

U.S. ELECTION ASSISTANCE COMMISSION



2010 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 2010 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).

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 put 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

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.

The following definitions are derived from New Mexico Statutes:

- a. *Over-vote means a ballot on which the voter has voted for more than the number of candidates to be elected for that office, or in both the affirmative and negative on a ballot question.*
- b. *Under-vote means a paper ballot that is not a blank ballot and on which the voter has selected at least one candidate or answered at least one ballot question in accordance with the instructions for that ballot type, but on which the voter has selected fewer than the number of alternatives allowed in a candidate contest or on a ballot question.*
- c. *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.*

- d. Void/Spoiled ballot

- e. **Provisional ballot means a marksense or optical scan paper ballot card that is marked by a provisional voter.**
- f. **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.**
- g. **Early voting means a voter who votes in person before election day, and not by mail.**
- h. **Active Voter means a qualified elector, registered to vote under the provisions of the Election Code and who has actively informed the county clerk of any change of residence for the purpose of voter registration and voting.**
- i. **Inactive Voter means a qualified elector, registered to vote under the provisions of the Election Code who has not informed the county clerk of any change of permanent residence address for the purpose of voter registration and voting.**
- j. **Other terms (please specify) _____**

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.

In the 2010 Gubernatorial Primary Election, New Mexico implemented the AutoVote Ballot Generation System for Early and Absentee Voting.

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.)

New Mexico utilizes a bottom-up system.

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

Pursuant to Section 1-5-30.A, NMSA 1978, the secretary of state shall develop, implement, establish and supervise a statewide computerized voter registration system that complies with the federal Help America Vote Act of 2002 to facilitate voter registration and to provide a central database containing voter registration information for New Mexico.

Thus, all 33 counties in New Mexico utilize the Voter Registration Election Management System providing statewide data in real time.

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?

Pursuant to Section 1-4-28.A & B, NMSA 1978, the secretary of state, county clerks and boards of registration, in compliance with the federal National Voter Registration Act of 1993, shall remove from the official list of eligible voters the names of voters who are ineligible to vote due to change of residence. The secretary of state shall issue rules for the cancellation of voter registrations in strict compliance with the federal National Voter Registration Act of 1993 (Exhibit A, attached).

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?

Attached (Exhibit A), please review NMAC 1.10.26, Inactive Voter List. NMAC 1.10.26 was promulgated to activate and inactivate voters in New Mexico.

B4. Can your state's voter registration database (or equivalent) share information electronically with your state's drivers 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.

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

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

The NCOA mailing is used as the confirmation mailing for the purge process as described in NMAC 1.10.26, Inactive Voter List (Exhibit A).

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?)

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 or 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 a 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.***

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.).

New Mexico provides the Federal Voter Registration Form as an alternative to enfranchise voters.

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?

New Mexico votes are counted centrally.

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

All votes are centrally tabulated by precinct for the reporting in the canvass..

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?

Absentee, mail, etc. are reported separately and then included in the canvass.

d. How are UOCAVA ballots counted and reported?

UOCAVA are tallied in a category of overseas voters.

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, a reason is not required.

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?

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 centrally tabulated by precinct and then included in the canvass.

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?

Yes, 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.

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

Pursuant to 1-12-18, 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.

An election judge shall have the voter sign the signature roster and issue the voter a provisional paper ballot, an outer envelope and an official inner envelope. The voter shall vote on the provisional paper ballot in secrecy and when done, place the ballot in the official inner envelope and place the official inner envelope in the outer envelope and return it to the precinct officer. The election judge shall ensure that the required information is completed on the outer envelope, have the voter sign it in the appropriate place and place it in an envelope designated for provisional paper ballots.

Knowingly executing a false statement constitutes perjury as provided in the Criminal Code [30-1-1 NMSA 1978] of this state, and voting on the basis of such falsely executed statement constitutes fraudulent voting.

Attached, please find NMAC 1.10.22 Provisional Voting (Exhibit B).

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.

Provisional ballots are counted if the person is registered to vote. The ballot is added in the precinct the voter voted.

C7. Please describe your state's laws regarding post-election audits, if any.

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.

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

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.

SECTION D: ELECTION DAY ACTIVITIES

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

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.

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

- a. registering to vote;**

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.

b. casting an in-person ballot;

Pursuant to Section 1-12-10, NMSA 1978, when a voter presents himself at the polls to vote, he shall announce his name and address in an audible tone of voice. When an election judge finds the voter's name in the signature roster, he shall in like manner repeat the name of the voter. The election judge shall then ask the voter to provide the required voter identification. The voter shall then sign his name or make his mark on the signature line in the copy of the signature roster to be returned to the county clerk.

B. If a voter fails to provide the required voter identification, the voter shall be allowed to vote on a provisional ballot

c. casting a mail-in or absentee vote;

Identification is not required when casting a mail-in or absentee ballot; unless the voter is a first time New Mexico voter.

d. casting a ballot under UOCAVA;

Identification is not required for UOCAVA voters; unless the voter is a first time New Mexico voter.

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

N/A

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.

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.

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?

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 (Exhibit C), 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.

E2. The Military and Overseas Voter Empowerment Act (MOVE) was signed into law on October 22, 2009. The MOVE Act contains, among other things, provisions regarding States' methods of communication with UOCAVA voters and UOCAVA ballot transmission.

Please describe your State's processes and procedures for implementing MOVE (including any changes in your State's laws or regulations) as they relate to:

- Protecting the security and integrity of the voter registration and ballot application process, the privacy and personal information of the voter, and absentee ballots. (Sect. 577, 578)

- Designating a means of electronic communication for all voting-related materials to UOCAVA voters. (Sect. 577)
- Establishing a ballot tracking mechanism to allow voters to determine whether their ballots were received by the appropriate election official. (Sect. 580(d))

Also, please describe your State's plans to capture data related to the number of registration applications, ballot applications, and blank ballots transmitted to UOCAVA voters via mail and electronic means (Internet, email, fax) *and* the number of registration applications, ballot applications, and completed ballots returned by UOCAVA voters via mail and electronic means (Internet, email, fax).

The State of New Mexico allows UOCAVA voters to vote using the FPCA (Federal Post Card Application) to fax or email their documents. They are also allowed to send back their ballot via fax or email. However, they will need to fill out a disclaimer "waiving their right to secrecy of the ballot".

Pursuant to 1-6-4.1D "A federal qualified elector or overseas voter may transmit, and the county clerk shall accept, an absentee ballot by electronic transmission if:

(1) the voter signs an affidavit waiving the right of secrecy of voter's ballot;

(2) the voter transmits the affidavit with the ballot; and

(3) the transmission of the absentee ballot and affidavit are received by the county clerk no later than 7:00 p.m. on election day.

Statewide, New Mexico's Voter Registration Election Management System tracks the voter's entire history including request for ballot, date mailed and received.

E3. 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.

* 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 – 2010 Election Administration and Voting Survey, 1201 New York Avenue, Suite 300, Washington, DC 20005.

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS
PART 26 INACTIVE VOTER LIST

1.10.26.1 ISSUING AGENCY: Office of the Secretary of State
 [1.10.26.1 NMAC - N, 9-30-2005]

1.10.26.2 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, municipal, special district elections and regular or special school district elections as modified by the School Election Law (Sections 1-22-1 to 1-22-19 NMSA 1978).
 [1.10.26.2 NMAC - N, 9-30-2005]

1.10.26.3 STATUTORY AUTHORITY: Election Code, Section 1-2-1 NMSA 1978; Chapter 270, Laws 2005, Public Law 103-31, The National Voter Registration Act of 1993. The issuing authority shall issue rules in accordance with the provisions of the federal National Voter Registration Act of 1993.
 [1.10.26.3 NMAC - N, 9-30-2005]

1.10.26.4 DURATION: Permanent.
 [1.10.26.4 NMAC - N, 9-30-2005]

1.10.26.5 EFFECTIVE DATE: September 30, 2005 unless a later date is cited at the end of a section.
 [1.10.26.5 NMAC - N, 9-30-2005]

1.10.26.6 OBJECTIVE: The Election Code (Section 1-1-1 NMSA through 1-24-4 NMSA 1978) was amended by Chapter 270, Laws 2005. The purpose of the amendment is compliance with the provisions of PL 103-31, effective January 1, 1995, which sets forth certain procedures for uniform, non-discriminatory maintenance of voter registration lists.
 [1.10.26.6 NMAC - N, 9-30-2005]

1.10.26.7 DEFINITIONS:

- A. "Active status"** means a state of participation in the electoral process in which a voter informs a county clerk of any change of permanent residence address for the purpose of voter registration and voting.
- B. "Active voter"** means a qualified elector, registered to vote under the provisions of the Election Code and who has actively informed the county clerk of any change of residence for the purpose of voter registration and voting.
- C. "Board of registration"** means the voters of a county who are appointed by the board of county commission and serve under the provisions of Section 1-4-33 through 1-4-38, NMSA 1978.
- D. "Confirmation card"** means a postage pre-paid, pre-addressed return card, sent by forwardable mail on which the voter may state a current address.
- E. "Confirmation mailing"** means the state organized process of address verification of voters who have filed a change of address with the postal service, but have not changed their address for the purpose of voter registration and voting.
- F. "Election"** means any special statewide election, general election, primary election, countywide election or election to fill vacancies in the office of United States representative, municipal, special district elections and regular or special school district elections.
- G. "Federal election"** means any general election, primary election or special election to fill vacancies in the office of United States representative.
- H. "Inactive status"** means a state of non-participation in the electoral process in which a voter does not inform a county clerk of any change of permanent residence address for the purpose of voter registration and voting.
- I. "Inactive voter"** means a qualified elector, registered to vote under the provisions of the Election Code who has not informed the county clerk of any change of permanent residence address for the purpose of voter registration and voting.
- J. "Removable status"** means a registered voter ineligible to vote by reason of having moved from the jurisdiction, declaration of incompetence by a court of law, unrestored felon status, death, or request of the voter or cancellation of registration by the board of registration.
- K. "Removable voter"** means a qualified elector who is ineligible to vote in his or her jurisdiction due to having moved from the jurisdiction, received a declaration of incompetence by a court of law, is an unrestored felon, is deceased, has requested cancellation of the certificate of registration or has had their certificate of registration cancelled by the board of registration.
- L. "Undeliverable mailing"** means any item of mail sent to a voter and returned by the postal service because the voter is not at that address.
- M. "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 provisions of the Election Code of the state of New Mexico.

N. “**Voter file**” means all voter registration information required by law and by the secretary of state that has been extracted from the certificate of registration of each voter in the county, stored on data recording media and certified by the county clerk as the source of all information required by the Voter Records System Act.
[1.10.26.7 NMAC - N, 9-30-2005]

1.10.26.8 CONFIRMATION PROCESS:

- A.** By December of odd-numbered years, the secretary of state shall contract with a postal service approved vendor of the national change of address (NCOA) program. The entire state voter file shall be compared to the postal service NCOA listing.
- B.** Any voter appearing on the NCOA file who has not changed their residence address with the county clerk list shall be mailed a confirmation card requesting a current address. Confirmation cards must be returned by the voter in 60 days.
- C.** If a voter’s confirmation card is returned undeliverable, the county clerk shall enter that voter on the voter file as inactive. If the voter returns the card with a new address in the same county, the county clerk shall use the confirmation mailing to update the voter’s address on the voter file. If the voter returns the card and indicates they have moved to another jurisdiction, the county clerk shall enter the voter as removable on the voter file.
- D.** After four consecutive federal elections with an inactive status and failure to vote in any state or local election or to update the residence address, the voter shall be removed from the voter file through the board of registration cancellation process. An appearance to vote in any election restores a voter to active status.
- E.** All activities of the NCOA confirmation process shall be completed no later than ninety (90) days of the federal primary election.
- F.** Voters shall also be placed on inactive status whenever a general mailing returns mail as undeliverable. A general mailing may consist of absentee ballots, voter identification cards, letters of information sent to all voters in a county, or any other mailing that is not targeted to a specific group or to non-voters.
[1.10.26.8 NMAC - N, 9-30-2005]

1.10.26.9 CANCELLATION PROCESS:

- A.** In March of odd-numbered years, the board of registration shall review a list of voters who have been on inactive status since the second previous primary election. The county clerk shall present a verified list of all voters to be removed to the board of registration. This list shall be generated by the secretary of state. The list and procedures for removing voters from the statewide voter registration system shall be consistent with the provisions of PL 103-31 U.S.C. 1973 gg-6(a) (4).
- B.** Upon approval of the list by the board of registration, each inactive voter on the list shall be flagged as removable status on the statewide voter registration system and their original voter registration (affidavit) shall be cancelled pursuant to Section 1-4-32 NMSA 1978.
[1.10.26.9 NMAC - N, 9-30-2005; A/E, 2-27-2009]

History of 1.10.26 NMAC: [RESERVED]

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. The issuing authority shall issue rules to ensure securing the secrecy of the provisional ballot and protect against fraud in the voting process, create a uniform process and set of criteria for deciding if provisional, absentee and other paper ballots shall be counted, and ensure the secrecy of provisional ballots, especially during canvassing, reviewing or recounting.

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

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. The purpose of the amendment 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 or a new voter whose name does not appear on the roster and has not provided the required identification to cast a provisional ballot. The purpose of this rule is to ensure the secrecy of the provisional ballot and protect against fraud in the voting process. Chapter 270, Laws 2005 amended the Election Code to require a uniform process and set of criteria for deciding if provisional, absentee and other paper ballots shall be counted, and to ensure the secrecy of provisional ballots, especially during canvassing, reviewing or recounting.

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

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, 'Rick' for Ricardo or Richard, 'Mtz' for Martinez.

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 ballot register" means a list of the name and address of each applicant; the date and time of receipt of the application; the disposition of the application; the date of issue of the absentee ballot; the applicant's precinct; whether the applicant is a voter, federal voter, qualified federal elector or an overseas citizen voter and the date and time of receipt of the ballot.

E. "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.

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

G. "Alternate location" means a site outside the office of the county clerk, established by the county clerk, where a voter may cast a ballot seventeen (17) days prior to an election and includes mobile alternate voting locations.

H. "Alternative voter" means a voter, who, after the deadline for requesting an absentee ballot and due to unforeseen illness or disability, resulting in confinement to a hospital, sanatorium, nursing home or residence, is unable to vote at his precinct polling place.

- I.** “**Ballot**” means a paper ballot card that is used on an optical scan vote tabulating machine or hand tallied or the electronic image on a direct recording electronic voting system that presents a sequence of contests, ballot measures or both.
- J.** “**Challenger**” means a voter in that county to which he is appointed under the provisions of the Election Code.
- K.** “**Contest**” means court litigation that seeks to overturn the outcome of an election pursuant to Section 1-14-1 NMSA 1978.
- L.** “**County canvassing board**” means the board of county commissioners in each county.
- M.** “**Designated polling place**” means the voting location assigned to a voter based on that voter’s residence within a precinct of the county.
- N.** “**Direct recording electronic (DRE) voting system**” means a voting system that records votes by means of a ballot display provided with mechanical or electro-optical components that can be actuated by the voter, that processes the data by means of a computer program, and that records voting data and cast vote records by in internal and external memory components. It produces a tabulation of the voting data stored in a removable memory component or in printed copy.
- O.** “**Early voter**” means a voter who votes in person before election day and not by mail.
- P.** “**Election**” means any special statewide election, general election, primary election or special election to fill vacancies in the office of United States representative and regular or special school district elections.
- Q.** “**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 one ballot card 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.
- R.** “**Emergency paper ballot**” means the paper ballot card used in a polling place on election day when a voting system is disabled, cannot be repaired in a reasonable length of time and when no other voting system is available to the voter.
- S.** “**Federal ballot**” means a paper ballot card that contains only federal candidates or questions.
- T.** “**High speed central count marksense ballot tabulator**” means a self-contained optical scan ballot tabulator that uses an automatic ballot feeder to process ballots placed in the tabulator in any orientation. Ballots are processed at high speed and the tabulator has a built in sorting system to divert processed ballots into appropriate bins.
- U.** “**Marksense or optical scan ballot**” means a paper ballot card used on an electronic vote tabulating marksense vote tabulating system, optical scan vote tabulating system or high-speed central count marksense vote tabulator.
- V.** “**In-lieu of absentee ballot**” means a paper ballot card provided to a voter at his polling place when the absentee ballot was not received by the voter before election day.
- W.** “**Naked ballot**” means an absentee ballot, provisional ballot, alternative ballot, replacement absentee ballot or in-lieu of absentee ballot that has not been placed in the inner secrecy envelope by the voter.
- X.** “**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.
- Y.** “**Overvoted ballot**” means a paper ballot card on which the voter has selected more than the number of alternatives allowed in a contest or on a question.
- Z.** “**Precinct board**” means the appointed election officials at a polling place, consolidated polling place, absentee precinct or alternate location.
- AA.** “**Presidential ballot**” means a paper ballot card containing only names of candidates for United States president.
- BB.** “**Provisional absentee voter**” means a voter who votes on a provisional absentee ballot after initially attempting to vote by absentee ballot but whose name does not appear on the roster or has failed to meet the voter identification requirements, pursuant to the provisions of the Election Code.
- CC.** “**Provisional ballot**” means a marksense or optical scan paper ballot card that is marked by a provisional voter.
- DD.** “**Provisional ballot tally sheet**” means a document prepared and used by the county clerk for the counting of votes cast by qualified provisional voters for candidates and questions.
- EE.** “**Provisional 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.
- FF.** “**Provisional voter**” means a voter casting a provisional ballot pursuant to the provisions of the

Election Code.

GG. “**Replacement absentee ballot**” means a paper ballot card issued by the county clerk prior to 5:00 p.m. on the Monday immediately preceding the date of the election to a voter who has applied for but not received an absentee ballot.

HH. “**Signature roster**” means the certified list of voters at a polling place which is signed by a voter when presenting himself on election day.

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

JJ. “**Verification process**” means the reviewing process used by a county clerk to determine the eligibility of a provisional or in-lieu of absentee voter.

KK. “**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.

LL. “**Voting response area**” means the place on a paper ballot card where the voter is instructed to mark his preference for a candidate or question.

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

1.10.22.8 PRECINCT BOARD PROCEDURES:

A. A voter whose name does not appear on the roster or is required to present identification at the polling place and fails to do so shall be entitled to cast a vote on a provisional ballot. The precinct board shall instruct the voter that the required identification must be taken to the office of the county clerk before the county canvass begins for the vote 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 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 phone 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 not accept any verbal authorization from the county clerk to allow a person to vote as a regular voter whose name is not on the roster. The precinct board shall not accept any verbal authorization from the county clerk to allow a person to vote as a regular voter who is required to provide identification pursuant to the Election Code. The precinct board shall also ensure that the provisional voter, absentee provisional ballot or in-lieu of absentee voter shall fill out all required information on the provisional ballot affidavit or in-lieu of absentee ballot affidavit and 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, absentee provisional ballot or in-lieu of absentee ballot voter is entered in the 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 voter completes the certificate of voter registration attached to the provisional ballot outer envelope and that the certificate of registration is not placed in the envelope but returned to the county clerk.

D. The precinct board shall ensure that each provisional ballot, absentee provisional 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.

E. The precinct board shall ensure emergency paper ballots shall be handled and tallied pursuant to the provisions of the Election Code.

F. The precinct board shall ensure provisional 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 the voter registration card attached to the outer provisional ballot envelope shall be placed in the provisional ballot transmission envelope and returned to the county clerk.

H. The precinct board shall ensure a provisional ballot, absentee provisional ballot, or in-lieu of absentee ballot shall not be placed in a ballot box at the polling place, alternate location or county clerk’s office. Provisional ballots shall be deposited in a special sealed provisional ballot transmission envelope or pouch designated by the county clerk for that purpose. The precinct board shall not open any absentee ballots delivered to the precinct but shall deliver the unopened official mailing envelopes to the absentee precinct boards.

I. Absentee precinct boards are governed by 1.10.12.1 NMAC. Absentee precinct boards shall not open or tally any provisional absentee ballots, but shall convey them to the county clerk for processing according to the provisions of the Election Code and 1.10.22 NMAC. 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]

1.10.22.9 COUNTY CLERK PROCEDURES:

A. The provisional ballot outer envelope containing the voter's oath shall not be opened until the county clerk has determined the reason the provisional voter's name was not on the signature roster, or whether the voter has provided identification, if required, by the Election Code. 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 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's address on the affidavit 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.

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, address, middle name, middle initial or suffix, provided the county clerk can identify the voter with other information provided on the affidavit.

D. The county clerk shall determine the qualification of a provisional ballot but shall not disqualify any provisional 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 outer envelope of the paper ballot or affidavit.

E. A provisional 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, provided that a voter shall not have his vote disqualified under Subsections B, C or D of this section, and

(2) if the county clerk can determine the voter is a registered voter in the county; if a voter is registered in county, but cast a provisional ballot at the wrong polling place, the county clerk shall ensure that only those votes for the positions or measures for which the voter was eligible to vote are counted; if there is a conflict between New Mexico statute and this statewide standard, the statute will control.

F. A provisional ballot shall be rejected if: (a) the voter has not provided all the information under Sections 1-12-25.3 and 1-12-25.4 NMSA 1978 subject to the provision in Subsections B, C or D of this section; (b) the clerk cannot determine the voter is a registered voter in the county; (c) the voter has voted outside his county of registration; (d) voter has voted an absentee ballot in the election; (e) voter's registration was properly cancelled; or (f) voter failed to meet the voter identification requirements. If there is a conflict between New Mexico statute and this statewide standard, the statute will control.

G. A county canvass observer, pursuant to Section 1-2-31 NMSA 1978 may be present during the provisional ballot qualification process and canvass. At all times while observing the process and canvass, the observer shall wear self-made badges designating them as authorized observers of the organizations which they represent. They shall not wear any other form of identification, party or candidate pins. The observer shall not: (a) perform any duty of the workers; (b) handle any material; (c) interfere with the orderly conduct of workers conducting the process; and (d) use cell phones, audio or video tape equipment while observing the process. The provisional ballot qualification process shall be run with the county clerk staff member reading aloud the name and address of the provisional ballot. A county canvass observer may interpose a challenge to the qualification of the voter consistent with Subsections A - E of Section 1-12-20 NMSA 1978. The county clerk staff member shall handle the challenge consistent with Section 1-12-22 NMSA 1978. The county clerk staff member will then announce aloud his or her decision regarding whether that provisional vote will or will not be qualified; the county clerk shall assign a different county clerk staff member than those involved in the qualification process to receive and open the ballot from 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 personal information: date of birth, party affiliation, and social security number.

H. 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 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 marked "unqualified provisional ballots" and retained for twenty-two

(22) months, pursuant to 42 USC 1974. The outer provisional ballot envelope for qualified provisional ballots shall be opened and deposited in an envelope marked “qualified provisional ballot outer envelopes” and retained for twenty-two (22) months, pursuant to 42 USC 1974. The county clerk 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 ballots, the county clerk shall deposit the counted provisional ballots in an envelope marked “counted provisional ballots” and retained for twenty-two (22) months, pursuant to 42 USC 1972.

I. The county canvassing board shall direct the county clerk to prepare a tally of qualified provisional 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 ballots, in-lieu of absentee ballots and absentee provisional ballots shall be tallied on separate tally sheets. The county clerk shall process provisional absentee ballots using the same procedures used for provisional ballots cast at the polling place or alternate location. The tally sheet may be a photocopy of a precinct tally sheet, however it shall be clearly marked as designated for provisional ballots, in-lieu of absentee ballots or provisional absentee ballots. Upon the conclusion of the county canvass, the county clerk shall transmit the provisional 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 ballots cast within the county. The report shall contain the name, address and correct precinct number of each provisional voter, in-lieu of absentee ballot voter or provisional absentee ballot voter. 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 access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot. The report shall include an explanation 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.

J. Counting procedures for provisional ballots. The county clerk shall count the qualified provisional ballots using the hand tally method. One team of at least two persons shall be used to count each qualified provisional ballot. The team shall consist of one reader and one marker, not of the same political party whenever 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.

K. Votes to be counted. When counting provisional ballots, votes shall be counted for only those positions or measures for which the voter was eligible to vote. 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.

L. The county clerk shall establish 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.

M. The county clerk may designate emergency paper ballots for use as provisional ballots.

N. The county clerk shall notify by certified mail each voter whose provisional ballots was not counted of 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.

O. 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 from the community 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 counsel;
- (4) the appeal hearing shall be an open meeting, but the voter’s personal information:
 - (a) date of birth;
 - (b) party affiliation, and
 - (c) 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) county clerk staff and the public may make 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 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 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]

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 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 ballots. 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 ballot with any person other than the provisional voter.

[1.10.22.10 NMAC - Rp, 1.10.22.10 NMAC, 4-28-06]

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

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS
PART 18 ADMINISTRATIVE COMPLAINT PROCEDURE

1.10.18.1 ISSUING AGENCY: Office of the Secretary of State
[1.10.18.1 NMAC – N, 03-15-2004]

1.10.18.2 SCOPE: This rule applies to any statewide special election, general election, primary election, county-wide election or election 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).
[1.10.18.2 NMAC - N, 03-15-2004]

1.10.18.3 STATUTORY AUTHORITY: Election Code, Section 1-2-1 NMSA 1978, Section 1-2-2.1 NMSA 1978, Public Law 107-252, The Help America Vote Act of 2002. The issuing authority shall adopt rules for an administrative 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.
[1.10.18.3 NMAC - N 03-15-2004]

1.10.18.4 DURATION: Permanent
[1.10.18.4 NMAC - N, 03-15-2004]

1.10.18.5 EFFECTIVE DATE: March 15, 2004 unless a later date is cited at the end of a section.
[1.10.18.5 NMAC - N, 03-15-2004]

1.10.18.6 OBJECTIVE: The Election Code (Section 1-1-1 through 1-24-4 NMSA 1978) was amended by Chapter 356, Laws 2003. The purpose of the amendment is compliance with the provisions of PL 107-252, effective October 29, 2002, which requires New Mexico to establish a state-based administrative complaint procedure to remedy grievances under Title III of the Help America Vote Act.
[1.10.18.6 NMAC - N, 03-15-2004]

1.10.18.7 DEFINITIONS: Unless otherwise defined below, the terms used in these procedures share the same definitions and meanings as the HAVA Act.

- A. “Administrative procedures”** means the procedures stated in this rule. These procedures will be available in alternative languages and formats.
- B. “Bureau”** means the New Mexico secretary of state’s bureau of elections.
- C. “Complaint form”** means a template form created by the bureau that will be available in hard copy in county clerk’s offices. A copy will also be made available by mail and available on the office of the secretary of state’s website.
- D. “HAVA”** means the Help America Vote Act of 2002 (Public Law 107-252).
- E. “HAVA Title III”** means the section of Public Law 107-252 titled “Uniform and Nondiscriminatory Election Technology and Administration Requirements”.
- F. “HAVA Title III violation”** means an act contrary to a party’s statutory rights regarding voting systems standards, provisional voting procedures, voter registration procedures, and operational standards of the statewide voter registration system as found in NMSA 1978, Section 1-2-2.1 and HAVA Title III. It does not mean non-Title III election law matters, such as a candidate’s ballot access or campaign reporting requirements.

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

1.10.18.8 INITIATING A COMPLAINT:

- A. Any person who believes a HAVA Title III violation has occurred, is occurring, or is about to occur may file a written complaint, on the bureau’s complaint form, that states the name of the alleged violator and a specific description of the alleged HAVA Title III violation.**
- B. The complaint must be signed and sworn or affirmed by the complainant and it must be notarized.**
- C. The complainant may check a box on the complaint requesting an on-the-record hearing or no hearing.**

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]