

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS
PART 14 RANKED CHOICE VOTING AND TOP-TWO RUN[-]OFF ELECTION

1.10.14.1 ISSUING AGENCY: The Office of the New Mexico Secretary of State.
[1.10.14.1 NMAC - N, 8/13/2019]

1.10.14.2 SCOPE: This rule applies to runoff elections covered under the election code.
[1.10.14.2 NMAC - N, 8/13/2019]

1.10.14.3 STATUTORY AUTHORITY: This rule is authorized by Sections 1-2-1 and 1-22-16 NMSA 1978, of the Election Code.
[1.10.14.3 NMAC - N, 8/13/2019]

1.10.14.4 DURATION: Permanent.
[1.10.14.4 NMAC - N, 8/13/2019]

1.10.14.5 EFFECTIVE DATE: ~~August 13~~ September 10, 2019, unless a later date is cited at the end of a section.
[1.10.14.5 NMAC - N, 8/13/2019]

1.10.14.6 OBJECTIVE: The purpose of this rule is to provide effective procedures for runoff elections.
[1.10.14.6 NMAC - N, 8/13/2019]

1.10.14.7 DEFINITIONS:

A. "Choice" means an ~~clear~~ indication on a ballot of a voter's assigned ranking of candidates for any single office according to the voter's preference. The standards for what constitutes a vote is codified in 1.10.23.12 NMAC and is incorporated by reference.

B. "Continuing ballot" means a ballot with votes that count[s] towards a continuing candidate.

C. "Continuing candidate" means a candidate that has not been eliminated, including a candidate in the first round.

D. "Duplicate ranking" means a voter has ranked the same candidate at multiple rankings for the office being counted.

E. "Exhausted ballot" means a ballot that cannot be advanced because no further continuing candidates are ranked on that ballot.

F. "Incorrectly marked ballot" means a ballot showing an overvote, or duplicate ranking, ~~or no vote~~.

G. "Majority of votes" means ~~[fifty percent plus one]~~ more than half of the votes cast for a continuing candidate.

H. "Next ranked" means the highest ranked choice for a continuing candidate.

I. "Overvote" means a voter has ranked more than one candidate at the same ranking.

J. "Ranked choice voting" means an election system in which voters rank the candidates for office in order of preference, and the ~~[ballots]~~ votes cast for that office are counted in rounds that simulate a series of runoffs until one candidate receives a majority of votes. Ranked choice voting is also known as "instant runoff voting."

K. "Round" means a step in the counting process during which votes for all continuing candidates are tabulated for the purpose of determining whether a candidate has achieved a majority of votes cast for a particular office and, absent a majority, which candidate or candidates must be eliminated.

L. "Skipped ranking" means a voter has left a ranking blank and ranks a candidate in a subsequent ranking.

M. "Undervote" means an office on a ballot in which the voter did not rank any candidates for ~~[an]~~ that office.

N. "Unused ranking" means the voter has ranked at least one but not all, candidates.

O. "Vote" means a choice that is counted toward the election of a candidate in a runoff election. ~~[During each round of counting, each continuing ballot contains one vote. All first choices are votes and lower ranked choices are potential runoff votes that may, in accordance with the requirements of this section, become votes and subsequently credited to a continuing candidate.]~~

[1.10.14.7 NMAC - N, 8/13/2019]

1.10.14.8 FORM OF RANKED CHOICE RUNOFF BALLOT:

A. The ranked choice voting ballot shall allow voters to rank all candidates in order of choice. The ranked choice voting ballot shall also contain a space on the ballot for a qualified write-in candidate to be ranked.

B. Instructions on the ballot shall conform substantially to the following specifications and appear only once on the top of the ballot: "Vote by indicating your first choice candidate and ranking additional candidates ~~[e]~~ in order of choice. Rank as many ~~[choices]~~ candidates as you wish. Marking additional ~~[second]~~ choices will not count against your first choice. ~~[Marking a subsequent choice will not help defeat your higher ranked choices]."~~

C. Sample ballots illustrating the procedures for ranked choice voting shall be posted in or near the voting booth, include ~~[ing]~~ in the instruction materials for mailed ballots, and posted on the secretary of state's website.

D. Upon submission of an incorrectly marked ballot, the voting machine shall provide a detailed warning message to the voter with a "cast" or "return" option and require confirmation of the voter's choice. A person who ~~accidentally~~ spoils or erroneously prepares the ballot may return the spoiled or erroneously prepared ballot to the election judge and receive a new ballot.

E. If any ballot is physically damaged so that it cannot properly be counted by the ~~[automatic tabulating equipment]~~ vote tabulation system, a true duplicate copy shall be made publicly of the damaged ballot and substituted for the damaged ballot. All duplicate ballots shall be clearly labeled "duplicate," bear a serial number which shall be recorded on the damaged or incorrectly marked ballot, and be counted in lieu of the damaged ballot. After a ballot has been duplicated, the damaged ballot shall be placed in an envelope provided for that purpose, and the duplicate ballot shall be tallied by the tabulator with the other ballots for that precinct.

F. Ranked choice voting is only applicable to elections in which the governing body has chosen to elect its officers by ranked choice. Any other ~~[race]~~ candidate contest or question on a ballot will not be chosen by ranked choice voting.

[1.10.14.8 NMAC - N, 8/13/2019]

1.10.14.9 TABULATION FOR SINGLE WINNER ELECTION:

A. In the first round every ballot shall count as a vote towards the first choice candidate. During each successive round of counting, each continuing ballot contains one vote. All first choices are votes and lower ranked choices are potential runoff votes that may, in accordance with the requirements of this section, become votes and subsequently credited to a continuing candidate.

B. After any round, if any candidate receives a majority of votes in that round, that candidate shall be declared the winner and the tabulation is complete.

C. If no candidate receives a majority of votes in that round, the candidate receiving the fewest number of votes shall be eliminated.

D. Ballots for which a vote counted towards a now eliminated candidate shall be transferred to the next ranked continuing candidate. All the continuing ballots for all continuing candidates shall be counted again in a new round.

E. If after the first round of transferring votes, no continuing candidate has received a majority of votes, the process of eliminating candidates, transferring votes, and tabulating revised results shall continue until one continuing candidate receives a majority of the votes cast.

F. If a tie between candidates occurs at any stage in the tabulation, the tie shall be resolved ~~[against]~~ in favor of the candidate who received the ~~[least]~~ greatest number of combined first choice votes and transferred votes at the previous stage of tabulation. If the first round tabulation results in a tie between candidates, the tie shall be resolved against the candidate who received the least number of combined second choice votes.

G. In tabulating duplicate rankings, the highest ranking for the candidate is valid and any lower rankings of that candidate shall be ignored.

H. In tabulating an overvote, the voter's rankings shall be counted in order of preference, stopping at the point where the ballot contains the same ranking for more than one candidate.

I. In tabulating a skipped ranking, the skipped ranking will be ignored and the next indicated ranking on that ballot will be valid.

[1.10.14.9 NMAC - N, 8/13/2019]

1.10.14.10 TABULATION FOR MULTIPLE WINNER ELECTION:

A. In any contest ~~[for]~~ in which more than one officer position is conducted by ranked choice voting, the tabulation proceeds in rounds. If, in the initial tabulation, the number of continuing candidates is less than or equal to the number of offices to be elected, then all continuing candidates are elected and tabulation is complete. Otherwise, each round proceeds sequentially, until tabulation is complete, as follows:

(1) Each ballot shall count, at its current transfer value, for the highest-ranked continuing candidate on that ballot. If the sum of the number of elected candidates and the number of continuing candidates is equal to the sum of one and the number of offices to be elected, then the candidate with the fewest votes is defeated, all other continuing candidates are elected, and tabulation is complete.

(2) If at least one continuing candidate has more votes than the election threshold for the contest, then each such candidate is elected. Each ballot counting for an elected candidate is assigned a new transfer value by multiplying the ballot's current transfer value by the surplus fraction for the elected candidate, rounded down to four decimal places and ignoring any remainder. Each candidate elected under this subsection is deemed to have a number of votes equal to the election threshold for the contest in all future rounds. A new round begins with Paragraph (1) of Subsection A of this section.

(3) If no candidate is elected under Paragraph (2) of Subsection A of this section, then the continuing candidate with the fewest votes is defeated, and a new round begins with Paragraph (1) of Subsection A of this section.

B. If a tie between candidates occurs at any stage in the tabulation, the tie shall be resolved ~~[against]~~ in favor of the candidate who received the ~~[least]~~ greatest number of combined first choice votes and transferred votes at the previous stage of tabulation.

[1.10.14.10 NMAC - N, 8/13/2019]

1.10.14.11 ~~[RESULTS FOR RANKED CHOICE VOTING]~~ REPORTING OF RESULTS FOR RUNOFF ELECTIONS:

A. The configuration of voting machine settings for a ranked choice or a top-two runoff election shall be determined by the secretary of state.

B. At a minimum, election results shall be posted online in the statewide reporting system.

[1.10.14.11 NMAC - N, 8/13/2019]

1.10.14.12 TOP-TWO RUNOFF ELECTION:

A. If no candidate receives ~~[fifty percent of the votes cast]~~ the percentage of votes required by the laws of the municipality to be elected in the first round of voting-~~[east]~~ for the particular office in question, a runoff election shall be held no sooner than 21 days nor later than ~~[within]~~ 45 days after the ~~[certification of the results]~~ approval of the report of the canvass of the election in question as now provided by the election code.

B. The top[-] two candidates who receive the highest number of votes cast for the office in question shall automatically become the candidates at the runoff election. The top two candidates do not need to file declarations of candidacy for the runoff election.

C. If a top-two runoff election is required pursuant to this section, only the election day polling locations in the affected district, alternate polling locations in the affected district, and the county clerk's office are required to be open. It is up to the county clerk, in consultation with the municipal clerk, to determine if any other polling locations are to be opened during a top-two runoff election.

D. The automatic recount provisions under Paragraph (3) of Subsection A of Section 1-14-24, NMSA 1978, apply to the first round of voting, only when a candidate has received a percentage of votes required by the laws of the municipality to be elected or in a top-two runoff election. The automatic recount provisions are not applicable to the first round of voting, where two candidates receiving the greatest number of votes for an office will proceed to a top-two runoff election.

[1.10.14.12 NMAC - N, 8/13/2019]

1.10.14.13 SEVERABILITY CLAUSE: If any part of this rule is declared unconstitutional by a court of competent jurisdiction, the remaining parts shall survive in full force and effect.

[1.10.14.13 NMAC - N, 8/13/2019]

History of 1.10.14 NMAC: [RESERVED]