

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS
PART 22 PROVISIONAL VOTING

1.10.22.1 ISSUING AGENCY: Office of the Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, New Mexico, 87503.
[1.10.22.1 NMAC - Rp, 1.10.22.1 NMAC, X/XX/2018]

1.10.22.2 SCOPE: This rule applies to any special statewide election, general election, primary election, countywide election or elections to fill vacancies in the office of United States representative and regular or special school district elections as modified by the School Election Law, Sections 1-22-1 to 1-22-19 NMSA 1978.
[1.10.22.2 NMAC - Rp, 1.10.22.2 NMAC, X/XX/2018]

1.10.22.3 STATUTORY AUTHORITY: The Election Code, Article 2 NMSA 1978 defines the secretary of state as the chief election office of the state and requires the secretary of state to prepare uniform instructions for the conduct of elections and registration matters. The Election Code, Section 1-6-5 mandates the secretary of state to establish procedures for the submittal, when required by federal law, of required voter identification with mailed-in absentee ballots. 1 The Election Code, Section 1-6-16.1 states that the secretary of state shall adopt rules deemed necessary to preserve the secrecy of the replacement absentee paper ballots. Per the Election Code, Section 1-12-25.2, the secretary of state shall provide a free access system, such as a toll-free telephone number or internet website that a voter who casts a provisional paper ballot may access to ascertain whether the voter’s ballot was counted and, if the vote was not counted, the reason it was not counted. This section also requires the secretary of state to issue rules on how a voter may appeal the decision of their provisional ballot disqualification. The Election Code, Section 1-12-25.4 NMSA 1978 obligates the secretary of state to issue rules to ensure securing the secrecy of the provisional paper ballots, especially during canvassing, review or recounting, and protecting against fraud in the voting process.
[1.10.22.3 NMAC - Rp, 1.10.22.3 NMAC, X/XX/2018]

1.10.22.4 DURATION: Permanent.
[1.10.22.4 NMAC - Rp, 1.10.22.4 NMAC, X/XX/2018]

1.10.22.5 EFFECTIVE DATE: X/XX/2018 unless a later date is cited at the end of a section.
[1.10.22.5 NMAC - Rp, 1.10.22.5 NMAC, X/XX/2018]

1.10.22.6 OBJECTIVE: The Help American Vote Act, PL 107-252, effective October 29, 2002, requires the casting of a provisional ballot in the following circumstances; a voter whose name does not appear on the roster at the polling place, county voter file, or a new voter who has not provided the required identification to. The Election Code also provides for the use of a provisional ballot qualification process in the instance of an affirmed challenge or when a replacement ballot for an absent voter is required. Most recently in 2017, the New Mexico Legislature adopted procedures specifying the use of a provisional ballot in the event of an emergency, as defined in Section 1-6-16.2, NMSA 1978. The proposed repeal and replacement of 01.10.22 NMAC, creates uniform criteria for the issuance and reporting of all provisional ballots and offers consistency in the qualification process and the counting and canvassing of the ballots for all county clerk offices. The revision also provides for the secrecy of a provisional voter’s ballot during each stage of the election process, extending out through a recount or contest of the election and the ensuing requalification of the provisional ballots.
[1.10.22.6 NMAC - Rp, 1.10.22.6 NMAC, X/XX/2018]

1.10.22.7 DEFINITIONS:

- A. “Abbreviated address”** means a voter using initials to designate a city within New Mexico and includes, but is not limited to, “LC” for Las Cruces, “SF” for Santa Fe, or “ABQ” for Albuquerque.
- B. “Abbreviated name”** means shortened given or surname including, but not limited to, ‘Pat’ for Patrick, Patricio, or Patricia, ‘Wm’ or ‘Bill’ for William, or ‘Rick’ for Ricardo or Richard.
- C. “Absentee ballot”** means a method of voting by ballot, accomplished by a voter who is absent from the voter’s polling place on election day.
- D. “Absentee ballot register”** means a list containing the name and address of each applicant requesting a ballot; the date and time of receipt of the completed application; whether the application was accepted

or rejected; whether the voter is required to submit identification, the issue date of the absentee ballot in the county clerk's office, at an alternate voting location, mailing or electronic transmittal; the applicant's precinct; whether the applicant is a voter, a uniformed-service voter or an overseas voter; and the date and time the completed absentee ballot was received by the county clerk's office or voted early in person.

E. "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.

F. "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.

G. "Ballot" means a system for arranging and designating for the voter the names of candidates, constitutional amendments, and other questions to be voted on and for the marking, casting or otherwise recording of such votes, and the term includes absentee ballots, provisional ballots and all other paper ballots, to include electronically transmitted ballots, regardless of delivery or return method.

H. "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.

I. "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.

J. "Canvass" means the entire process of determining that votes have been counted and tabulated correctly, culminating in the authentication of the official election results.

K. "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.

L. "Consolidated polling place" means a voting location established by a board of county commissioners or county council for the purpose of permitting voters to cast a ballot at a designated location on election day, which may or may not be the voter's precinct polling place.

M. "Contest" means court litigation that seeks to overturn the outcome of an election pursuant to Section 1-14-1 NMSA 1978.

N. "County canvass observer" a voter of the county to which they are appointed, in accordance with Section 1-2-31 NMSA 1978 and permitted to be present at any time from the time the county canvassing begins until the completion of the canvass and strictly limited to observing and documenting the canvassing process.

O. "County canvassing board" means the board of county commissioners in each county.

P. "County voter file" means the computerized version of the county register, comprising a portion of the statewide voter file.

Q. "Election" means any general election, primary election, statewide special election, elections to fill vacancies in the office of United States representative, county wide special election, school district regular election, school district special election or municipal and special district elections that have incorporated by reference the Election Code or do not otherwise have provisions governing the procedures of such election.

R. "Health care provider" means an individual licensed, certified or permitted by law to provide health care in the ordinary course of business or practice of a profession.

S. "Inner secrecy envelope" means the envelope given to the voter along with the 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.

T. "Naked ballot" means a provisional ballot that has not been placed in the inner secrecy envelope by the voter.

U. "Observer" means a voter of a county who has been appointed by a candidate, political party chair or election related organization pursuant to the provisions of the Election Code.

V. "Outer envelope" means an envelope which has information that will identify the voter and may contain a sworn affidavit, into which the voter places the inner secrecy envelope.

W. "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.

X. "Precinct" means a part of a county with definite boundaries established for electoral administrative functions.

Y. "Precinct board" means the voters of a county who are appointed by the county clerk to a polling place, consolidated polling place, absentee precinct or alternate voting location for the purposes of issuing, tabulating, tallying and reporting ballot results.

Z. "Provisional ballot" means a ballot issued to a voter classified as provisional for one or more of

the following reasons: the voters name does not appear on the signature roster or the county voter files; the voters name appears on the absentee register or signature roster as having been issued an absentee ballot; the voter is flagged as requiring voter physical form of identification and has not provided the required physical form of identification upon the issuance of a ballot at the county clerk's office, alternate voting location, mobile alternate voting location, election day polling place, or prior to the mailing of an absentee ballot.

AA. "Provisional ballot transmission envelope" means a sealed envelope or pouch marked and designated by the county clerk to transmit provisional ballots from the polling place or alternate location to the office of the county clerk.

BB. "Provisional voter" means a voter casting a provisional ballot pursuant to the provisions of the Election Code, or a voter whose name does not appear on the signature roster or on the county voter file.

CC. "Qualification process" means the process used by a county clerk to determine the qualifications of a voter who voted a provisional ballot.

"Replacement absentee ballot" means a provisional ballot provided to a voter whose name appears on the absentee ballot register or signature roster as having been sent a ballot and who has affirmed that the ballot was not received or voted on a sworn affidavit pursuant to the Election Code, Section 1-6-16 NMSA 1978.

DD. "Required voter identification" means the forms of identification as specified in Section 1-1-24 NMSA 1978.

EE. "Signature roster" means the certified list of voters at a polling place which is signed by a voter or county voter file at a consolidated polling place.

FF. "Tally sheet" means a document prepared by the secretary of state used for the counting and tallying of votes cast on a ballot that has not been fed into a voting tabulator.

GG. "Undervoted ballot" means a paper 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.

HH. "Voter" means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provision of the Election Code of the state of New Mexico.

II. "Voting Tabulator" means a certified ballot voting system, to include software and firmware, used to record, count and produce a tabulation of votes cast by using the voter's marking of their selection of alternatives allowed in any candidate contest or ballot question in the voting response area on the ballot face. This includes high speed central count voting tabulators.

[1.10.22.7 NMAC - Rp, 1.10.22.7 NMAC, X/XX/2018]

1.10.22.8 PROVISIONAL BALLOT ISSUANCE AND PRECINCT BOARD PROCEDURES:

A. A person offering to vote shall be allowed to vote on a provisional ballot in accordance with the Election Code Section 1-12-8, NMSA 1978 as follows:

(1) the person's original certificate of registration cannot be found in the county register or the person's name does not appear on the signature roster at a consolidated precinct, where any voter of the county is allowed to cast a ballot;

(2) the person's name does not appear on the voter list or signature roster of a polling place, where precincts are not consolidated, shall be allowed to vote at that polling place in accordance with the National Voter Registration Act of 1993. For voter eligibility information purposes, the precinct board at or near the entrance of the polling place, shall post an alphabetical list of voters and a map of the precincts represented to vote there;

(3) a voter whose certificate of registration is confirmed but is unable to provide the required voter identification, to include a first time voter who is required to present a physical form of identification in accordance with the Election Code, Subsection I of Section 1-4-5.1 NMSA 1978, prior to the issuance of a ballot at the office of the county clerk, alternate voting location, mobile alternate voting location or election day polling place. The precinct board shall instruct the voter that the required voter identification must be taken to the office of the county clerk no later than 5:00 p.m. two days after the election or to the alternate voting location, mobile alternate voting location or election day polling place before the polls close for the ballot to be qualified. A first time voter who is required to present a physical form of identification and has submitted an application for absentee ballot shall be mailed a provisional ballot in a provisional ballot envelope. Upon return of the provision ballot, the voter must provide the required voter identification in order for it to be qualified.

(4) a voter whose name appears on the absentee vote register as having been issued a ballot, by executing a sworn affidavit, affirms that they have not received, or if received, have not voted the absentee ballot

may vote on a replacement absentee paper ballot, hereinafter referred to as a provisional ballot, in accordance with the Election Code, Section 1-6-16 NMSA 1978;

(5) a voter who is unable to go to the polls, after the close of the period for requesting an absentee ballot by mail, due to unforeseen illness or disability resulting in the voter's confinement in a hospital, sanatorium, nursing home or residence, may, in writing, request a provisional ballot. The written request shall be signed by the voter and a health care provider under penalty of perjury, in conjunction with the Election Code, Section 1-6-16.2 NMSA 1978;

(6) a voter, who is the subject of an affirmed challenge by a lawfully appointed challenger as prescribed in the Election Code Sections 1-12-20 through 1-12-22 NMSA 1978; or,

(7) in a primary election, a voter who is not registered in a party designated on the primary election ballot, in accordance with the Election Code, Section 1-4-2 NMSA 1978.

B. When issuing a provisional ballot, the precinct board shall ensure the following:

(1) a provisional voter shall fill out all required information on the provisional ballot affidavit and place the ballot in the inner secrecy envelope and outer envelope prescribed by the secretary of state.

(2) the name of a provisional voter is entered in the signature roster on the line immediately following the last entered voter's name, or in its electronic equivalent when consolidated precincts are used, pursuant to the Election Code.

(3) a provisional voter completes the certificate of voter registration attached to the provisional ballot outer envelope and that the certificate of registration remains attached to the provisional ballot outer envelope and is returned to the county clerk.

(4) a provisional ballot cast at the office of the county clerk, alternate voting location, mobile alternate voting location or election day polling place is placed in an secrecy envelope prior to placing the secrecy envelope in the outer envelope containing the voter's oath or affirmation and certificate of voter registration.

(5) a provisional voter is not permitted to place the voted ballot into the voting tabulator.

(6) a provisional voter is not subject to challenge at the time of voting under the procedures provided in the Election Code.

(7) the required physical form of identification provided by a provisional voter who returned to the alternate voting location, mobile alternate voting location or election day polling place, after already casting a provisional ballot, shall be placed with the provisional ballot outer envelope to be used by the county clerk during the provisional ballot qualification process.

(8) a provisional ballot shall not be placed in the ballot box designed for tabulated ballots, but rather, shall be deposited in a special sealed provisional ballot transmission envelope, pouch or ballot box designated by the county clerk for that purpose.

(9) a voter is provided written instructions, to include a free access system, such as a toll-free telephone number or internet website, on how to determine whether the ballot was counted and, if disqualified, the reason thereof.

C. After the period allowed for voting at the office of the county clerk, alternate voting location, mobile alternate voting location or upon close of the election day polling place, all provisional ballots shall be delivered and transferred to the county clerk. A receipt indicating the date and time, the total number of provisional ballots, the name of the alternate voting location, mobile alternate voting location or election day polling place and the signature of the presiding judge and two election judges, one of a differing party than the presiding judge shall be prepared. After verification of the total number of provisional ballots received, the county clerk or designee shall sign the receipt indicating custody of the ballots.

[1.10.22.8 NMAC - Rp, 1.10.22.8 NMAC, X/XX/2018]

1.10.22.9 COUNTY CLERK PROCEDURES:

A. The county clerk is charged with, and authorized to, determine the qualification of all provisional ballots issued for the election, notifying provisional voters of the qualification determination and counting and recording all qualified provisional ballots.

(1) The provisional ballots shall be kept separate by each voting method, absentee, early or election day, as well as, by name of alternative voting location, mobile alternate voting location or election day polling place. The outer envelope containing the voter's oath shall not be opened until the county clerk has completed the qualification process. The qualification process shall consist of determining the reason the provisional voter's name was not on the county register or signature roster, if the provisional voter has provided identification, when applicable, or if the provisional voter has voted in any other manner.

(2) Within the authority to determine the qualification of a provisional ballot, the county

clerk shall not disqualify any provisional ballot because:

(a) the voter's address on the affidavit of the provisional ballot outer envelope does not match the voter's address on the voter's certificate of registration, provided the county clerk can identify the voter with other information provided on the affidavit or certificate of voter registration attached to the provisional ballot outer envelope;

(b) the voter has used an abbreviated name, abbreviated address, middle name, middle initial or suffix, provided the county clerk can identify the voter with other information provided on the affidavit on the provisional ballot outer envelope or certificate of voter registration attached to the provisional ballot outer envelope, or

(c) the voter did not sign both the affidavit and the polling place roster if the voter provided a valid signature and the county clerk can identify the voter with information provided on the affidavit on the outer envelope or certificate of voter registration attached to the provisional ballot outer envelope.

(3) The county clerk shall place any naked ballot in an individual manila envelope to replace the inner secrecy envelope and mark the voter's correct voting precinct on that envelope.

B. A provisional ballot shall be qualified if the voter has provided all the information under the Election Code, Section 1-12-25.3 NMSA 1978 and the provisions set out in the Election Code, Section 1-12-25.4 NMSA 1978 have been met in full.

C. A provisional ballot shall be rejected if:

(1) the voter has not provided all the information under the Election Code, Section 1-12-25.3 NMSA 1978 or met the requirements in the Election Code, Section 1-12-25.4 NMSA 1978;

(2) the voter is not a registered voter in the county;

(3) the voter is registered to vote in another county in the state;

(4) the voter has voted an absentee ballot in the election and the ballot has been received by the absentee precinct board;

(5) the voter's registration was properly cancelled;

(6) the voter is unable to meet the voter identification requirements within the allowable timeframe;

(7) in the case of a primary election, the person is not affiliated with a political party represented on the ballot;

(8) in the case of a federal qualified elector who has submitted a federal write-in absentee ballot, it has been determined that the elector already voted in the election, or

(9) in the case of an overseas voter, it has been determined that the submitted federal write-in absentee ballot was mailed from a location within the United States.

D. The provisional ballot qualification process shall be conducted by the county clerk or designee as follows:

(1) read aloud the name and address on the provisional ballot outer envelope;

(2) determine, by use of the statewide voter file, the registration status, county of registration and correct precinct of the provisional voter, or if the required physical form of identification is attached or verified, and

(3) shall publicly announce whether the provisional ballot is qualified or disqualified and the reasons for that determination.

E. A county canvass observer, pursuant to the Election Code Section 1-2-31 NMSA 1978 may be present during the provisional ballot qualification and canvass. During the provisional ballot qualification process and canvass, the observer shall wear a self-made badge designating the observer as an authorized observer of the candidate or organization represented. The observer shall not wear any other form of identification and all campaign and electioneering material are prohibited. The observer shall not perform any duty of the county clerk or designee, handle any material or interfere with the orderly conduct of the provisional ballot qualification or canvass. The observer shall not be in the view of the provisional ballot outer envelope as to maintain the privacy of the voter's social security number or full date of birth, nor shall the use of cell phones or electronic recording equipment be allowed while observing. Observers are permitted to take written memorandum for later reference.

F. The determination of the provisional voter's disposition and whether the ballot shall be counted, along with the research done by the county clerk or designee shall be noted on the provisional ballot outer envelope to include the following:

(1) notation of qualified or disqualified;

(2) the voter's correct voting precinct, if registered;

(3) the voter's correct party designation, if registered;

- (4) if the voter is registered in a differing party than that of the issued ballot, a notation of “Different Party” shall be made;
- (5) if the voter is registered in a different county within the state, a notation of “Out of County” shall be made;
- (6) if the voter is not registered in the state, a notation of “Not Registered” shall be made;
- (7) if the voter’s record shows that a ballot for the election has already been received, a notation of “Already Voted” shall be made;
- (8) if the voter’s record shows cancelled, a notation of “Cancelled” along with the reason for cancellation shall be made, and
- (9) when consolidated precincts are not utilized, the voter’s correct qualified districts, if registered.

G. The county clerk, after the qualification process, shall separate qualified ballots from unqualified ballots, while keeping them arranged by voting method, absentee, early or election day and sorted by each alternative voting location, mobile alternate voting location or election day polling place. Unqualified provisional ballot outer envelopes shall not be opened and shall be deposited in an envelope or ballot box marked “unqualified provisional ballots” and retained pursuant to the Election Code, Section 1-12-69 NMSA, 1978.

(1) The outer provisional ballot envelope for qualified provisional paper ballots shall be opened and attached to the inner secrecy envelope and ballot, until the time period for any election recount or contest filed pursuant to the election code is expired.

(2) After the tally of qualified provisional ballots, the county clerk or designee shall deposit the counted provisional ballots with attached outer and secrecy envelopes in an envelope or box marked “counted provisional ballots” which shall be retained pursuant to the Election Code, Section 1-12-69 NMSA, 1978.. [1.10.22.9 NMAC - Rp, 1.10.22.9 NMAC, X/XX/2018]

1.10.22.10 TABULATION AND CANVASSING OF QUALIFIED PROVISIONAL BALLOT PROCEDURES:

A. The qualified provisional ballots shall counted for the reporting of votes by precinct and voting method for each candidate contest or question, as specified in the Election Code, Section 1-12-70 NMSA 1978. Only the votes for those candidates or ballot questions for which the voter is eligible to vote on shall be counted, as follows:

(1) A provisional ballot issued by mail to either a first time voter required to provide a form of physical identification or to a voter, who by executing a sworn affidavit, affirmed that they had not received, or if received, had not voted the ballot shall either be hand tallied and recorded in the absentee provisional by hand tally counting group, or tabulated by a voting tabulator designated, programmed and certified for such use, and recorded in the absentee provisional by machine counting group.

(a) A provisional ballot 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 Section 1-12-8 NMSA 1978, or upon an affirmed challenge by a lawfully appointed challenger as prescribed in the Election Code Sections 1-12-20 through 1-12-22 NMSA 1978, shall either be hand tallied and recorded in the early provisional by hand tally counting group, or tabulated by a voting tabulator designated, programmed and certified for such use, and recorded in the early provisional by machine counting group.

(b) A qualified provisional ballot issued on election day for the reasons set out in the Election Code Section 1-12-8 NMSA 1978, or upon an affirmed challenge by a lawfully appointed challenger as prescribed in the Election Code Sections 1-12-20 through 1-12-22 NMSA 1978, shall either be hand tallied and recorded in the election day provisional by hand tally counting group, or tabulated by a voting tabulator designated, programmed and certified for such use, and recorded in the election day provisional by machine counting group.

(c) A qualified federal write-in absentee ballot shall be hand tallied and shall be counted and recorded in the federal overseas hand tally counting group.

(2) The hand tally of votes from qualified provisional ballots shall be conducted in accordance with 1.10.23 NMAC by a team of at least two persons. The team shall consist of one reader and one marker, not of the same political party, if possible. The reader shall read the ballot to the marker and the marker shall observe whether the reader has correctly read each vote from the ballot; the marker shall then mark the tally sheet of the precinct and voting method and voting location where the ballot was cast, and the reader shall observe whether the marker correctly marked the tally sheet,. The hand tally team shall observe the following:

(a) Only the votes for the candidates or ballot questions from the precinct the voter is eligible to for shall be counted;

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

(c) 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 on overvoted ballots;

(d) No votes for either candidates or contests will be hand tallied for blank ballots;

(e) Only those contests or ballot questions receiving a selection by the voter will be hand tallied on an undervoted ballot;

(f) 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, and

(g) Overvoted, blank or undervoted ballots cast by voters, 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.

(3) When a voting tabulator is used for the counting and recording of qualified provisional ballots of voters who were issued a ballot for their correct voting precinct, a member of the county canvassing board shall feed the ballots into the voting tabulator.

(a) An overvoted or blank provisional ballot shall be accepted by the voting tabulator after it has been adjudicated by the county canvassing board. The ballot will be counted and recorded in the appropriate machine counting group, as detailed above.

(b) If a provisional ballot is misread after being fed into a voting tabulator, a county canvass board member shall feed it into the voting tabulator a second time. A provisional ballot that is rejected after two attempts shall be adjudicated by the county canvass board, hand tallied and counted and recorded in the appropriate hand tally counting group, as detailed above.

B. During the counting of qualified provisional ballots, the county clerk shall ensure that observers are not permitted to see the identity of any voter whose ballot is being tallied. If, in the instance of only one provisional ballot being cast in an alternate voting location, consolidated polling place or precinct polling place, the observer may know the identity of the voter, but may not observe the tally of the ballot.

C. Upon the conclusion of the county canvass, the county clerk shall transmit the provisional ballot results to the office of the secretary of state. In accordance with the Election Code, Subsection H of Section 1-12-25.4 NMSA, 1978, the county canvassing board shall direct the county clerk to prepare a report displaying the number of provisional paper ballots received, the number found valid and counted, the number rejected and not counted and the reason for not counting the ballots as part of the canvassing process to the secretary of state immediately upon certification of the election.

D. If there is a discrepancy in the number of provisional; ballots returned based on the number of provisional ballots issued, the county canvassing board shall follow the procedures set out in the Election Code, Article 13, NMSA 1978.

[1.10.22.10 NMAC - N, X/XX/2018]

1.10.22.11 PROVISIONAL VOTER NOTIFICATION AND HEARING PROCESS

A. Upon completing the provisional ballot qualification process, the county clerk shall notify by mail each voter whose provisional ballot was not counted and the reason the ballot was not counted. The notification shall be sent as soon as practical after the qualification determination, through the tenth calendar day following the election. The voter shall have until the Friday prior to the meeting of the state canvassing board to appeal this decision to the county clerk. The appeal process pursuant to Subsection C of Section 1-12-25.2 NMSA 1978 shall be conducted as follows:

- (1) the county clerk shall select a hearing officer(s) from staff or a person who is not affiliated with any candidate on the ballot and knowledgeable of election law;
- (2) the county clerk shall provide a disability accessible room for the appeal hearing to be held;
- (3) the voter shall schedule an appointment time for an appeal by calling the county clerk's office and shall appear under oath and show by a preponderance of the evidence that the vote should be counted;
- (4) the voter may appear with an advocate;
- (5) the appeal hearing shall be an open meeting, but the voter's date of birth and social security number shall not be stated out loud and the public shall not be in the line of sight or view or make notes of the voter's personal information;
- (6) the county clerk or authorized designee and the public may make a brief public comment

and offer relevant exhibits but only the hearing officer shall be permitted to cross examine the witness;

- (7) the hearing officer shall not be bound by the rules of civil procedure, but may use them for guidance and shall make an immediate oral decision explaining the decision by citing a provision of the Election Code;
- (8) there is no statutory right of appeal;
- (9) if the voter prevails, the hearing officer shall direct the county clerk to handle the ballot as a qualified provisional ballot, and
- (10) the county clerk shall notify the county canvassing board of the completion and results of the appeals process.

[1.10.22.11 NMAC - N, X/XX/2018]

1.10.22.12 SECRETARY OF STATE PROCEDURES:

A. In accordance with the Election Code, Subsection B Section 1-12-25.2, NMSA 1978, the secretary of state shall provide a free access system, such as a toll-free telephone number or internet website, that a provisional voter may access to ascertain whether the voter’s ballot was counted and, if the vote was not counted, the reason it was not counted and how to appeal the decision. Access to information about an individual voter’s provisional ballot through the free access system is restricted to the voter who cast the ballot.

B. The secretary of state shall not discuss the disposition of any provisional ballot with any person other than the provisional voter

[1.10.22.12 NMAC - Rp, 1.10.22.10 NMAC, X/XX/2018]

1.10.22.13 [RESERVED]

HISTORY OF 1.10.22 NMAC:

1.10.22 NMAC - Provisional Voting was Repealed and Replaced by 1.10.22 NMAC - Provisional Voting effective X/XX/2018.

History of Repealed Material:

1.10.22 NMAC - Provisional Voting Security (filed 8/1/2003) - Repealed effective 4/28/2006.

1.10.22 NMAC - Provisional Voting (filed 4/28/2006) - Repealed effective X/XX/2018.