

**TITLE 1            GENERAL GOVERNMENT ADMINISTRATION**  
**CHAPTER 10       ELECTIONS AND ELECTED OFFICIALS**  
**PART 12           ABSENTEE VOTING**

**1.10.12.1           ISSUING AGENCY:** Office of the Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, New Mexico 87503.

[1.10.12.1 NMAC - Rp, 1.10.12.1 NMAC, XX/XX/XXXX]

**1.10.12.2           SCOPE:** This rule applies to any general election, primary election, statewide special election , elections to fill vacancies in the office of United States representative, countywide special election, school district regular election, school district special election or municipal and special district elections that have been incorporated by reference to the New Mexico Election Code or do not otherwise have provisions governing the procedures of such election per the Election Code, Section 1-1-19, NMSA 1978.

[1.10.12.2 NMAC - Rp, 1.10.12.2 NMAC, XX/XX/XXXX]

**1.10.12.3           STATUTORY AUTHORITY:** Election Code, Section 1-2-1 NMSA 1978; Election Code, Section 1-6-5.4 NMSA 1978. The issuing authority shall adopt rules for protecting the integrity, security and secrecy of the absentee ballot. Election Code, Section 1-6-5.6 NMSA 1978. The issuing authority shall adopt rules for mobile alternate voting locations in rural areas of the state; Election Code, Section 1-6-16.1 NMSA 1978. The issuing authority shall adopt rules deemed for the preservation and secrecy of the replacement absentee paper ballots; Election Code, Section 1-9-7.1 NMSA 1978. The issuing authority shall establish procedures for the use of nonvisual access or low vision access technology to mark a paper ballot via absentee ballot or voting at a polling place.

[1.10.12.3 NMAC - Rp, 1.10.12.3 NMAC, XX/XX/XXXX]

**1.10.12.4           DURATION:** Permanent.

[1.10.12.4 NMAC - Rp, 1.10.12.4 NMAC, XX/XX/XXXX]

**1.10.12.5           EFFECTIVE DATE:** March 31, 2000 unless a later date is cited at the end of a section.

[1.10.12.5 NMAC - Rp, 1.10.12.5 NMAC, XX/XX/XXXX]

**1.10.12.6           OBJECTIVE:** The Absent Voter Act, Sections 1-6-1 through 1-6-18 NMSA 1978 hereinafter referred to as the Act was enacted by Laws 1969, Chapter 240, Section 127. Pursuant to the New Mexico Constitution, Art. IV, Section 23, the Act was amended by Laws 1999, Chapter 267, Laws 2001, Chapter 58, Laws 2003, Chapter 357 and Laws 2005, Chapter 270. The purpose of the Act is to allow voters to vote 28 days prior to an election on paper ballots by mail or on voting tabulators in person at the office of their county clerk, an alternate voting location or mobile alternate voting location. The Absent Voter Precinct Act, Sections 1-6-19 to 1-6-25 NMSA 1978 was enacted by Laws 1969, Chapter 54, Section 1. The objective of this rule is to establish procedures for protecting the integrity, security and secrecy of the absentee ballot. The Uniform Military and Overseas Voters Act, Sections 1-6B-1 through 1-6B-17 NMSA 1978 was adopted to ensure compliance and consistent application of the federal Uniformed and Overseas Citizens Absentee Voting Act.

[1.10.12.6 NMAC - Rp, 1.10.12.6 NMAC, XX/XX/XXXX]

**1.10.12.7           DEFINITIONS:**

**A.            “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.

**B.            “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.

**C.            “Absentee in person voting daily report”** means a form used to certify 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, consisting of 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. It shall contain a signature line for the county clerk, authorized designee or precinct board member and a line for the date.

**D. “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.

**E. “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.

**F. “Application”** means an absentee ballot application, prescribed by the secretary of state.

**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; the term includes absentee, provisional paper ballots and all other paper ballots, and electronically transmitted ballots, regardless of delivery or return method.

**H. “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.

**I. “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.

**J. “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.

**K. “County canvassing board”** means the board of county commissioners in each county per Election Code, Section 1-13-1 NMSA 1978.

**L. “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.

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

**N. “Electronically transmitted ballots”** means a ballot provided through an electronic transmission system to federal qualified electors or blind or visually impaired voters as provided in the Election Code Section 1-6B-1 to 1-6B-17 and Section 1-9-7.1 NMSA, 1978.

**O. “Immediate family member”** means a person’s spouse, children, parents, brothers and sisters.

**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.

**Q. “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.

**R. “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 identification has not provided the required 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.

**S. “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 issued 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.

**T. “Required voter identification”** means the forms of identification as specified in the Election Code, Section 1-1-24 NMSA 1978.

**U. “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.

**V. “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 provisions of the Election Code of the state of New Mexico.

**W. “Voting response area”** means the place on a ballot the voter is instructed to mark the voter’s selection for a candidate or question.

**X. “Voting Tabulator”** means a certified ballot voting system, including 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.

[1.10.12.7 NMAC - Rp, 1.10.12.7 NMAC, XX/XX/XXXX]

**1.10.12.8 APPLICATION:**

**A.** An application for an absentee ballot may be made only on a blank form prescribed by the secretary of state, either on paper with an original signature or through the official electronic 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 applicant’s printed name, registration address and year of birth to be supplied by the applicant pursuant to the Election Code, Section 1-6-4 NMSA 1978.

**B.** Upon receipt of the absentee ballot application, the county clerk, designee or precinct board member shall review it for completeness.

(1) When it is determined that the application is complete and that the applicant has a valid certification of registration on file in that county, the application shall be marked “accepted” with the date and time of receipt and the required information entered in the absentee ballot register.

(2) 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 on it, the application shall be marked “rejected” with the date and time of receipt. The county clerk shall notify the applicant in writing of the reasons for rejection, and provide a new application for an absentee ballot. The “rejected” application and a copy of the notification shall be retained in a separate file from the “accepted” applications.

**C.** An application for a military-overseas ballot may be made only on a form prescribed by federal law in accordance with the Uniformed Military and Overseas Act, Section 1-6B-3 NMSA 1978, and consist of one of the following methods:

(1) a federal postcard application or its electronic equivalent;

(2) a federal write-in absentee ballot;

(3) a certificate of registration which has an army post office, fleet post office or a diplomatic post office address in the correct format as mailing address;

(4) an application for absentee ballot which has an army post office, fleet post office or a diplomatic post office address in the correct format as a delivery address;

(5) a certificate of registration which has an overseas address as a mailing address; or

(6) an application of absentee ballot which has an overseas address as a delivery address.

**D.** The Uniformed Military and Overseas Act does not apply to a uniformed service voter or the spouse of a uniformed service voter who is physically present in the state during the absentee period or who is not classified as active or reserve status.

**E.** The county clerk, designee or precinct board member shall review each application for completeness and compliance with voter registration requirements as prescribed in the Election Code, Section 1-6B-5 NMSA 1978.

(1) Applications that meet the requirements shall be marked “accepted” with the date and time of receipt and entered into the absentee ballot register.

(2) Applications that do not meet the requirements shall be marked “rejected” with the date and time of receipt and the county clerk shall immediately notify the applicant of the reasons for rejection, according to the applicants preferred method of communication. Notification documentation shall be retained in a separate file from the “accepted” applications.

**F.** An application for an absentee 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 days before the election, shall be electronically transmitted to the appropriate county clerk.

[1.10.12.8 NMAC - Rp, 1.10.12.8 NMAC, XX/XX/XXXX]

**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 provided as follows:

(1) Mail - by completing and signing an application, wherein the mailed ballot is marked,

sealed in the provided envelope and signed according to the instructions beginning 28 days prior to and no later than the Friday before the election. The ballot shall be mailed in accordance with the schedule set out in the Election Code, Section 1-6-6 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)** The voter, a caregiver to the voter or the voter's immediate family member may mail or hand-deliver the ballot in the sealed envelope to the office of the county clerk or to any election day polling place within the voter's county of registration before the close of polls in accordance with the Election Code, Section 1-12-8.2 NMSA 1978.

**(b)** 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 provided a provisional ballot, a provisional ballot envelope prescribed by the secretary of state and instructions on how to provide identification documentation as specified in Election Code, Section 1-4-5.1 NMSA 1978.

**(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; the county clerk or precinct board member shall instruct the voter how to mark their selection of alternatives allowed in any candidate contest or ballot question in the voting response area and ensure that the applicant casts the ballot before departing by personally feeding it into the voting tabulator in accordance with the Election Code, Sections 1-12-12 to 1-12-16 NMSA 1978. No voter who has cast a ballot early may then cast a ballot at the voter's election day polling place.

**(a)** A voter who is blind, visually impaired, physically disabled, unable to read or write, or a member of a language minority who has an inability to read well enough to exercise the elective franchise, shall be afforded the ability to independently mark their paper ballot using the accessible voting devise of the voting tabulator and may be assisted only by a person of the voter's own choice, when requested. Only the voter or the person assisting the voter shall be allowed to enter the voting booth or handle the ballot while the voter votes. The county clerk or precinct board member shall note the assistance provided and identify the person providing the assistance in the signature roster or its equivalent when ballot on demand systems are used.

**(b)** Each county clerk shall ensure that precinct board members at the office of the county clerk, alternate voting location or mobile alternate voting location are trained on the accessible voting devise of the voting tabulator.

**(c)** As required in the Election Code, Section 1-12-7.1 NMSA 1978, a voter who is required to present a physical form of identification and does not submit it upon requesting to vote early at the office of the county clerk, alternate voting location or mobile alternate voting location shall be allowed to vote on a provisional ballot and shall be provided a provisional ballot envelope with instructions on how to provide identification documentation as specified in Election Code, Section 1-4-5.1 NMSA 1978. The provisional ballot shall be provided to the county clerk for subsequent qualification and notification to the voter as outlined in Subsection B 1.10.12.15 NMAC.

**(3)** Electronic ballot transmission -pursuant to Election Code, Section 1-9-7.1 NMSA, 1978, a blind or visually impaired voter may request an electronically transmitted ballot by completing an absentee application and executing a statement certifying blindness. The county clerk shall provide an absentee 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 balloting instructions on how to access the ballot, mark their selection of alternatives allowed in any candidate contest or ballot question and how to return the ballot, as well as, the voter certificate as required in Election Code, Subsections C and D of Section 1-6-8 NMSA 1978, to be completed, signed and included with the returned ballot, in the official return envelope.

**(a)** The secretary of state shall prescribe an official return envelope such that the blind or visually impaired voter can distinguish it for the purposes of returning the absentee ballot.

**(b)** Delivery of electronically transmitted ballots shall be by a computer that is equipped with secured intrusion detection and protection systems, protecting the firewall and local network from network intrusions.

**(4)** Electronic ballot transmission and submittal - by completing, signing and requesting the transmission method on an application:

**(a)** A federal qualified elector pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, no later than 45 days before the election shall be sent a ballot and balloting instructions on how the voter accesses the transmitted ballot, marks their selection of alternatives allowed in any candidate contest or ballot question in the voting response area and returns the ballot by electronic submission, facsimile means, or mail shall be provided; or,

(b) An emergency response provider, only upon the determination that the standards of the Election Code, Section 1-6B-9 NMSA 1978 have been met and no sooner than 35 days before the election, shall be sent a ballot and balloting instructions on how the voter accesses the transmitted ballot, marks their selection of alternatives allowed in any candidate contest or ballot question in the voting response area and returns the ballot by electronic submission, facsimile means or mail shall be provided.

(c) Delivery of electronically transmitted ballots shall be by a computer that is equipped with secured intrusion detection and protection systems, protecting the firewall and local network from network intrusions.

(5) Email addresses provided to the county clerk as a means for electronic transmittal of a ballot are exempt from the Inspection of Public Records Act and as such shall not be recorded on the absentee ballot register, nor disclosed to the public. When a voter is eligible to vote in an election conducted pursuant to the Municipal Election Code, the county clerk shall provide the email address to the appropriate clerk, as defined in the Election Code, Section 1-6B-2 NMSA 1978.

**B.** A voter who has been issued an absentee ballot 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, the voter, by executing a sworn affidavit prior to 5:00 p.m. on the Monday before the election, affirms that they have not received, or if received, have not voted the ballot, will be issued a replacement absentee ballot, hereinafter referred to as a provisional ballot, along with a provisional ballot envelope prescribed by the secretary of state. The provisional ballot may be mailed to the voter, 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 provisional ballot in the provisional ballot envelope, and shall complete and sign the affidavit on the envelope.

(2) The voter, by executing a sworn affidavit at their election day polling place affirms that they have not received, or if received, have not voted the ballot, will be issued a provisional ballot, along with a provisional ballot envelope prescribed by the secretary of state.

(3) A provisional ballot issued at the office of the county clerk, alternate voting location, mobile alternate voting location or election day polling place must be voted on prior to the voter leaving the premises, provided however, that it shall be not be cast in the voting tabulator, but placed and sealed in a provisional ballot envelope prescribed by the secretary of state for subsequent qualification by the county clerk.

(4) 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 ballot envelopes 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. After verification of the total number of provisional ballots, the county clerk or designee shall sign the receipt indicating custody of the ballots. The county clerk will perform the required qualification process for each provisional ballot and will notify the voter of their provisional ballot status in accordance with the Election Code, Section 1-12-25.4 NMSA 1978. All qualified provisional ballots will be counted in accordance with 1.10.22.12 NMAC.

[1.10.12.9 NMAC - Rp, 1.10.12.9 NMAC, XX/XX/XXXX]

**1.10.12.10 ABSENTEE PAPER BALLOTS:** Except as otherwise provided in the Election Code there shall be one uniform paper ballot.

[1.10.12.10 NMAC - Rp, 1.10.12.10 NMAC, XX/XX/XXXX]

**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 1-6-5.7 NMSA 1978. Mobile alternate voting locations may also be designated in rural areas of the county or on Indian nation, tribal area or pueblo land in the county. A request for an alternate voting location or mobile alternate voting location by the Indian nation, tribe or pueblo in the county in accordance with the Election Code, Section 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. Oral assistance for language minority voters pursuant to Election Code, Section 1-2-19 NMSA 1978 shall be provided.

(3) The county clerk shall prepare a list of authorized individuals who have access to alternate voting locations or mobile alternate voting locations, to include authorized custodians of voting tabulator or ballot box keys. Access to the alternate voting locations or mobile alternate voting locations 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.** Electioneering, as defined in the Election Code, Subsection L of Section 1-6-5 NMSA 1978 is not permitted in the office of the county clerk, alternate voting location, or mobile alternate voting location.

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

(1) If an interposed challenge is affirmed in accordance with the Election Code, Section 1-12-20 NMSA, 1978, the voter may be allowed to vote on a provisional ballot. The provisional ballot shall not be cast on the voting tabulator at the office of the county clerk, alternate voting location or mobile alternate voting location, but shall be placed in a provisional ballot envelope and provided to the county clerk for subsequent qualification.

(2) If the interposed challenge is not-affirmed, the voter shall be allowed to vote by casting the ballot in the voting tabulator.

[1.10.12.11 NMAC - N, XX/XX/XXXX]

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

**A.** Certified voting tabulators, to include removable storage media devices shall be programmed and used for the tabulation of ballots in accordance with the Election Code, Article 9, Voting Machines;

(1) No sooner than 42 days before the election, a voting tabulator issued for early voting at the county clerk's office, alternate voting location or mobile alternate voting location and no less than 10 days before a voting tabulator is issued for absentee ballot by mail tabulation, the county clerk shall prepare, inspect and seal each device in accordance with the specifications provided by the manufacturer and the Election Code, Sections 1-11-5 to 1-11-11 NMSA 1978.

(2) Notice of voting tabulator certification shall be sent to the county chair of each political party having a candidate on the ballot and published for public awareness in accordance with the Election Code, Section 1-11-8 NMSA 1978.

(3) Certificates of certification for each voting tabulator shall be filed in the county clerk's office, with a copy posted on the voting tabulator and submitted to the secretary of state pursuant to the Election Code, Section 1-11-7 NMSA 1978. Envelopes for each voting tabulator shall be prepared containing the tabulator serial number, seal number, a printed and signed results reporting tapes indicating the tabulator has been zeroed out and any keys or tokens needed to secure and operate the tabulator. Such envelopes shall be provided to the presiding judge of the alternate voting location or mobile alternate voting location.

(4) At least one day before each voting tabulator is deployed for absentee ballot by mail tabulation and early voting at the county clerk's office, alternate voting location or mobile alternate voting location the county clerk shall certify the voting tabulator type and serial number to the secretary of state and the county chair of each political party represented on the ballot.

(5) 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 Election Code, Section 1-11-11 NMSA 1978 and shall be secured by a lock, key and seal.

(6) The placement of each voting tabulator within the office of the county clerk, alternate voting location or mobile alternate voting shall safeguard the secrecy of the vote, protect the security of the voting tabulator and shall be compliant with accessibility requirements of the federal Americans with Disabilities Act.

(7) Each day during the early voting period at the office of the county clerk, alternate voting location or mobile alternate voting location, the county clerk, designee or precinct board member shall, in the

presence of one other county clerk designee or precinct board member, unlock the office where the voting tabulator, ballot box, preprinted paper ballots or voting systems needed to issue ballots is located and unlock the voting tabulator, ballot box or other container securing preprinted paper ballots or voting systems needed to issue ballots.

**(8)** Each day upon close of the office of the county clerk, alternate voting location or mobile alternate voting location, the county clerk, designee or precinct board member shall follow the procedure as above to lock and secure the voting tabulator, ballot box or other container securing preprinted paper ballots or voting systems needed to issue ballots.

**(9)** 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.

**(10)** Immediately after unlocking or locking the office of the county clerk, alternate voting location or mobile alternate voting location, the county clerk, designee or precinct board member present shall complete and sign the absentee in person 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, either by vote tabulator or hand tally shall be reconciled prior to the submission of the absentee in person voting daily report.

**B.** A voting tabulator within the office of the county clerk, alternate voting location or mobile alternate voting 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 shall be prompted only by the absentee precinct board when convened for the counting and recording of absentee by-mail 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, or designee, 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 transaction will be recorded by the tabulator and will be visible on the reporting tapes. The 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 tabulator.

**(a)** If the number of ballots counted does not match the number of ballots cast prior to the inadvertent close of the tabulator, the county clerk or designee 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 storage media device, 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 reporting tapes to ensure the ballots cast number and all candidate contests and ballot questions stand at 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 report, affirming their inspection and insert the ballots from within the bin and feed them into the voting tabulator. The tape shall remain connected to the 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 matches the total ballots cast on the voting tabulator prior to the inadvertent close.

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

**(2)** If a voting tabulator is inadvertently closed, prompting the result reporting of ballots cast during the days and hours of operation at the office of the county clerk, alternate voting location or mobile alternate voting location, the presiding judge shall immediately notify the county clerk and ensure the voting tabulator, ballots within the bin or results reporting tapes are not tampered with.

**(a)** The county clerk or designee 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 then clear the storage media device, removing all previously recorded votes and reopen the polls on the voting tabulator. Upon opening the voting tabulator, the presiding judge and two election judges, one of a differing party than the presiding judge will inspect the generated report to ensure the ballots cast number and all candidate contests and ballot questions were zeroed out. 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 report, affirming their inspection and will insert the ballots from within the bin and feed them into the voting tabulator. Once complete, they will verify the ballots cast on the public counter matches the total ballots cast on the voting tabulator prior to the inadvertent close.

(b) The tabulator may then be put back into use and the county clerk shall immediately notify the secretary of state of the occurrence. The presiding judge will provide the results reporting tapes from the inadvertent tabulator closure to the voting technician, who will deliver them directly to the county clerk to be filed and kept confidential.  
[1.10.12.12 NMAC - N, XX/XX/XXXX]

**1.10.12.13 VOTE TABULATION:**

**A.** Ballots shall be tabulated for the reporting of votes by precinct and voting method for each candidate contest or question, pursuant to the Election Code, Section 1-12-70 NMSA 1978.

(1) Early voted ballots, not by mail, cast on a voting tabulator at the office of the county clerk, alternate voting location or mobile alternate voting location shall be counted separately from absentee by mail ballots in accordance with the Election Code, Section 1-6-5.4 NMSA 1978.

(a) If an early voted ballot cast at the office of the county clerk, alternate voting location or mobile alternate voting location 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 the Election Code, Section 1-12-62 NMSA 1978. The county clerk, designee or precinct 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 board, after the close of early voting, to be hand tallied by 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 central cast tabulator may be designated, programmed and certified for the tabulation of such ballots. The absentee precinct 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 at the office of the county clerk, alternate voting location or mobile alternate voting location 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 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 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 board, after the close of early voting, to be hand tallied by 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 ballots, either returned by mail or hand-delivered, shall be fed into a voting tabulator by an absentee precinct 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 ballot shall be accepted by the voting tabulator after it has been adjudicated by the absentee precinct board. The ballot will be counted and recorded in the absentee by machine counting group.

(b) If an absentee by-mail ballot is misread after being fed into a voting tabulator, an absentee precinct board member shall feed it into the voting tabulator a second time. An absentee by-mail ballot that is rejected after two attempts shall be adjudicated by the absentee precinct board, hand tallied by precinct as provided by 1.10.23 NMAC and counted and recorded in the absentee by hand tally counting group.

(c) Returned absentee ballots that were issued via electronic transmission to a blind or visually impaired voter will not contain programmed ballot markings necessary for tabulation by the voting tabulator. These ballots shall be hand tallied by the absentee precinct 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 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 markings necessary for tabulation by a voting tabulator, shall be hand tallied by the absentee precinct 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 tabulating of military-overseas ballots, the ballots shall be fed into the voting tabulator by an absentee precinct 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 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 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 board, hand tallied by precinct as provided by 1.10.23 NMAC and counted and recorded in the military-overseas ballot by 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 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 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 as follows:

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

(2) On 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 hand tallied;

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

(4) On an undervoted ballot, only those 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.** 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.

**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, XX/XX/XXXX]

**1.10.12.14 [RESERVED]**

**1.10.12.15 ABSENTEE PRECINCT BOARD, COUNTY CLERK AND COUNTY CANVASS BOARD DUTIES:**

**A.** An absentee precinct board shall be created for the purpose of determining voter eligibility, counting and tabulation of absentee by mail and early voted ballots cast at the office of the county clerk, alternate voting location or mobile alternate voting location. The board shall be comprised of precinct board members in accordance with the Election Code, Section 1-2-12 NMSA 1978, and each member shall meet the qualifications set

out in Election Code, Section 1-2-7 NMSA 1978. The county clerk may deem it necessary to appoint teams of presiding judges, additional election clerks and county clerk employees to assist the precinct board, provided that the counting and tabulation of absentee by mail ballots shall remain separate from early voted ballots.

(1) Pursuant to the Election Code, Section 1-6-11 NMSA 1978, no sooner than the Thursday before election day, all absentee by mail ballots received shall be delivered and transferred to the absentee precinct board. The absentee precinct board, after confirming the number of the absentee by mail ballots, shall sign the required receipt indicating their custody of such ballots. The receipt shall be maintained on file with the county clerk. Certified voting tabulators to be used for the counting and tabulating of absentee by mail ballots shall be delivered, to include, all necessary supplies, red pencils or red pens to be used as a writing instrument for absentee precinct board members. Only the presiding judge shall be issued an ink pen for the signing and filling out required documents.

(2) Pursuant to the Election Code, Section 1-6-14 NMSA 1978, the official outer envelope of each absentee by mail ballot shall be inspected to determine whether the required signature of the voter is present. Only after determination that the voter has not already voted in the election, an absentee by mail ballot envelope containing the required information shall be recorded into the absentee ballot register as “accepted” and the envelope shall be opened.

(a) An absentee by mail ballot 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 issuance of absentee by mail ballots to the voters who signed, and it has been determined that the voters have not already voted in the election. Absentee 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 ballot 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 envelope, and the voter has not voted in any other manner during the election. Absentee 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) A provisional ballot envelope from a first-time voter required to provide a form of physical identification shall be separated from all other ballots and inspected by the county clerk or designee to ensure the presence of such identification. A provisional ballot envelope containing the required identification document, as required, shall be recorded in the absentee ballot register as “accepted”. Per the Election Code, Subsection I of Section 1-6-14 NMSA 1978, a provisional ballot envelope without a form of physical identification shall be recorded as “rejected” on the absentee ballot register, with the reason for rejection. The total number of ballots rejected for the same reason shall be secured and recorded. The county clerk shall perform the provisional qualification process in accordance with 1.10.22 NMAC, with notification of the provisional ballot status and the opportunity for a provisional ballot hearing sent to the voter in accordance with Section 1-12-25.2 NMSA 1978. Qualified provisional ballots will be counted and recorded by precinct. If the ballots are hand tallied they shall be recorded in the absentee provisional by hand tally counting group. If the ballots are tabulated by a voting tabulator designated, programmed and certified for such use, they shall be recorded in the absentee provisional by machine counting group.

(4) An absentee by mail ballot envelope lacking the signature of the voter shall be rejected, however a signature shall not be rejected because it contains an abbreviated name, lack of a middle initial or name, or lack of suffix, provided that the absentee precinct board can identify the voter with other information provided on the outer envelope. Such ballots shall be recorded in the absentee ballot register as “rejected” with the reason for rejection. The absentee precinct board shall secure the unsigned ballot in a locked ballot box in accordance with the Election Code, Subsection B of Section 1-6-14 NMSA 1978, and record the total number of unsigned ballots. The report shall be forwarded with other canvassing materials to the office of the secretary of state and canvass board. The ballots will be reviewed in the event of a recount or contest.

(5) Pursuant to the Election Code, Subsections C and D of Section 1-6-14 NMSA 1978, an absentee ballot mailing envelope may be challenged by lawfully appointed challengers for the following reasons: the official return envelope has been opened by someone other than the voter prior to being received by the absentee precinct board; the voter did not sign the official mailing envelope; or, the person offering to vote is not a voter, as defined in the Election Code.

(a) If a challenge is unanimously upheld by the absentee presiding judge and two election judges, one of a differing party than the presiding judge, the absentee ballot envelope shall be marked “challenged-affirmed”, recorded into the absentee ballot register as “rejected” with the reason for rejection. A challenged-affirmed absentee ballot envelope shall be secured in an envelope purposed for challenged ballots. The

absentee precinct board shall record the total number of challenged ballots and provide the information to the county clerk.

(b) Voters who satisfy the reason for the challenge before the conclusion of the county canvass, shall have their ballot changed in the absentee ballot register to “accepted”, the absentee ballot envelope notation “challenged-affirmed” shall be crossed out, dated and signed by the presiding and the ballot shall be counted.

(c) If the ballots are hand tallied they shall be recorded in the absentee provisional by hand tally counting group. If the ballots are tabulated by a voting tabulator, they shall be recorded in the absentee provisional by machine counting group.

**B.** Upon the last day to vote in the office of the county clerk, alternate voting locations or mobile alternate voting locations, all early voted ballots shall be delivered to the county clerk or designee, who will transfer custody to the absentee precinct board. A receipt containing the serial number and public count indicating votes recorded on the voting tabulator, number of ballot boxes, number of provisional ballots, number of ballots to be hand tallied and signature of the respective alternate or mobile alternate voting locations presiding judge shall be prepared. After verifying the information for accuracy, the county clerk, designee or absentee precinct board shall sign the receipt indicating custody of the early voting returns, voting tabulator and ballot boxes. Keys to the location, ballot boxes and voting tabulators shall also be transferred over. The receipt shall be maintained on file with the county clerk.

(1) The absentee precinct board shall process early voted ballots cast at the office county clerk, alternate voting location or mobile alternate voting location by closing the polls and running the results reporting tapes from each voting tabulator used for early voting and as provided in 1.10.12.13 NMAC shall be responsible for hand tallying any early voted ballot not tabulated by the voting tabulator in accordance with the Election Code, Section 1-1-5.2 NMSA 1978 and 1.10.23.12 NMAC.

(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 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 be provided to the county clerk. The county clerk shall perform the required provisional qualification process and shall notify the voter of the provisional ballot disqualification and their right to a provisional ballot hearing in accordance with Section 1-12-25.2 NMSA 1978. Qualified provisional ballots will be counted and recorded by precinct as provided in 1.10.22 NMAC. If the ballots are hand tallied they shall be recorded in the early voting provisional by hand tally counting group. If the ballots are tabulated by a voting tabulator designated, programmed and certified for such use, they shall be recorded in the early voting provisional by machine counting group.

**C.** The county canvassing board shall canvass the election returns and ascertain whether any discrepancies, omissions or error appears on the face of the election returns, in accordance with the Election Code, Article 13, Post-Election Duties 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, XX/XX/XXXX]

#### **1.10.12.16 [RESERVED]**

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

**A.** Paper ballots cast in a voting tabulator at the county clerk’s office, alternate voting location or mobile alternate voting location shall remain in the custody of the precinct 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 an election judge of a differing political party shall be placed into a locked ballot box, with two padlocks or numbered seals specific to the tabulator, provided that those ballots diverted to the write-in holding bin or 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. The presiding judge and election judge of a differing party must execute a certificate containing the date and voting tabulator serial number for each ballot type on a daily basis, after the transfer of ballots. 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 transferred to the absentee precinct board. The presiding judge, county clerk, or designee shall have sole possession of the key to the locked room.

(1) Paper ballots that remain in the ballot holding bin of the voting tabulator for the duration of voting, shall be checked daily before voting begins by two election judges of differing parties 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. If the ballot holding bin of the voting tabulator becomes full prior to the close of voting, the presiding judge and an election judge of a differing party shall unlock the bin and transfer the ballots to a locked ballot box, with two padlocks or numbered seals, specific to the tabulator after voting hours. The presiding judge shall, in an audible tone, explain the reason for the removal and transfer of ballots. Those ballots diverted to the write-in holding bin or those ballots placed in the hand tally bin shall also be removed, kept separate from each other and specific to the tabulator. The presiding judge and election judge must execute a certificate containing the date and voting tabulator serial number for each ballot type on a daily basis, after the transfer of ballots.

(2) 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 board. The presiding judge, county clerk, or designee shall have sole possession of the key to the locked room.

[1.10.12.17 NMAC - Rp, 1.10.12.17 NMAC, XX/XX/XXXX]

**1.10.12.18 SECURITY FOR UNVOTED PRE-PRINTED BALLOTS AT ALTERNATE VOTING LOCATION:**

**A.** No sooner than one day, nor later than one hour before the first day of voting at the alternate voting location or mobile alternate voting location, the county clerk or a designee shall provide the presiding judge pre-printed paper ballots, in a locked box with two padlocks or numbered seals.

(1) The county clerk or designee shall open the ballot box, and together with the presiding judge, shall complete an affidavit that verifies the number of ballots by style or precinct that were issued to alternate voting location or mobile alternate voting location. The affidavit shall be signed by the county clerk or designee and the presiding judge and retained on file with the county clerk.

(2) The county clerk or designee shall instruct the presiding judge to distribute one key for each padlock on the ballot box to two election judges, each of differing political parties. One key shall be for one padlock and the other key for the other padlock. The keys shall remain in their custody until the early voting period ends and then returned to the county clerk.

**B.** At the end of each day of early voting at the alternate voting location or mobile alternate voting location, the presiding judge and the two election judges, one of a differing party than the presiding judge shall verify and document the number of the unvoted ballots and place them in the ballot box. The ballot box shall be locked with the two padlocks or numbered seals by the two election judges, one of a differing party than the presiding judge and placed in a locked room at the alternate voting location or mobile alternate voting location. The presiding judge, county clerk, or designee shall have sole possession of the key to the locked room. If a location does not have a locked room, the county clerk shall provide a cabinet with a locking device to be placed on the site for the presiding judge to place the ballot box.

(1) At the beginning of each day until the final day of early voting at the alternate voting location or mobile alternate voting location, the presiding judge shall unlock the room. The presiding judge, and the two election judges, one of a differing party than the presiding judge shall open the padlocks or numbered seals on the ballot box to retrieve the unvoted ballots to be used.

(2) The beginning ballot number for that day must match the ending ballot number from the prior day. If it does not match, the county clerk must be notified immediately. No voting at that alternate location shall be allowed until the discrepancy has been resolved to the satisfaction of the county clerk.

(3) All voted ballots shall remain in the voting tabulator except in accordance with 1.10.12.17 NMAC.

[1.10.12.18 NMAC - Rp, 1.10.12.18 NMAC, XX/XX/XXXX]

**1.10.12.19 [RESERVED]**

**1.10.12.20 [RESERVED]**

**History of 1.10.12 NMAC:** 1.10.12 NMAC - Absentee Voting, filed 03/31/2000 was repealed and replaced by 1.10.12 NMAC - Absentee Voting, effective XX/XX/XXXX.