

THE OFFICE OF THE NEW MEXICO SECRETARY OF STATE

IN RE:

RULEMAKING PROCEEDING FOR THE
ADOPTION OF 1.10.15 NMAC –
ALTERNATIVE AND ELECTION DAY
ADMINISTRATION

CONCISE EXPLANATORY STATEMENT

The Office of the New Mexico Secretary of State (the “SOS”) hereby adopts the Alternative and Election Day Voting Administration rule; that is codified in Part 1.10.15 NMAC.

(1) Statutory Authority for Rule Promulgation:

Sections 1-2-1 and 1-12-72, NMSA 1978, authorizes the SOS to adopt and promulgate rules necessary to carry out the purposes of the Election Code.

(2) Effective Date of Rule:

Date of publication in the New Mexico Register.

(3) Date of Adoption of Rule:

September 1, 2020

(4) Reasons for Adopting Rule:

The purpose of this rule is to provide a uniform system of conducting elections based on legislative changes in the Election Code

(5) Reasons for Changes from Published Rule:

The changes made to published rules are based on written and oral public comment received. The “Definition” section was removed as “mailable voter” was not used in the proposed rule and added nothing substantive to the statutory definition. The rest of the rule was renumbered accordingly.

In Part 1.10.15.7 NMAC, the SOS made a clarification regarding safeguarding a rejected mailed ballot while a county clerk is contacting a voter about the deficiency in the mailed ballot. Additionally, the clerk is now required to provide notice to the voter of a deficient mailed ballot in the voter’s preferred language. The final change is to reflect the proper choice of word that the clerks will enter on the electronic voter system when the voter has successfully cured the deficient mailed ballot.

In Part 1.10.15.8 NMAC the SOS made a clarification that challengers' restricted activities are applicable when inside the polling location itself and doesn't restrict the actions of an election challenger in the same ways when a challenger is located in the absent voter election precinct or participating in other canvassing activity listed in Section 1-2-26(A)(6) NMSA 1978. Additionally, the SOS clarified the proper parties who may appoint a challenger pursuant to the Election Code. Finally, the SOS placed a requirement on the county clerks to train election board members on allowing for challenges.

(6) Reasons for Not Accepting Substantive Arguments from Public Comment:

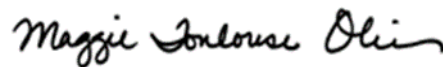
The SOS did not accept the argument that Part 1.10.23.8 NMAC should apply to the curing process pursuant to 1-12-72(J), NMSA 1978, as this is not contemplated in the Election Code and the determination of the county clerk to accept or reject a mailed ballot is subject to a later interposition of a challenge before the absent voter election board. Challengers are allowed when the absent precinct voter board meets, and the absent voter precinct board also may reject a mailed ballot pursuant to 1-6-14(B), NMSA 1978.

The SOS did not accept the argument that certain proposed changes to challengers' behaviors are incongruent to the Election Code. All the provisions related to challengers' actions have been uniformly adhered to by election administrators and are done to preserve the secrecy of the ballot, prevent voter intimidation, and allow for a uniform and efficient administration of voting in the polling location.

The proposed rule is hereby adopted as of the date of this Concise Explanatory Statement.

IT IS SO ORDERED.

ON BEHALF OF THE OFFICE OF THE
NEW MEXICO SECRETARY OF STATE



9/1/2020

DATE

Maggie Toulouse Oliver
Secretary of State