

**This is an amendment to 1.10.12 NMAC, Sections 1, 3, 6, 7, 8, 9, 11, 12, 13, 15, and 17, and adding new Sections 16 and 19, effective 8/31/2023.**

**1.10.12.1 ISSUING AGENCY:** Office of the Secretary of State [~~325 Don Gaspar, Suite 300, Santa Fe, New Mexico 87501~~].

[1.10.12.1 NMAC - Rp, 1.10.12.1 NMAC, 4/24/2018; A, 8/31/2023]

**1.10.12.3 STATUTORY AUTHORITY:** Election Code, Section 1-2-1; [~~Section 1-6-5.4~~]; Section 1-6-5.6; Section 1-6-16.1; [~~and~~] Section 1-9-7.1; and Section 1-21A-8 NMSA 1978.

[1.10.12.3 NMAC - Rp, 1.10.12.3 NMAC, 4/24/2018; A, 8/31/2023]

**1.10.12.6 OBJECTIVE:** The objective of this rule is to establish procedures for protecting the integrity, security and secrecy of the [~~absentee~~] mailed ballot, to establish procedures for establishing mobile alternate voting locations in rural areas of the state, [~~and~~] to establish procedures for electronic ballot delivery of [~~absentee~~] mailed ballots for visually impaired voters, and to establish procedures for mailed ballot delivery to government official buildings designated by Indian nation, tribes or pueblos.

[1.10.12.6 NMAC - Rp, 1.10.12.6 NMAC, 4/24/2018; A, 8/31/2023]

**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~~] the ability of the voter to receive, mark and return a ballot at a place and time other than a polling location on the day of the election.

**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~~] an election 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 pursuant to Section 1-6-5.7 of the Election Code. This includes mobile alternate voting locations.

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

~~[F.]~~ **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.]~~ **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.]~~ **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.]~~ **I. “County canvassing board”** means the board of county commissioners in each county or the board of registration if designated by the board of county commissioners pursuant to Section 1-13-1 NMSA 1978, convened for the purposes of conducting the county canvass.

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

~~[K.]~~ **K. “Early voting daily report”** means a physical form, or its digital equivalent, 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.]~~ **L. “Electronically transmitted ballot”** means a ballot provided through an electronic transmission system to federal qualified electors pursuant to Section 1-6B-7 NMSA 1978 or to blind or visually impaired voters as provided in Section 1-9-7.1 NMSA 1978.

~~[K.]~~ **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.

~~[L.]~~ **N. “Mailed ballot”** means a ballot that is sent to a voter pursuant to the provisions of the Election

Code and does not include a ballot that is provided to a voter an early voting location.

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

~~[N.]~~ **Q. “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]~~ mailed ballot.

~~[O.]~~ **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.

~~[P.]~~ **Q. “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.

~~[Q.]~~ **R. “Replacement ~~[absentee]~~ ballot”** means:

**(1)** 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]~~ a mailed ballot and who has affirmed that the mailed 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]~~ or

**(2)** a ballot issued at the office of the county clerk, an alternate voting location, a mobile alternate voting location, or at a polling location on election day, to be filled out and fed by the voter into the electronic voter tabulator if that voter affirms that their ~~[absentee]~~ mailed ballot was not voted and returned.

**S. “Timing marks”** means 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.

~~[S.]~~ **T. “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.

~~[T.]~~ **U. “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, 4/7/2020; A, Rn, 8/31/2023]

#### **1.10.12.8 APPLICATION:**

**A.** An application for ~~[an absentee]~~ a mailed ballot may be made on ~~[a blank]~~ the official form prescribed by the secretary of state, either on paper with an original signature or through the official electronic ~~[absentee]~~ mailed ballot application portal. The form may not be altered, to include the pre-population of voter information, without prior approval from the secretary of state. Completed applications shall require the information specified in the Election Code, Section 1-6-4 NMSA 1978.

**B.** Upon receipt of ~~[an absentee]~~ a mailed ballot application, the county clerk shall review it for completeness in accordance with the Election Code, Section 1-6-5 NMSA 1978. When it is determined that the applicant does not have a valid certificate of registration on file in that county or the application is not completed or has incorrect information, the application shall be marked “rejected”. The county clerk shall notify the applicant in writing of the reasons for rejection and include the internet address for the official electronic absentee application portal and may also include the paper form ~~[absentee]~~ mailed ballot application.

**C.** An application by a federal qualified elector as defined in the Election Code, Section 1-1-4.1 NMSA 1978, consists of one of the methods listed in the Election Code Section 1-6B-3 NMSA 1978.

**(1)** The county clerk shall review each application by a federal qualified elector for completeness and compliance with the voter registration requirements prescribed in the Election Code, Section 1-6B-5 NMSA 1978 and determine whether the requirements are met. The county clerk shall immediately notify the federal qualified elector if the application is rejected, to include the reasons for rejection, according to the applicant’s preferred method of communication, pursuant to the Election Code, Section 1-6B-7 NMSA 1978.

**(2)** An application for ~~[an absentee]~~ a mailed ballot or a military overseas ballot received by the office of the county clerk or secretary of state for a voter registered in a differing county shall be forwarded within 24 hours of receiving the application, or if received less than ~~[five]~~ seven days before the election, shall be electronically transmitted to the appropriate county clerk.

[1.10.12.8 NMAC - Rp, 1.10.12.8 NMAC, 4/24/2018; A, 8/31/2023]

### 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~~ voting is 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, 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~~ a mailed 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 C 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~~ mailed 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~~ election 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~~ a mailed ballot in accordance with the Uniform Military and Overseas Voter Act.

B. ~~[A] Unless the voter is certified to participate in the confidential substitute address program pursuant to the Confidential Substitute Address Act, a voter who has been issued an absentee a mailed 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~~ may request a replacement ballot and shall be issued and mailed a replacement ~~absentee~~ ballot that ~~is~~ shall be processed as a provisional ballot. The replacement ~~absentee~~ ballot may be mailed to the voter seven or more days before election day, 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 inner envelope, then in an outer envelope and shall ~~complete and sign the attached~~ enclose a completed and signed sworn affidavit.

(2) ~~[The] If the county clerk does not have real-time synchronization between a voting location and the qualification of mailed ballots, the voter, by executing a sworn affidavit [at their election day polling place affirms] at the office of the county clerk, alternate voting location, mobile alternate voting location or election day polling place affirming that they have not received, or if received, have not voted the ballot, will shall~~ 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] pursuant to this section must be voted on prior to the voter leaving the premises of the office of the county clerk, alternate voting location, mobile alternate~~

voting location or election day polling, 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)]~~ **(3)** ~~[The]~~ If the county clerk does have real-time synchronization between the voting location and the qualification of mailed ballots, 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, or election day voting location and be issued a replacement ballot to be filled out and fed by the voter into the electronic vote tabulator.

**(4)** A voter who is certified to participate in the confidential substitute address program pursuant to the Confidential Substitute Address Act shall not vote in person but may request and receive a replacement ballot by appearing in person only at the office of the county clerk and by executing an affidavit pursuant to Subsection C of Section 1-6C-6 NMSA 1978 stating that the voter participant wishes to void any previously mailed ballot that was mailed in that election.

[1.10.12.9 NMAC - Rp, 1.10.12.9 NMAC, 4/24/2018; A, 4/7/2020; A, 8/31/2023]

#### **1.10.12.11 ALTERNATE VOTING LOCATIONS AND MOBILE ALTERNATE VOTING LOCATIONS:**

**A.** Alternate voting locations are established by the county clerk for early voting and shall meet the standards set out in the Election Code, Sections 1-6-5.6 to 1-6-5.8 NMSA 1978. ~~[Reimbursement to the county for the cost of voting equipment and personnel on Indian nation, tribal area or pueblo land shall only be provided for those invoices received by the office of the secretary of state no later than the fifth week after the date of the election.]~~

**(1)** 90 days prior to the beginning of early voting, the county clerk shall notify the secretary of state of the dates, times of operations, and addresses of the established alternate voting locations or mobile alternate voting locations and shall publicize the information using media outlets directed to, and appropriate for, the voters of that area.

**(2)** Alternate voting locations and mobile alternate voting locations shall be staffed in accordance with the Election Code, Section 1-2-12 NMSA 1978 and may not be staffed by the county clerk if the county clerk's name appears on the ballot or by the county clerk's deputy if the county clerk's deputy's name appears on the ballot.

**(3)** The county clerk shall prepare a list of authorized individuals who have access to each alternate voting location or mobile alternate voting location, to include authorized custodians of the voting tabulator or ballot box keys. Access to each alternate voting location or mobile alternate voting location for those authorized shall not be controlled by any third party. A copy of the list shall be provided to the office of the secretary of state and, in a primary, general or special election for U.S. representative, the chairs of each county's political parties.

**B.** Lawfully appointed challengers, watchers and observers shall be allowed in an alternate voting location or mobile alternate voting location as provided in the Election Code.

**(1)** An interposed challenge shall be handled in accordance with the Election Code, Section 1-12-20 to 1-12-22 NMSA 1978.

**(2)** Challengers, watchers or observers shall not violate the permitted or prohibited provisions as outlined in the Election Code including Sections 1-2-23, 1-2-29, 1-2-25, 1-2-31 and 1-2-32 NMSA 1978. If a violation occurs, the incident shall be documented in reasonable detail by the election board on a form prescribed by the secretary of state and retained by the county clerk pursuant to Subsection C of Section 1-2-22 NMSA 1978. An election board who unanimously votes to remove a challenger, watcher or observer as a result of a violation shall sign and record the vote of the board on the violation form.

[1.10.12.11 NMAC - N, 4/24/2018; A, 8/31/2023]

#### **1.10.12.12 VOTING TABULATOR PROGRAMMING, CERTIFICATION, CUSTODY AND SECURITY:**

**A.** Each certified voting tabulator designated for use during an election, shall be programmed, tested for accuracy and used for the tabulation of ballots in accordance the Election Code, Section 1-9-1 to 1-9-22 NMSA 1978.

**(1)** Official tabulator envelopes for each voting tabulator shall be prepared and shall contain the tabulator serial number, seal number, a printed and signed results reporting tape indicating the clearing of any votes recorded on the tabulator's removable storage media device cartridge and set at zero, and any keys or tokens needed to access, operate and secure the tabulator. Such envelopes shall be provided to the presiding judge of the

alternate voting location or mobile alternate voting location.

(2) At least one day before each voting tabulator is deployed for ~~[absentee-by-mail]~~ mailed ballot tabulation and early voting, the county clerk shall provide the voting tabulator type and serial number to the secretary of state and the county chair of each political party represented on the ballot.

(a) Each certified voting tabulator deployed to an alternate voting location or mobile alternate voting location shall be transported with the care and custody set out in the Election Code, Section 1-9-12 NMSA 1978, delivered in accordance with the Election Code, Section 1-11-11 NMSA 1978 and shall be secured by a lock, key and seal.

(b) The placement of each voting tabulator used for absentee or early voting shall safeguard the secrecy of each voted ballot, protect the security of the voting tabulator and shall be compliant with accessibility requirements of the Americans with Disabilities Act.

(3) Each day during the early voting period, the county clerk or ~~[precinct]~~ election board member shall, in the presence of one other county clerk employee or ~~[precinct]~~ election board member, unlock the office where the voting tabulator, ballot box, preprinted paper ballots or voting systems needed to issue ballots are located and unlock the voting tabulator, ballot box or other container securing preprinted paper ballots or voting systems needed to issue ballots.

(4) Each day upon close of the early voting location, the above procedure shall be followed to lock and secure the voting tabulator, ballot box or other container securing preprinted paper ballots or voting systems needed to issue ballots.

(5) Assigned user names and passwords needed to access voting systems used to issue ballots or the voting tabulator shall not be shared or disclosed to any person other than the intended user.

(6) Immediately after unlocking or locking the early voting location, the county clerk or ~~[precinct]~~ election board member present shall complete and sign the early voting daily report and shall submit it to the office of the secretary of state for the previous day's activity. Any discrepancy between the daily number of ballots issued and the number of ballots cast shall be reconciled prior to the submission of the early voting daily report.

**B.** A voting tabulator shall be used for the entire early voting period for the casting of ballots. The tabulator shall remain in open status and the result reporting tape shall be prompted only by the ~~[absentee-precinct]~~ absent voter election board, when convened, for the counting and recording of ~~[absentee-by-mail]~~ mailed and early voted ballots.

(1) If a voting tabulator is inadvertently prompted to close, the presiding judge shall notify the county clerk immediately. The county clerk, after determining that the tabulator should be reopened, shall dispatch a voting technician, who in the presence of the presiding judge and two election judges, one of a differing party than the presiding judge, shall enable the reopen polls function and verify the number of ballots counted on the tabulator screen. An audit log of the reopen polls transaction will be recorded by the voting tabulator and will be visible on the results reporting tapes. The results reporting tapes shall be signed by the presiding judge and two election judges, one of a differing party than the presiding judge, and remain connected to the voting tabulator.

(a) If the number of ballots counted does not match the number of ballots cast prior to the inadvertent close of the voting tabulator, the county clerk shall instruct the voting technician, who in the presence of the presiding judge and two election judges, one of a differing party than the presiding judge, to clear the removable storage media device cartridge, removing all previously recorded votes and reopen the polls of the voting tabulator. The presiding judge and two election judges, one of a differing party than the presiding judge, will inspect the generated results reporting tapes to ensure the ballots cast number and all candidate contests and ballot questions are cleared and set to zero. The presiding judge and two election judges, one of a differing party than the presiding judge shall sign the certificate at the end of the generated results reporting tapes, affirming their inspection and reinsert the ballots from within the bin into the voting tabulator. The results reporting tapes shall remain connected to the voting tabulator. Once complete, the presiding judge and two election judges, one of a differing party than the presiding judge will verify the ballots cast on the public counter of the voting tabulator matches the total ballots cast on the voting tabulator prior to the inadvertent close.

(b) The voting tabulator may then be put back into use and the county clerk shall immediately notify the office of the secretary of state, in writing, of the occurrence. The presiding judge will provide the results reporting tapes from the inadvertent tabulator closure to the voting technician, who will deliver the results reporting tapes directly to the county clerk to be filed and kept confidential.

(2) If a voting tabulator is inadvertently closed, generating the results reporting tapes during the days and hours of operation of early voting, the presiding judge shall immediately notify the county clerk and ensure the voting tabulator, ballots within the bin and results reporting tapes are not tampered with.

(a) The county clerk shall dispatch a voting technician, who in the presence of the presiding judge and two election judges, one of a differing party than the presiding judge, will instruct the presiding judge to verify the total number of ballots cast on the voting tabulator before it was inadvertently closed. The voting technician will clear the removable storage media device cartridge, removing all previously recorded votes and reopen the polls of the voting tabulator. The presiding judge and two election judges, one of a differing party than the presiding judge, will inspect the generated results reporting tapes to ensure the ballots cast number and all candidate contests and ballot questions are cleared and set to zero. The presiding judge and two election judges, one of a differing party than the presiding judge shall sign the certificate at the end of the generated results reporting tapes, affirming their inspection and reinsert the ballots from within the bin into the voting tabulator. The results reporting tapes shall remain connected to the voting tabulator. Once complete, the presiding judge and two election judges, one of a differing party than the presiding judge will verify the ballots cast on the public counter of the voting tabulator matches the total ballots cast on the voting tabulator prior to the inadvertent close.

(b) The voting tabulator may then be put back into use and the county clerk shall immediately notify the office of the secretary of state, in writing, of the occurrence. The presiding judge will provide the results reporting tapes from the inadvertent tabulator closure to the voting technician, who will deliver the results reporting tapes directly to the county clerk to be filed and kept confidential.

[1.10.12.12 NMAC - N, 4/24/2018; A, 8/31/2023]

### 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]~~ mailed ballots in accordance with the Election Code 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]~~ election 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]~~ absent voter election 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]~~ high-speed central cast tabulator may be designated, programmed and certified for the tabulation of such ballots. The ~~[absentee precinct]~~ absent voter election 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]~~ election 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]~~ absent voter election board, after the close of the early voting period, by the ~~[precinct]~~ election 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]~~ Mailed ballots, either returned by mail or hand-delivered, shall be fed into a voting tabulator by an ~~[absentee precinct]~~ absent voter election 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]~~ mailed ballot shall be accepted by the voting tabulator after it has been adjudicated by the ~~[absentee precinct]~~ absent voter election board. The ballot will be counted and recorded in the absentee by machine counting group.

(b) If ~~[an absentee by mail]~~ a mailed ballot is misread after being fed into a voting tabulator, an ~~[absentee precinct]~~ absent voter election board member shall feed it into the voting tabulator a second time. ~~[An absentee by mail]~~ A mailed ballot that is rejected after two attempts shall be adjudicated by the ~~[absentee precinct]~~ absent voter election 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]~~ mailed ballots that were issued via electronic transmission to a blind or visually impaired voter will not contain programmed ~~[ballot markers]~~ timing marks necessary for tabulation by the voting tabulator. These ballots shall be hand tallied by the ~~[absentee precinct]~~ absent voter election 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]~~ mailed 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]~~ timing marks necessary for tabulation by a voting tabulator, shall be hand tallied by the ~~[absentee precinct]~~ absent voter election 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]~~ timing marks, the ballots shall be fed into the voting tabulator by an ~~[absentee precinct]~~ absent voter election 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]~~ absent voter election 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]~~ absent voter election 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]~~ absent voter election 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]~~ mailed 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]~~ absent voter election 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 candidate contests or ballot questions 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 candidate 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, 4/7/2020; A, 8/31/2023]

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

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

(1) Pursuant to the Election Code, Section 1-6-11 NMSA 1978, the [~~absentee-by-mail~~] mailed 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~~] absent voter election board members. Only the presiding judge shall be issued a black or blue ink pen for signing and filling out required documents.

(2) Before opening the outer envelope, the presiding judge and the election judges shall determine that the county clerk has verified the required information by reviewing the outer envelope for the presence of a signature and the presence of the last four digits of a social security number and by reviewing the clerk’s confirmation of verification on the absentee ballot register. If the information under the privacy flap appears to need further review by the county clerk, the absent voter election board shall immediately notify the county clerk, and the county clerk shall verify the information under the privacy flap.

~~(2)~~ (3) The processing of [~~absentee-by-mail~~] mailed ballots shall be in accordance with the Election Code, [~~Section~~] Sections 1-6-10 and 1-6-14 NMSA 1978.

(a) [~~An absentee-by-mail~~] A mailed 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 county clerk verified that both voters provided the last four digits of their social security numbers, the absentee ballot registered confirms the issuance of [~~absentee-by-mail~~] mailed ballots to the voters who signed, and it has been determined that the voters have not already voted in the election. [~~Absentee ballot~~] Mailed 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~~] A mailed 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, the absentee ballot register confirms the county clerk verified that the voter provided the last four digits of their social security number, and the voter has not voted in any other manner during the election. [~~Absentee~~] Mailed 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)~~ (4) Pursuant to the Election Code, Subsections C and D of Section 1-6-14 NMSA 1978, [~~an absentee-by-mail~~] a mailed 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~~] mailed ballot envelope shall be crossed out, signed and dated by either the presiding judge of the [~~absentee-precinct~~] absent voter election 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~~] mailed ballot hand tally counting group. If the ballot is tabulated by a voting tabulator, it shall be recorded in the [~~absentee-by-mail~~] mailed ballot machine counting group.

(5) A lawfully appointed challenger or watcher shall not be permitted to take pictures or otherwise make copies of documents containing protected personal information.

~~(4)~~ (6) [~~An absentee-by-mail~~] A mailed 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~~] mailed 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]~~ absent voter election 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]~~ absent voter election 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]~~ absent voter election 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]~~ absent voter election board shall be responsible for hand tallying any early voted ~~[ballot]~~ candidate contest or ballot question 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, 4/7/2020; A, 8/31/2023]

#### **1.10.12.16** ~~[[RESERVED]]~~ **MAILED BALLOT CURING PROCESS:**

**A.** Within one day of receipt of a mailed ballot, the county clerk shall remove the privacy flap to verify that the voter signed the outer envelope and to confirm that the last four digits of the social security number provided by the voter matches the information on the voter's certificate of registration pursuant to Subsection B of Section 1-6-10 NMSA 1978.

**(1)** If either voter's signature or the last four digits of the voter's social security number are not provided, the county clerk shall reject the mailed ballot and make a notation of "rejected" in the absentee ballot register and provide the applicable rejection reason, either "no signature" or "incomplete," and shall transfer the ballot the special deputy for mailed ballots for delivery to the absent voter election board.

**(2)** If the last four digits of the social security number do not match the electronic voter registration certificate, the following procedures shall be followed:

**(a)** The county clerk shall review the original voter registration application to ensure the mismatch is not the result of a typographical error in the voter database. If the error is in the electronic voter registration record, the voter record shall be corrected, and the ballot will not require a curing process.

**(b)** If the issue is deemed not to be a typographical error in the electronic voter registration record, the county clerk shall query the driver history record system through the New Mexico department of taxation and revenue using the name and date of birth of the voter. If the query returns the same social security number as provided by the voter under the privacy flap, the ballot shall be accepted.

**B.** The county clerk shall immediately attempt to contact a voter whose ballot qualification was rejected to provide notice to the voter of the rejection, opportunity to satisfy the reason for the rejection, and the process for curing reason for the rejection.

**(1)** The county clerk shall contact the voter by phone and email, if this information is available.

**(2)** If contact is not made by email or phone, the county clerk shall send a notice by regular mail with a postage pre-paid envelope.

**(3)** If a voter requests translation, the county clerk must provide translation in the voter's preferred language.

**C.** Voters may cure a rejected ballot in-person at the county clerk's office of the county where the ballot was issued or by electronic or regular mail by completing one of the following procedures:

**(1)** If either the voter's signature is missing or the voter did not provide the last four digits of the voter's social security number, the voter shall complete the required information under the privacy flap or

complete and sign an affidavit.

(2) If the last four digits of the provided social security number do not match the electronic voter registration record and cannot be ascertained through Subsection A of this section, the voter shall be required to complete and sign an affidavit on a form prescribed by the secretary of state and provided further documentation in order to affirm the required voter identification information.

D. Pursuant to Subsection F of Section 1-6-10 NMSA 1978, if the required information is submitted by the voter, the clerk shall update the absentee ballot register record as “accepted” and shall transfer the ballot, affidavit, and any other document that evidences the cured mailed ballot to the special deputy for mailed ballots for delivery to the absent voter election board or an election board appointed for the preparation of the county canvass. County clerks shall conceal or redact the full social security number and full date of birth on any provided documents prior to transferring those materials.

E. All documents containing personal protected information shall be kept in a secure place by the county clerk and the absent voter election board.

[1.10.12.16 NMAC - N, 8/31/2023]

### **1.10.12.17 PAPER BALLOT TRANSFER:**

**A.** Paper ballots cast in a voting tabulator for early voting shall remain in the custody of the [~~precinct~~] election board assigned to the alternate voting location or mobile alternate voting location in either the ballot holding bin of the voting tabulator, or if deemed necessary, in a locked ballot box with two padlocks or numbered seals, designated for the specific tabulator.

**B.** Paper ballots removed from the ballot holding bin of the voting tabulator on a daily basis shall only be removed after voting hours by the presiding judge and two election judges, one of a differing political party than the presiding judge. The ballots shall be placed into a locked ballot box, with two padlocks or numbered seals designated for the specific tabulator.

**(1)** Those ballots diverted to the write-in holding bin and those ballots placed in the hand tally bin shall also be removed daily. Tabulated, write-in and hand tally ballots shall be kept separate from each other, but shall be retained by date and specific to the tabulator.

**(2)** The presiding judge and two election judges, one of a differing party than the presiding judge must execute a certificate containing the date and voting tabulator serial number for each ballot type, after the transfer of ballots on a daily basis.

**(3)** The locked ballot box shall be placed in a locked room at the county clerk’s office, alternate voting location or mobile alternate voting location. If a location does not have a locked room, the county clerk shall either provide a cabinet with a locking device to be placed at the location for the presiding judge to place the ballot box, or the county clerk shall take possession of the locked ballot box and store it at the county clerk’s office until it is transferred to the [~~absentee precinct~~] absent voter election board. The presiding judge or county clerk shall have sole possession of the key to the locked room.

**C.** Paper ballots that remain in the ballot holding bin of the voting tabulator for the duration of voting, shall be checked daily before voting hours begin by two election judges, one of a differing party than the presiding judge, and in the presence of the presiding judge. If the ballots are touching or near the diverter device, they shall be laid down in a stack, as to avoid a jam in the diverter.

**(1)** If the ballot holding bin of the voting tabulator becomes full during voting hours, the presiding judge and two election judges, one of a differing party than the presiding judge, shall unlock the bin and transfer the ballots to a locked ballot box, with two padlocks or numbered seals, specific to the tabulator. The presiding judge shall, in an audible tone, explain the reason for the removal and transfer of ballots.

**(2)** The presiding judge and two election judges, one of a differing party than the presiding judge must execute a certificate containing the date and voting tabulator serial number for each ballot type, after the transfer of the ballots. Those ballots diverted to the write-in holding bin and those ballots placed in the hand tally bin shall also be removed, kept separate from each other and specific to the tabulator.

**(3)** The locked ballot box shall be placed in a locked room at the county clerk’s office, alternate voting location or mobile alternate voting location. If a location does not have a locked room, the county clerk shall either provide a cabinet with a locking device to be placed at the location for the presiding judge to place the ballot box or shall take possession of the locked ballot box and stored at the county clerk’s office until transferred to the [~~absentee precinct~~] absent voter election board. The presiding judge or county clerk shall have sole possession of the key to the locked room.

**D.** After the transfer, recording and securing of ballots in accordance with this section, the voting tabulator will remain in open polls status, put back into use for the duration of the voting period and the removable

storage media device cartridge will not be cleared out.  
[1.10.12.17 NMAC - Rp, 1.10.12.17 NMAC, 4/24/2018; A, 8/31/2023]

**1.10.12.19 ~~[[RESERVED]]~~ USE OF GOVERNMENTAL AND OFFICIAL BUILDING AS MAILING ADDRESSES ON MAILED BALLOT APPLICATIONS**

A. Upon written request from an Indian nation, tribes or pueblos, the secretary of state may designate a government or official building for the delivery of mailed ballots or for use on voter registrations for members of that Indian nation, tribe or pueblo. The written request must be in compliance with Subsection D of Section 1-21A-1 NMSA 1978.

B. The written request designating the government or official building shall be submitted to the secretary of state in March or April of any year. It should include the common name for the building, the mailing address of the building, and the name(s) and phone number(s) of lead person(s) charged with the oversight of the mailed ballot process at the building.

C. Upon receipt of a written request, the secretary of state shall perform a security evaluation of the building to ensure the building has a space to safely keep the official mailing envelope in a locked and number-sealed ballot box or envelope. The secretary of state shall respond in writing within 60 days of the request.

D. An approved designation will take effect at the general election or regular local election of the year in which the request was approved.

E. If the request is approved and upon implementation, the secretary of state shall send a notification of new designations in writing and shall provide an updated list of approved government and official buildings by county to each county clerk with an Indian nation, tribe or pueblo in the county.

(1) The lead person(s) designated pursuant to Section B of this section shall ensure that mailed ballots received at the designated location are secured safely in a locked and number-sealed ballot box or envelope until they are retrieved by voters.

(2) Only a voter who requested a mailed ballot may retrieve a mailed ballot at a designated and approved government or official building.

(3) A chain of custody form shall be completed by the voter collecting their mailed ballot every time a ballot is collected. A copy of the chain of custody form shall be sent to the county clerk who issued the mailed ballot within 24 hours. The chain of custody form shall be prescribed by the secretary of state and shall include:

- (a) the location of the officially designated building;
- (b) date and time of arrival;
- (c) printed full name of the person retrieving the ballot;
- (d) signature of the person retrieving the ballot;
- (e) printed full name of the person providing the ballot to the voter;
- (f) signature of the person providing the ballot to the voter;

(4) The lead person(s) designated pursuant to Section B of this section shall maintain a log of the number of mailed ballots received each day and the names of the voters reflected on the outer envelopes of received mailed ballots. The log shall be prescribed by the secretary of state and a lead person shall send a copy of the updated log to the county clerk who issued the mailed ballots each week beginning 28 days prior to the election and on the Saturday following an election day.

(5) The lead person(s) designated pursuant to Section B of this section shall return any ballots not retrieved by voters to the county clerk by the Friday following an election day.

[1.10.12.19 NMAC - N, 8/31/2023]