

The Office of the Secretary of State proposes to amend the following rules:

1.10.12.7 DEFINITIONS:

A. “Absentee ballot” means a method of voting by mail, accomplished by a voter who is absent from the voter’s polling place on election day. “Absentee ballot” has the same definition under the Absent Voter Act as a mailed ballot.

B. “Absentee ballot register” means a listing kept by the county clerk for each election with the information specified in the Election Code, Section 1-6-6 NMSA 1978.

C. “Adjudicate” means a decision made by a precinct board, in accordance with the Election Code, of a ballot signifying a voter’s intent to mark their selection for a candidate contest or ballot question.

D. “Alternate voting location” means a location outside the office of the county clerk, established by the county clerk, where a voter may cast an early in person ballot on voting tabulator. This includes mobile alternate voting locations.

E. “Application” means ~~[an absentee]~~ a mailed ballot application, prescribed by the secretary of state pursuant to the Election Code, Section 1-6-4 NMSA 1978.

F. “Ballot markers” means the grid pattern around the voting response area on the ballot face used by the voting tabulator to distinguish the ballot style and voter’s selection of alternatives allowed in any candidate contest or ballot question to record, count and produce a tabulation of votes cast.

G. “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.

H. “Challenger” means a voter of a precinct located in that county to which the voter is appointed in conformance with the Election Code, Section 1-2-21 to 1-2-22 NMSA 1978 for the purpose of carrying out such duties as prescribed in the Election Code, Section 1-2-23 to 1-2-26 NMSA 1978.

I. “County canvassing board” means the board of county commissioners in each county, convened for the purposes of conducting the county canvass.

J. “Early voter” means a voter who votes in person before election day, and not by mail.

K. “Early voting daily report” means a form used to certify the daily early voting activity at the office of the county clerk, alternate voting location and mobile alternate voting location; the form shall be prescribed by the office of the secretary of state to be completed and filed daily during early voting, consisting of the voting tabulator serial number, beginning public counter number, ending public counter number, total number of ballots cast early per tabulator and those to be hand tallied.

L. “Electronically transmitted ballot” means a ballot provided through an electronic transmission system to federal qualified electors pursuant to Section 1-6B-7 or to blind or visually impaired voters as provided in Section 1-9-7.1 NMSA 1978.

~~[M.]~~ ~~“Immediate family member” means a person’s spouse, children, parents, brothers and sisters.~~

~~N.]~~ **M.** “Inner envelope” means the official envelope, prescribed by the secretary of state, given to the voter along with an absentee or provisional ballot into which the voter places the ballot after it is voted and which is used to preserve the secrecy of the voter’s ballot.

~~O.]~~ **N.** “Official transmittal envelope” means the official envelope used by the county clerk to mail absentee ballot materials, to include the inner and outer envelopes.

~~P.]~~ **O.** “Outer envelope” means the official envelope, prescribed by the secretary of state, which has information that will identify the voter and contains a sworn affidavit, into which the voter places the inner envelope, containing an absentee ballot.

Q.] **P.** “Overvoted ballot” means a ballot on which the voter has selected more than the number of candidates to be elected for that contest, or in both the affirmative and negative on a ballot question.

R.] **P.** “Provisional ballot envelope” means the official envelope, prescribed by the secretary of state, which has information that will identify the provisional voter, purpose the provisional ballot was issued and contains a sworn affidavit and a blank voter registration certificate, into which the provisional voter places the inner envelope.

S.] **R.** “Replacement absentee ballot” means a ballot that is processed as a provisional ballot, provided to a voter whose name appears on the absentee ballot register or signature roster as having been issued an absentee ballot and who has affirmed that the ballot was not received or voted on pursuant to the Election Code, Section 1-6-16 NMSA 1978. The ballot shall be placed in a provisional ballot envelope prescribed by the secretary of state and processed within the timeframe specified in the Election Code, Section 1-6-16 NMSA 1978. A voter may also be issued a ballot at the office of the county clerk, an alternate voting location or a mobile alternate voting location, to be filled out and fed by the voter into the electronic voter tabulator if that voter affirms that their absentee ballot was

not received or voted.

~~[T.]S.~~ **“Undervoted ballot”** means a 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.

~~[U.]T.~~ **“Voting response area”** means the place on a ballot the voter is instructed to mark the voter’s selection for a candidate or question.

[1.10.12.7 NMAC - Rp, 1.10.12.7 NMAC, 4/24/2018; A, xx/xx/2020]

1.10.12.9 ABSENTEE VOTING:

A. A voter shall have the right to vote by absentee ballot for all candidate contests and ballot questions as if the voter were casting the ballot in person at their election day polling place. Absentee ballots are provided as follows:

(1) By mail - by completing and signing an application as provided in the Election Code, Section 1-6-5 NMSA 1978 and received by the office of the county clerk, pursuant to the Election Code, Section 1-6-10 NMSA 1978 during the regular hours and days of business.

(a) A voter who is required to present identification and has not done so at the time the voter’s ballot is to be mailed to them, shall be sent a ballot that is processed as a provisional ballot, ~~[along with a provisional ballot envelope prescribed by the secretary of state,]~~ and shall include instructions on how to provide the required identification pursuant to the Election Code, Section 1-4-5.1 NMSA 1978.

(b) A blind or visually impaired voter pursuant to the Election Code, Section 1-9-7.1 NMSA 1978, may request an electronically transmitted ballot by completing an absentee application and executing a statement certifying blindness. The county clerk shall provide an absentee ballot through electronic transmission, enabling the use of one’s personal nonvisual or low vision access technology to independently mark the ballot. The electronic transmission shall also include instructions on how the voter accesses the ballot, marks their selections, returns the ballot, as well as, the voter certificate as required in the Election Code, Subsection[s] C ~~[and D]~~ of Section 1-6-8 NMSA 1978, which shall be completed, signed and included with the returned ballot, in the outer envelope.

(i) The secretary of state shall prescribe an official transmittal envelope such that the blind or visually impaired voter can distinguish it for the purposes of returning the absentee ballot.

(ii) Delivery of electronically transmitted ballots shall be by a computer system secured by intrusion detection and protection systems.

(2) Early - by completing and signing an application at the office of the county clerk beginning 28 days before the election, or 20 days prior to the election at an alternate voting location or mobile alternate voting location in accordance with the Election Code, Section 1-6-5 NMSA 1978.

(a) Each county clerk shall ensure that the employee issuing ballots at the office of the county clerk and precinct board members at the alternate voting location or mobile alternate voting location are trained on the accessible voting device of the voting tabulator so that any voter may mark a ballot independently.

(b) A voter who is required to present a physical form of identification and does not submit it upon requesting to vote early shall be issued a provisional ballot in accordance with the Election Code, Section 1-12-7.1 NMSA 1978.

(3) A federal qualified elector or emergency response provider may apply for an absentee ballot in accordance with the Uniform Military and Overseas Voter Act.

B. A voter who has been issued an absentee ballot by mail or via electronic delivery shall not be allowed to vote in person, other than under the following conditions:

(1) In accordance with the Election Code, Section 1-6-16 NMSA 1978, a voter who has not received, or if received, has not voted the ballot, will be issued a replacement absentee ballot that is processed as a provisional ballot. The replacement absentee ballot may be mailed to the voter, to include express mail, if the county clerk deems necessary, or issued in person at the office of the county clerk, alternate voting location or mobile alternate voting location. Once voted, the voter shall place the replacement absentee ballot in an outer envelope and shall complete and sign the attached sworn affidavit.

(2) The voter, by executing a sworn affidavit at their election day polling place affirms that they have not received, or if received, have not voted the ballot, will be issued a replacement absentee ballot that is processed as a provisional ballot, along with a provisional ballot envelope prescribed by the secretary of state.

(3) A replacement absentee ballot issued at the office of the county clerk, alternate voting location, mobile alternate voting location or election day polling place must be voted on prior to the voter leaving

the premises, provided however, that the ballot shall be not be cast in the voting tabulator, but placed and sealed in a provisional ballot envelope prescribed by the secretary of state to undergo the subsequent provisional qualification process by the county clerk.

(4) The voter, by executing a sworn affidavit affirming that they did not and will not vote the mailed ballot that was issued, may appear at the office of the county clerk, an alternate voting location or a mobile alternate voting location and be issued a replacement ballot to be filled out and fed by the voter into the electronic vote tabulator.

[1.10.12.9 NMAC - Rp, 1.10.12.9 NMAC, 4/24/2018; A, xx/xx/2020]

1.10.12.13 VOTE TABULATION:

A. Ballots shall be tabulated for the reporting of votes pursuant to the Election Code, Section 1-12-70 NMSA 1978.

(1) Early voted ballots, not by mail, cast on a voting tabulator shall be counted separately from absentee by-mail ballots in accordance with the Election Code~~[, Section 1-6-5.4 NMSA 1978]~~ and recorded in the early vote by machine counting group.

(a) If an early voted ballot is returned by the voting tabulator as overvoted or blank, the ballot shall be accepted by the voting tabulator only after requesting and receiving a declaration by the voter of their intent to cast the overvoted or blank ballot as is.

(b) An early voter who declares their intent to cast the overvoted or blank ballot, shall have their ballot cast on the voting tabulator. For overvoted ballots, only those contests receiving no more than the allotted selections for the number of candidates to be elected or ballot questions where there is one selection for either the affirmative or negative will be tabulated; for blank ballots, no votes will be tabulated.

(c) An early voter who declares their intent to not cast the overvoted or blank ballot shall have their ballot rejected by the voting tabulator without the tabulation of votes. The overvoted ballot shall be spoiled in conjunction with Section 1-12-62 NMSA 1978. The county clerk or precinct board member shall instruct the voter to insert the spoiled ballot into a spoiled ballot envelope and return the spoiled ballot envelope to the county clerk. The voter shall then be issued a new ballot, be instructed how to mark their selection of alternatives allowed in any candidate contest or ballot question in the voting response area and how to personally feed the ballot into the voting tabulator.

(i) In the event the voter does not wish to spoil their voted ballot and declines a new ballot, the overvoted ballot shall be delivered to the absentee precinct board, after the close of early voting, to be hand tallied in accordance with 1.10.23 NMAC. The ballot will be counted and recorded in the early vote by hand tally counting group; or,

(ii) If deemed necessary by the county clerk, a high speed central cast tabulator may be designated, programmed and certified for the tabulation of such ballots. The absentee precinct board will adjudicate the overvoted or blank ballot and count and record it in the early vote by hand tally counting group.

(d) If an early voted ballot cast is misread after being fed into the voting tabulator, the voter shall be instructed to insert the ballot in a different orientation. If the ballot is misread again, the ballot will be spoiled, and the county clerk or precinct board member shall instruct the voter to insert the spoiled ballot into a spoiled ballot envelope and return it to the county clerk in conjunction with the Election Code, Section 1-12-62 NMSA 1978. The voter shall then be issued a new ballot, be instructed how to mark their selection of alternatives allowed in any candidate contest or ballot question in the voting response area and how to personally feed the ballot into the voting tabulator. In the event the voter does not wish to spoil their voted ballot and declines a new ballot, the misread ballot shall be delivered to the absentee precinct board, after the close of the early voting period, by the precinct board, to be hand tallied in accordance with 1.10.23 NMAC. The ballot will be counted and recorded in the early vote by hand tally counting group.

(2) Absentee by-mail ballots, either returned by mail or hand-delivered, shall be fed into a voting tabulator by an absentee precinct board member in accordance with the Election Code, Sections 1-6-11 and 1-6-14 NMSA 1978 as follows:

(a) An overvoted or blank absentee by-mail ballot shall be accepted by the voting tabulator after it has been adjudicated by the absentee precinct board. The ballot will be counted and recorded in the absentee by machine counting group.

(b) If an absentee by-mail ballot is misread after being fed into a voting tabulator, an absentee precinct board member shall feed it into the voting tabulator a second time. An absentee by-mail ballot that is rejected after two attempts shall be adjudicated by the absentee precinct board, hand tallied by precinct as

provided in 1.10.23 NMAC and counted and recorded in the absentee by hand tally counting group.

(c) Returned absentee ballots that were issued via electronic transmission to a blind or visually impaired voter will not contain programmed ballot markers necessary for tabulation by the voting tabulator. These ballots shall be hand tallied by the absentee precinct board, by precinct and shall be counted and recorded in the absentee by hand tally counting group.

(3) Returned military-overseas ballots, either mailed back or electronically submitted shall be counted separately from all other absentee by-mail or early voted ballots. The county clerk shall determine whether returned military-overseas ballots are to be hand-tallied, or if necessary, to designate, program and certify a voting tabulator for the tabulation of such ballots.

(a) Returned military-overseas ballots that do not contain programmed ballot markers necessary for tabulation by a voting tabulator, shall be hand tallied by the absentee precinct board, by precinct and shall be counted and recorded in the federal overseas hand tally counting group.

(b) When a voting tabulator is used for the tabulation of military-overseas ballots that contain programmed ballot markers, the ballots shall be fed into the voting tabulator by an absentee precinct board member and the votes shall be counted and recorded in the federal overseas by machine counting group.

(c) An overvoted or blank military-overseas ballot shall be accepted by the voting tabulator after it has been adjudicated by the absentee precinct board. The ballot will be counted and recorded in the federal overseas by machine counting group.

(d) If a military-overseas ballot is misread after being fed into a voting tabulator, an absentee precinct board member shall feed it into the voting tabulator a second time. A military-overseas ballot that is rejected after two attempts shall be adjudicated by the absentee precinct board, hand tallied by precinct as provided in 1.10.23 NMAC and counted and recorded in the federal overseas hand tally counting group.

(4) Undervoted ballots shall be accepted by the voting tabulator, regardless of either being cast early at the county clerk's office, an alternate voting location or mobile alternate voting location or absentee by-mail ballot and only those contests or ballot questions receiving a selection by the voter will be tabulated.

B. The public counter number of the voting tabulator will not increase in the above scenarios involving an overvoted or blank ballot, unless the ballot is accepted by the voting tabulator after requesting and receiving a declaration by the voter of their intent to cast the overvoted or blank ballot as is or by adjudication of the absentee precinct board. An undervoted ballot fed into the voting tabulator will increase the public counter number.

C. Overvoted, blank, undervoted or misread ballots required to be hand tallied shall be recorded on the prescribed hand tally sheet, by precinct, as follows:

(1) Each ballot shall increase the ballots cast count by one;

(2) On an overvoted ballot, only those contests receiving no more than the allotted selections for the number of candidates to be elected or ballot questions where there is one selection for either the affirmative or negative will be hand tallied;

(3) No votes for either candidate contests or ballot questions will be hand tallied on a blank ballot;

(4) On an undervoted ballot, only those contests or ballot questions receiving a selection by the voter will be hand tallied; and,

(5) Only those contests receiving no fewer, nor more than the allotted selections for the number of candidates to be elected or ballot questions where there is one selection for either the affirmative or negative will be hand tallied on a misread ballot.

D. An overvoted, blank or undervoted ballot cast by a voter, after going through the above process shall be recorded as a "ballot cast" and proper voting credit shall be given on the respective voter registration record on file with the county clerk.

E. In accordance with the Election Code, Section 1-12-70 NMSA 1978, the reporting of vote totals by precinct and voting method shall be combined to the extent necessary to protect the secrecy of each voter's ballot.

[1.10.12.13 NMAC - Rp, 1.10.12.13 NMAC and 1.10.12.14 NMAC, 4/24/2018; A, xx/xx/2020]

1.10.12.15 ~~[ABSENTEE]~~ ELECTION PRECINCT BOARD, COUNTY CLERK AND COUNTY CANVASS BOARD DUTIES:

A. An absentee precinct board shall be created for the purpose of determining voter eligibility, counting and tabulating absentee by-mail and early voted ballots cast. The board shall be comprised of precinct board members in accordance with the Election Code, Section 1-2-12 NMSA 1978 provided that the counting and tabulation of absentee by-mail ballots shall remain separate from early voted ballots.

(1) Pursuant to the Election Code, Section 1-6-11 NMSA 1978, the absentee by-mail ballots shall be delivered along with all necessary supplies, including red pencils or red pens, to be used as a writing instrument, for absentee precinct board members. Only the presiding judge shall be issued a black or blue ink pen for signing and filling out required documents.

(2) The processing of absentee by-mail ballots shall be in accordance with the Election Code, Section 1-6-14 NMSA 1978.

(a) An absentee by-mail ballot inner envelope containing two ballots shall be counted if the determination can be made that the outer envelope is signed by both voters, the absentee ballot register confirms the issuance of absentee by-mail ballots to the voters who signed, and it has been determined that the voters have not already voted in the election. Absentee ballot envelopes not in compliance with one or more of the above requirements shall be changed to “rejected” in the absentee ballot register, with the reason for rejection.

(b) An absentee by-mail ballot inner envelope containing no ballot shall be “accepted” if the outer envelope is signed by the voter, the absentee ballot register confirms the issuance of the ballot to the voter who signed the outer envelope, and the voter has not voted in any other manner during the election. Absentee ballot envelopes not in compliance with one or more of the above requirements shall be changed to “rejected” in the absentee ballot register, with the reason for rejection.

(3) Pursuant to the Election Code, Subsections C and D of Section 1-6-14 NMSA 1978, an absentee by-mail ballot envelope may be challenged by a lawfully appointed challenger. A voter who satisfies the reason for the affirmed challenge before the conclusion of the county canvass shall have their ballot accepted and counted. The voter’s record on the absentee ballot register shall be changed from “rejected” to “accepted”, and the notation “challenged-affirmed” on the absentee by-mail ballot envelope shall be crossed out, signed and dated by either the presiding judge of the absentee precinct board or a member of the county canvassing board, dependent upon when the voter satisfies the reason for the affirmed challenge. If the ballot is hand tallied it shall be recorded in the absentee by-mail hand tally counting group. If the ballot is tabulated by a voting tabulator, it shall be recorded in the absentee by-mail machine counting group.

(4) An absentee by-mail ballot, processed as a provisional ballot, in a provisional ballot envelope, prescribed by the secretary of state because the first-time voter did not provide the required form of physical identification prior to the ballot issuance, shall be separated from all other absentee by-mail ballots and provided to the county clerk. The county clerk shall perform the required provisional qualification process to the ballots in accordance with the Election Code, Section 1-6-14 NMSA 1978 and with 1.10.22 NMAC.

B. Upon the last day to early vote, all early voted ballots shall be delivered to the county clerk, who will transfer custody to the absentee precinct board. A receipt containing the serial number and public counter number indicating the votes recorded on the voting tabulator, number of ballot boxes, number of provisional ballots, number of ballots to be hand tallied and the signature of the respective alternate or mobile alternate voting location presiding judge shall be provided. After verifying the information for accuracy, the county clerk or absentee precinct board presiding judge shall sign the receipt indicating custody of the early voting returns, voting tabulator and ballot boxes. Keys to the alternate or mobile alternate voting location and the key or security token to access the voting tabulator shall also be transferred to the county clerk. The receipt shall be maintained on file with the county clerk.

(1) The absentee precinct board shall process early voted ballots cast by closing the polls and running the results reporting tapes for each voting tabulator used during the early voting period. The absentee precinct board shall be responsible for hand tallying any early voted ballot not tabulated by the voting tabulator in accordance with the Election Code, Section 1-1-5.2 NMSA 1978.

(2) Provisional ballots issued during early voting in the office of the county clerk, alternate voting location or mobile alternate voting location for the reasons set out in the Election Code, shall be provided to the county clerk.

C. The county canvassing board shall canvass the election returns and ascertain whether any discrepancies, omissions or errors appear on the face of the election returns, in accordance with the Election Code, Section 1-13-1 to 1-13-22 NMSA 1978.

D. All provisional ballots issued to absent or early voters are subject to requalification in the event of a recount or contest as prescribed in the Election Code, Section 1-14-22 NMSA, 1978.

[1.10.12.15 NMAC - Rp, 1.10.12.15 NMAC, 4/24/2018; A, xx/xx/2020]