

**From:** [walkerb@fastmail.com](mailto:walkerb@fastmail.com)  
**To:** [rules\\_sos\\_SOS](#)  
**Cc:** [Lange\\_Dylan\\_SOS](#)  
**Subject:** [EXT] Comments on 1.10.15 NMAC Alternative and Election Day Voting Administration  
**Date:** Monday, August 24, 2020 12:36:50 PM

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Dear Mr. Lange:

I read the Secretary of State's proposed rules governing mailed ballots and voter challenges with interest. My interest comes from two areas of experience. First, as the State Ethics Commission's general counsel, I wanted to see how an established state agency proposes and adopts rules; I hope to use what I have reviewed to improve the State Ethics Commission's future rulemaking efforts.

Second, I served as a presiding judge at a voter convenience center in Bernalillo County in the primary election, and have been selected to serve again for the upcoming general election. So I have been working to familiarize myself with the election code and in particular those provisions that might bear on presiding judges. It is interesting and exciting to see the Secretary of State's efforts to clarify and refine this important (and personally relevant) area of election law.

These two interests inform my comments:

1. [1.10.15.3](#) & [1.10.15.4](#) The proposed rules are permanent in duration, but are authorized (at least in part) by a temporary statute. See House Bill 4, Section 3. I suggest amending the rules to state either that they are authorized by NMSA 1978, Section 1-2-1 only, or if authorized also by Section 1-2-72, that the rules' duration be limited to the duration of Section 1-2-72.
2. [1.10.15.7\(A\)](#): The proposed rule defines "mailable voter," and the notice of proposed rules states that "mailable voter" is a "key term . . . used in the proposed rule." But the term does not appear anywhere else in the rule. I suggest either eliminating the defined term or using it in the rule such that inclusion of an explicit definition makes sense. If the intent is to define the use of the term "voter" in the rules to mean a "mailable voter" as defined in Section 1-2-72(D), I suggest amending the definition to state that "voter" means "mailable voter" as defined by Section 1-2-72(D).
3. [1.10.15.9](#) procedures for handling challenges are much-needed, and I applaud the Secretary of State for undertaking this effort. But in my limited experience as a presiding judge, I was not provided with any training on the presiding judge's authorities under the election code with respect to challengers. I suggest that the proposed rule be amended to include a provision requiring county clerks to train presiding judges about the election code and these rules as they concern challengers.

Thank you for your attention, and best of luck with this week's rulemaking hearing.

Sincerely,

Walker Boyd