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THE OFFICE OF THE NEW MEXICO SECRETARY OF STATE

IN RE:

RULEMAKING PROCEEDING FOR THE
ADOPTION OF 1.10.23 NMAC – RECOUNTS,
AUDITS, RECHECKS, AND CONTESTS

CONCISE EXPLANATORY STATEMENT

The Office of the New Mexico Secretary of State (the “SOS”) hereby adopts amendments to the Recounts, Audits, Rechecks and Contests Rule that is codified in Part 1.10.23 NMAC.

(1) Statutory Authority for Rule Promulgation:

Section 1-2-1 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:

March 26, 2020

(4) Reasons for Adopting Rule:

This rulemaking is necessary to align with current statutory mandates related to absentee, provisional, and hand counted ballots. The current rule refers to tabulators that are outdated and no longer certified for use in New Mexico. The definition of a vote in the rule, specifically related to how to count a write-in vote, no longer aligns with statute. Additionally, the rule needs to be amended to provide for recounts in the Regular Local Election.

(5) Reasons for Changes from Published Rule:

There are no changes from the published rule.

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

The SOS did not accept the argument that Part 1.10.23.12 NMAC should not be repealed for its importance to election boards in determining what constitutes a vote. There are far too many inaccuracies in this section to not repeal. However, the SOS will issue updated, legally correct, guidance on what constitutes a vote to all county clerks and election boards before the June 2, 2020 Primary Election, to ensure consistent interpretation. The SOS also did not ultimately accept the suggestion to incorporate a standard to re-mark a ballot in a ranked choice voting

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election. The SOS believes that such a change was not properly noticed to the public and would be better incorporated in the Ranked Choice Voting and Top-Two Runoff Election Rule.

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

IT IS SO ORDERED.

3/26/2020
DATE

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

Maggie Toulouse Oliver
Maggie Toulouse Oliver
Secretary of State