing to extend the deadline.

B. If a party, agency or hearing officer would like to extend the deadline, it must receive written approval from the complainant. If the complainant does not give approval, the complainant will automatically proceed to alternative dispute resolution as found in the New Mexico Governmental Dispute Act, NMSA 1978, Sections 12-8A-1 through 12-8A-5. The office of the secretary of state, if not a party, must adopt the agreement reached by the parties to the alternative dispute resolution procedure within sixty (60) days after the complaint is referred to resolution.

C. The final determination shall be in writing and shall be sent by return receipt requested mail to the complainant and alleged violator.

D. The final determination may dismiss the case or provide a remedy appropriate to the violation. In no event shall the remedy involve either the payment of money to the complainant or a finding that an election official is subject to civil penalties. An appropriate remedy may include, but is not limited to any or all of the following: written finding that Title III has been violated; a plan for rectifying the particular violation, an assurance that additional training will be provided to election officials so as to ensure compliance with HAVA Title III and the New Mexico Election Code; and a commitment to better inform voters of their rights.

E. By posting a notice on its website and by distributing news releases as it deems appropriate, the office of the secretary of state shall publicize the results of its assessment and investigation of the complaint that results in a finding that a Title III violation has or has not occurred.

[1.10.18.11 NMAC - N, 03-15-2004]

1.10.18.12 RIGHT OF APPEAL: These procedures do not grant a statutory right of review.

[1.10.18.12 NMAC - N, 03-15-2004]

HISTORY of 1.10.18 NMAC: [Reserved]

1.10.22 NMAC 1

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS PART 22 PROVISIONAL VOTING

1.10.22.1 ISSUING AGENCY: Office of the Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, New Mexico, 87503.

[1.10.22.1 NMAC - Rp, 1.10.22.1 NMAC, 4-28-06]

1.10.22.2 SCOPE: This rule applies to any special statewide election, general election, primary election, countywide election or elections to fill vacancies in the office of United States representative and regular or special school district elections as modified by the School Election Law (Sections 1-22-1 to 1-22-19 NMSA 1978).

[1.10.22.2 NMAC - Rp, 1.10.22.2 NMAC, 4-28-06]

1.10.22.3 STATUTORY AUTHORITY: Election Code, Section 1-2-1 NMSA 1978; Chapter 356, Laws 2003, Public Law 107-252, The Help America Vote Act of 2002; Chapter 270, Laws 2005, Chapter 137, Laws 2011. The issuing authority shall issue rules to ensure securing the secrecy of the provisional paper ballot, especially during canvassing, reviewing or recounting and protecting against fraud in the voting process.

[1.10.22.3 NMAC - Rp, 1.10.22.3 NMAC, 4-28-06; A/E, 10-2-08, A, 3-15-12]

1.10.22.4 DURATION: Permanent.

[1.10.22.4 NMAC - Rp, 1.10.22.4 NMAC, 4-28-06]

1.10.22.5 EFFECTIVE DATE: April 28, 2006 unless a later date is cited at the end of a section.

[1.10.22.5 NMAC - Rp, 1.10.22.5 NMAC, 4-28-06]

1.10.22.6 OBJECTIVE: The Election Code (Section 1-1-1 NMSA through 1-24-4 NMSA 1978) was amended by Chapter 356, Laws 2003 and Chapter 137, Laws 2011. The purpose of the amendments is compliance with the provisions of PL 107-252, effective October 29, 2002, which allows a voter whose name does not appear on the roster at the polling place, county voter file, or a new voter whose name does not appear on the roster and has not provided the required identification to cast a provisional paper ballot. Chapter 270, Laws 2005 and Chapter 137, Laws 2011 amended the Election Code to require uniform criteria used to determine if provision ballots shall be counted, and to ensure the secrecy of the provisional ballot during verification, canvassing, recounting or election contest.

[1.10.22.6 NMAC - Rp, 1.10.22.6 NMAC, 4-28-06; A/E, 10-2-08, A, 3-15-12]

1.10.22.7 DEFINITIONS:

A. "Abbreviated address" means a voter using initials to designate a city within New Mexico and includes, but is not limited to, "LC" for Las Cruces, "SF" for Santa Fe, or "ABQ" for Albuquerque.

B. "Abbreviated name" means shortened given or surname including, but not limited to, 'Pat' for Patrick, Patricio, or Patricia, 'Wm' or 'Bill' for William, or 'Rick' for Ricardo or Richard.

C. "Absentee ballot" means a method of voting by ballot, accomplished by a voter who is absent from the voter's polling place on election day.

D. "Absentee precinct board" means the voters of a county who are appointed by the county clerk to open, tabulate, tally and report absentee ballot results.

E. "Absentee provisional ballot" means the paper ballot issued to an absent provisional voter.

F. "Alternate voting location" means a site outside the office of the county clerk, established by the county clerk, where a voter may cast an absentee ballot and includes mobile alternate voting locations.

G. "Ballot" means a system for arranging and designating for the voter the names of candidates, constitutional amendments, and other questions to be voted on and for the marking, casting or otherwise recording of such votes, and the term includes absentee ballots, provisional paper ballots and all other paper ballots.

H. "Contest" means court litigation that seeks to overturn the outcome of an election pursuant to Section 1-14-1 NMSA 1978.

I. "County canvassing board" means the board of county commissioners in each county.

J. "County voter file" means the computerized version of the county register, comprising a portion of the statewide voter file.

K. "Election" means any special statewide election, general election, primary election, countywide **1.10.22 NMAC 2**

election or special election to fill vacancies in the office of United States representative and regular or special school district elections.

L. “Electronic vote tabulating (EVT) marksense voting system” or “optical scan vote tabulating system” means a voting system which records and counts votes and produces a tabulation of the vote count using a paper ballot imprinted on either or both faces with text and voting response locations. The marksense or optical scan vote tabulating voting system records votes by means of marks made in the voting response locations.

M. “In-lieu of absentee ballot” means a paper ballot provided to a voter at his polling place when the absentee ballot was not received by the voter before election day.

N. “In lieu of absentee ballot tally sheet” means a document or computer based document used by the county clerk for the counting of votes cast by a qualified in-lieu of absentee ballot voter,

O. “Naked ballot” means a provisional ballot or in-lieu of absentee ballot that has not been placed in the inner secrecy envelope by the voter.

P. “Observer” means a voter of a county who has been appointed by a candidate, political party chair or election related organization pursuant to the provisions of the Election Code.

Q. “Precinct” means a part of a county with definite boundaries established for electoral administrative functions.

R. “Precinct board” means the appointed election officials at a polling place, consolidated polling place, absentee precinct or alternate location.

S. “Provisional absentee voter” means a voter who votes on a provisional absentee ballot because the voter is a new registrant to the state, registered to vote the first time by mail and has not submitted the required voter identification.

T. “Provisional paper ballot” means a paper ballot that is marked by a provisional voter.

U. “Provisional paper ballot tally sheet” means a document or computer based document approved by the secretary of state, used by the county clerk for the counting of votes cast by a qualified provisional voter.

V. “Provisional paper ballot transmission envelope” means a sealed envelope or pouch marked and designated by the county clerk to transmit provisional ballots from the polling place or alternate location to the office of the county clerk.

W. “Provisional voter” means a voter casting a provisional ballot pursuant to the provisions of the Election Code, or a voter whose name does not appear on the signature roster or on the county voter file.

X. “Required voter identification” means the forms of identification as specified in Section 1-1-24 NMSA 1978.

Y. “Signature roster” means the certified list of voters at a polling place which is signed by a voter or county voter file at a consolidated polling place.

Z. “Tally sheet” means a document prepared by the county clerk and used for the counting of provisional paper ballots, hand tallied absentee ballots, in-lieu of absentee ballots and emergency paper ballots.

AA. “Verification process” means the process used by a county clerk to determine the qualifications of a voter who voted a provisional paper ballot or in-lieu of absentee ballot.

BB. “Voter” means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provision of the Election Code of the state of New Mexico.

[1.10.22.7 NMAC - Rp, 1.10.22.7 NMAC, 4-28-06; A/E, 10-2-08, A, 3-15-12]

1.10.22.8 PRECINCT BOARD PROCEDURES:

A. A voter whose name does not appear on the signature roster or county voter file at a consolidated polling place or who is required to present identification at the polling place or alternate voting location and is unable to do so shall be entitled to cast a vote on a provisional paper ballot. The precinct board shall instruct the voter that the required voter identification must be taken to the office of the county clerk no later than 5:00 p.m. two (2) days after the election for the ballot to be qualified. The precinct judge shall give the voter written instructions on how the voter may determine whether the vote was counted and, if the vote was not counted, the reason it was not counted. The precinct board shall ensure that each provisional voter or in-lieu of absentee voter is provided with a toll free telephone number that may be called fourteen (14) days after the election for a determination on whether the provisional ballot was counted.

B. Each polling place shall post the telephone numbers of the county clerk and the secretary of state and a map of the precincts represented in that polling place and an alphabetical list of the voters in each precinct in that polling place. The precinct board shall also ensure that the provisional voter, or in-lieu of absentee voter shall fill out all required information on the provisional paper ballot affidavit or in-lieu of absentee ballot affidavit and **1.10.22 NMAC 3** place the ballot in the inner secrecy envelope and outer envelope prescribed by the

secretary of state. The precinct board shall ensure that the name of a provisional voter or in-lieu of absentee ballot voter is entered in the signature roster on the line immediately following the last entered voter's name, pursuant to the Election Code.

C. The precinct board shall ensure that each provisional paper ballot voter completes the certificate of voter registration attached to the provisional paper ballot outer envelope and that the certificate of registration remains attached to the provisional ballot outer envelope and is returned to the county clerk in the provisional ballot transmission envelope.

D. The precinct board shall ensure that each provisional paper ballot, or in-lieu of absentee ballot cast at a polling place or alternate site is placed in an inner or secrecy envelope prior to placing the inner or secrecy envelope in the outer envelope containing the voter's oath or affirmation and certificate of voter registration.

E. The precinct board shall ensure that a provisional paper ballot voter or in-lieu of absentee ballot voter is not permitted to place the voted ballot into the electronic vote tabulating marksense voting system.

F. The precinct board shall ensure provisional paper ballot voters are not subject to challenge at the time of voting under the procedures provided in the Election Code.

G. The precinct board shall ensure that a provisional paper ballot or in-lieu of absentee ballot shall not be placed in the ballot box at the polling place, alternate voting location or county clerk's office. Provisional paper ballots shall be deposited in a special sealed provisional paper ballot transmission envelope or pouch designated by the county clerk for that purpose.

H. Identification documents submitted with provisional absentee ballots shall be attached to the voter's certificate of registration and a notation that the documents have been submitted shall be entered into the electronic file of registered voters.

[1.10.22.8 NMAC - Rp, 1.10.22.8 NMAC, 4-28-06; A, 3-15-12]

1.10.22.9 COUNTY CLERK PROCEDURES:

A. The provisional paper ballot outer envelope containing the voter's oath shall not be opened until the county clerk has completed the verification process and determined the reason the provisional voter's name was not on the signature roster, whether the voter has provided identification, if required, by the Election Code or if the provisional absentee voter's absentee ballot was received by the absentee precinct board. The county clerk shall place any naked ballot in an individual manila envelope to replace the inner secrecy envelope and mark the voter's correct voting precinct on that envelope.

B. The county clerk has the authority to determine the qualification of a provisional paper ballot, absentee provisional ballot or in-lieu of absentee ballot but shall not disqualify any provisional paper ballot, absentee provisional ballot or in-lieu of absentee ballot because the voter's address on the affidavit on the provisional paper ballot outer envelope does not match the voter's address on the voter's certificate of registration, provided the county clerk can identify the voter with other information provided on the affidavit or certificate of voter registration attached to the provisional paper ballot outer envelope.

C. The county clerk shall determine the qualification of a provisional ballot, absentee provisional ballot or in-lieu of absentee ballot but shall not disqualify any provisional ballot, absentee provisional ballot or in-lieu of absentee ballot because the voter has used an abbreviated name, abbreviated address, middle name, middle initial or suffix, provided the county clerk can identify the voter with other information provided on the affidavit on the provisional paper ballot outer envelope or certificate of voter registration attached to the provisional ballot outer envelope.

D. The county clerk shall determine the qualification of a provisional paper ballot but shall not disqualify any provisional paper ballot because the voter did not sign both the affidavit and the polling place roster if the voter provided a valid signature and the county clerk can identify the voter with information provided on the affidavit on the outer envelope or certificate of voter registration attached to the provisional paper ballot outer envelope.

E. A provisional paper ballot shall be qualified if both:

(1) the voter has provided all the information under Section 1-12-25.3 and Section 1-12-25.4 NMSA 1978 and the voter provides a valid signature and sufficient information for the county clerk to determine the voter is a qualified elector;

(2) the county clerk can determine the voter is a registered voter in the county; if a voter is registered in the county, but cast a provisional paper ballot at the wrong polling place, or if the voter was required to present identification.

F. A provisional paper ballot or in-lieu of absentee ballot shall be rejected if:

(1) the voter has not provided all the information under Sections 1-12-25.3 and 1-12-25.4 NMSA **1.10.22**

NMAC 4 1978 subject to the provision in Subsections B, C or D of this section;

(2) the voter is not a registered voter in the county;

- (3) the voter is registered to vote in another county in the state;
- (4) the voter has voted an absentee ballot in the election and the ballot has been received by the absentee precinct board;
- (5) the voter's registration was properly cancelled; or
- (6) the voter is unable to meet the voter identification requirements.

G. A county canvass observer, pursuant to Section 1-1-25 and Section 1-2-31 NMSA 1978 may be present during the provisional paper ballot qualification and canvass. During the provisional ballot qualification and canvass, the observer shall wear a self-made badge designating the observer as an authorized observer of the organization represented. The observer shall not wear any other form of identification and party or candidate pins are prohibited. The observer shall not perform any duty of the county clerk or authorized deputy, handle any material, interfere with the orderly conduct of the provisional paper ballot qualification or canvass or use cell phones or electronic recording equipment while observing.

H. The provisional paper ballot qualification process shall be conducted as follows:

- (1) the county clerk or authorized deputy shall read aloud the name and address on the provisional paper ballot outer envelope;
- (2) the county clerk or authorized deputy shall determine, by use of the statewide voter file, the registration status, county of registration and correct precinct of the provisional voter, or if the required identification is attached or verified; and
- (3) the county clerk or authorized deputy shall publicly announce whether the provisional paper ballot is qualified or disqualified and the reasons for that determination.

I. The in-lieu of absentee ballot qualification process shall be conducted as follows:

- (1) The county clerk or authorized deputy shall determine, by use of the absentee precinct board roster, if an absentee ballot has been received by the absentee precinct board.
- (2) The county clerk or authorized deputy shall publicly announce whether the in-lieu of absentee ballot is qualified or disqualified and the reasons for that determination.

J. The county clerk or authorized deputy will announce aloud his or her decision regarding whether that provisional vote will or will not be qualified; the county clerk may assign a different county clerk staff member than those involved in the qualification process to receive and open the ballot outer envelope for the tallying process. The observer may preserve for future reference written memorandum of any action and may raise it at the canvass meeting. Observers shall not be in the line of sight or view or make notes of the voter's date of birth or social security number.

K. The determination of the provisional voter's status and whether the ballot shall be counted, along with the research done by the county clerk shall be noted on the provisional paper ballot outer envelope. The county clerk shall, after status determination, separate qualified ballots from unqualified ballots. Unqualified ballots shall not be opened and shall be deposited in an envelope or box marked "unqualified provisional paper ballots" which shall be retained for twenty-two (22) months, pursuant to 42 USC 1974. The outer provisional paper ballot envelope for qualified provisional paper ballots shall be opened and deposited in an envelope or box marked "qualified provisional paper ballot outer envelopes" which shall be retained for twenty-two (22) months, pursuant to 42 USC 1974. The county clerk or authorized deputy shall mark the number of the voter's correct precinct on the inner secrecy envelope and ballot for the purposes of a recount or contest, but no other information indicating the identity of the voter shall be furnished to the county canvassing board or any other person. After the tally of qualified provisional paper ballots, the county clerk or authorized deputy shall deposit the counted provisional paper ballots in an envelope or box marked "counted provisional paper ballots" which shall be retained for twenty-two (22) months, pursuant to 42 USC 1974.

L. The county canvassing board shall direct the county clerk to prepare a tally of qualified provisional paper ballots, in-lieu of absentee ballots and absentee provisional ballots and include them in the canvass presented to the county canvassing board to be tallied and included in the canvass of that county for the appropriate precinct. Provisional paper ballots, in-lieu of absentee ballots and absentee provisional ballots shall be tallied on separate tally sheets. The tally sheet may be a photocopy of a precinct tally sheet or a computer based tally sheet approved by the secretary of state, however it shall be clearly marked as designated for provisional paper ballots, in-lieu of absentee ballots or provisional absentee ballots. Upon the conclusion of the county canvass, the county clerk shall transmit the provisional paper ballot tally to the office of the secretary of state. The county clerk shall also prepare a report, on behalf of the county canvassing board, on the disposition of all provisional paper ballots cast within the county. The report shall contain the name, address and correct precinct number of each provisional voter **1.10.22 NMAC 5** or provisional absentee ballot voter and the qualification or disqualification of in-lieu of absentee ballots. The report shall be transmitted to the secretary of state within 10

days of the election. Pursuant to the Help America Vote Act, information about an individual provisional paper ballot shall be restricted to the individual who cast the ballot. The report shall include an explanation of why a provisional voter's name was not included on the signature roster and the reason why any provisional voter's ballot, in-lieu of absentee voter's ballot or provisional absentee voter's ballot was not counted. The report shall be in alphabetical order.

M. Counting procedures for provisional paper ballots. The county clerk shall count the qualified provisional paper ballots using the hand tally method. One team of at least two persons shall be used to count each qualified provisional paper ballot. The team shall consist of one reader and one marker, not of the same political party if feasible. The reader shall read the ballot to the marker and the marker shall observe whether the reader has correctly read the ballot; the marker shall then mark the tally sheet of the precinct where the vote was cast, and the reader shall observe whether the marker correctly marked the tally sheet. If consolidated precincts were used county-wide, provisional paper ballots may be counted by an optical scan vote tabulating system, with a separate memory card used.

N. Votes to be counted. When counting provisional paper ballots, votes shall be counted for only those positions or measures for which the voter was eligible to vote in the precinct where the ballot was cast. If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall count a vote as provided for in Subsection A and Paragraphs (1) through (4) of Subsection B of Section 1-9-4.2 NMSA 1978. In no case, shall the counting team mark or re-mark the ballot. 1.10.23.12 NMAC contains illustrative examples of how to discern voter intent.

O. The county clerk shall provide a free access system, such as a toll-free telephone number or internet web site that a voter who casts a provisional paper ballot may access to ascertain whether the voter's ballot was counted, and, if the vote was not counted, the reason it was not counted. Access to this system is restricted to the voter who cast the ballot.

P. The county clerk shall notify by mail each voter whose provisional paper ballot was not counted and the reason the ballot was not counted. The clerk shall send out this notification any time between the closing of the polls on election day through the tenth calendar day following the election. The voter shall have until the Friday prior to the meeting of the state canvassing board to appeal this decision to the county clerk.

Q. The appeal process pursuant to Subsection C of Section 1-12-25.2 NMSA 1978 shall be conducted as follows:

- (1) the county clerk shall select a hearing officer(s) from staff or a person who is not affiliated with any candidate on the ballot and knowledgeable of election law and the clerk shall provide a disability accessible room for the hearing officer to work;
- (2) the voter shall schedule an appointment time for an appeal by calling the county clerk's office and shall appear under oath and show by a preponderance of the evidence that the vote should be counted;
- (3) the voter may appear with an advocate;
- (4) the appeal hearing shall be an open meeting, but the voter's personal information:
 - (a) date of birth; and
 - (b) social security number shall not be stated out loud and the public shall not be in the line of sight or view or make notes of the voter's personal information;
- (5) the county clerk or authorized deputies and the public may make a brief public comment and offer relevant exhibits but only the hearing officer shall be permitted to cross examine the witness;
- (6) the hearing officer shall not be bound by the rules of civil procedure, but may use them for guidance and shall make an immediate oral decision or send by certified mail a letter explaining the hearing officer's decision to the voter;
- (7) there is no statutory right of appeal;
- (8) all decisions shall cite a provision of the Election Code explaining the disposition and be announced or mailed by the Monday before the state canvassing board meeting;
- (9) if the voter prevails, the hearing officer shall direct the county clerk staff to handle the ballot as a qualified provisional paper ballot as found above; and
- (10) the county clerk shall notify the county canvassing board of the completion and results of the appeals process.

[1.10.22.9 NMAC - Rp, 1.10.22.9 NMAC, 4-28-06; A/E, 10-2-08; A/E, 11-3-08, A, 3-15-12]

1.10.22.10 SECRETARY OF STATE PROCEDURES:

A. Provisional voters wishing to determine the disposition of their ballot may call the office of the **1.10.22 NMAC 6**

secretary of state fourteen (14) days after the election. The secretary of state shall make the agency toll free number available to county clerks for the purpose of determining the status of provisional paper ballots, or may establish a web-based computer program for the same purpose. The secretary of state, prior to providing information to a voter on the disposition of his ballot, shall verify the identity of the voter by name, address, date of birth and social security number.

B. The secretary of state shall not discuss the disposition of any provisional paper ballot with any person other than the provisional voter.

[1.10.22.10 NMAC - Rp, 1.10.22.10 NMAC, 4-28-06, A, 3-15-12]

1.10.22.11 [RESERVED]

[1.10.22.11 NMAC - N, 4-28-06; A/E, 10-2-08]

1.10.22.12 [RESERVED]

[1.10.22.12 NMAC - N, 4-28-06; A/E, 10-2-08]

1.10.22.13 [RESERVED]

[1.10.22.13 NMAC - N, 4-28-06; A/E, 10-2-08]

HISTORY OF 1.10.22 NMAC:

History of Repealed Material:

1.10.22 NMAC Provisional Voting Security (filed 8-1-03) - Repealed effective 4-28-06