

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

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 - N, 8-15-2003]

1.10.22.2 SCOPE: This rule applies to any special statewide election, general election, primary election, county wide 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 - N, 8-15-2003]

1.10.22.3 STATUTORY AUTHORITY: Election Code, Section 1-2-1 NMSA 1978; Chapter 356, Laws 2003, Public Law 107-252, The Help America Vote Act of 2002. The issuing authority shall issue rules to ensure securing the secrecy of the provisional ballot and protect against fraud in the voting process.

[1.10.22.3 NMAC - N, 8-15-2003]

1.10.22.4 DURATION: Permanent.

[1.10.22.4 NMAC - N, 8-15-2003]

1.10.22.5 EFFECTIVE DATE: August 15, 2003 unless a later date is cited at the end of a section.

[1.10.22.5 NMAC - N, 8-15-2003]

1.10.22.6 OBJECTIVE: The Election Code (Section 1-1-1 NMSA through 1-24-4 NMSA 1978) was amended by Chapter 356, Laws 2003. The purpose of the amendment is compliance with the provisions of PL 107-252, effective October 29, 2002, which allows a voter whose name does not appear on the roster at the polling place or a new voter whose name does not appear on the roster and has not provided the required identification to cast a provisional ballot. The purpose of this rule is to ensure the secrecy of the provisional ballot and protect against fraud in the voting process.

[1.10.22.6 NMAC - N, 8-15-2003]

1.10.22.7 DEFINITIONS:

A. “Absentee ballot register” means a list of the name and address of each applicant; the date and time of receipt of the application; the disposition of the application; the date of issue of the absentee ballot; the applicant’s precinct; whether the applicant is a voter, federal voter, qualified federal elector or an overseas citizen voter and the date and time of receipt of the ballot.

B. “Absentee provisional ballot” means the paper ballot card issued to an absent provisional voter.

C. “Absentee provisional voter” means a voter casting a provisional ballot pursuant to the provisions of the Election Code.

D. “Alternate location” means a site outside the office of the county clerk, established by the county clerk, where a voter may cast an absentee ballot seventeen (17) days prior to an election.

E. “County canvassing board” means the board of county commissioners in each county (Section 1-13-1 NMSA 1978).

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

G. “Election” means any special statewide election, general election, primary election or special election to fill vacancies in the office of United States representative and regular or special school district elections.

H. “Marksense or optical scan ballot” means a paper ballot card used on an electronic vote tabulating system, but for the purposes of this rule is hand tallied.

I. “Precinct board” means the appointed election officials at a polling place, consolidated polling place, absentee precinct or alternate site.

J. “Provisional ballot” means a marksense or optical scan paper ballot card marked by a provisional voter.

K. “Provisional ballot tally sheet” means a document prepared and used by the county clerk for counting votes cast for candidates and questions by provisional voters.

L. “Provisional ballot transmission envelope” means an envelope marked and designated by the

county clerk to transmit provisional ballots from the polling place or alternate site to the office of the county clerk.

M. “Provisional voter” means a voter casting a provisional ballot pursuant to the provisions of the Election Code.

N. “Signature roster” means the certified list of voters at a polling place which is signed by a voter when presenting himself for voting on election day.

O. “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.

[1.10.22.7 NMAC - N, 8-15-2003]

1.10.22.8 PRECINCT BOARD PROCEDURES:

A. A provisional ballot shall not be placed in a ballot box at the polling place, alternate location or county clerk’s office. Provisional ballots shall be deposited in a special provisional ballot transmission envelope designated by the county clerk for that purpose.

B. The precinct board shall not accept any verbal authorization from the county clerk to allow a person to vote whose name is not on the roster. The precinct board shall not accept any verbal authorization from the county clerk to allow a person to vote who is required to provide identification pursuant to the Election Code. The precinct board shall ensure that the name of a provisional voter is entered in the roster on the line immediately following the last entered voter’s name, pursuant to the Election Code.

C. Upon sealing the voter’s provisional ballot envelope, the precinct board shall provide the voter with the toll free telephone number, attached to the provisional ballot outer envelope, to use if the voter wishes to determine whether or not the provisional ballot was counted. The precinct board shall ensure that each provisional voter completes the certificate of voter registration attached to the provisional ballot outer envelope and that the certificate of registration is not placed in the envelope but returned to the county clerk.

D. The precinct board shall ensure that each provisional ballot cast at a polling place or alternate site is placed in an inner or secrecy envelope prior to placing the inner or secrecy envelope in the outer envelope containing the provisional voter’s oath or affirmation. The precinct board shall ensure that each provisional voter is provided with a toll free telephone number that may be called fourteen (14) days after the election for a determination on whether the provisional ballot was counted.

E. Absentee precinct boards shall not open or tally any provisional absentee ballots, but shall convey them to the county clerk for processing according to the provisions of the Election Code and this rule. The county clerk shall process provisional absentee ballots using the same procedures used for provisional ballots cast at the polling place or alternate location. Identification documents submitted with provisional absentee ballots shall be attached to the voter’s certificate of registration and a notation that the documents have been submitted shall be entered into the electronic file of registered voters.

F. Provisional voters are not subject to challenge under the procedures provided in the Election Code.

G. The voter registration card attached to the outer provisional ballot envelope shall be placed in the provisional ballot transmission envelope and returned to the county clerk.

[1.10.22.8 NMAC - N, 8-15-2003]

1.10.22.9 CLERK PROCEDURES:

A. The provisional ballot outer envelope containing the voter’s oath shall not be opened until the county clerk has determined the reason the provisional voter’s name was not on the signature roster, or whether the voter has provided identification, if required, by the Election Code.

B. The determination of the provisional voter’s status and whether the ballot shall be counted, along with the research done by the county clerk shall be noted on the provisional ballot outer envelope. The county clerk shall, after status determination, separate qualified ballots from unqualified ballots. Unqualified ballots shall not be opened and shall be deposited in an envelope marked “unqualified provisional ballots” and retained for twenty-two (22) months, pursuant to 42 USC 1974. The outer provisional ballot envelope for qualified provisional ballots shall be opened and deposited in an envelope marked “qualified provisional ballot outer envelopes” and retained for twenty-two (22) months, pursuant to 42 USC 1974. The county clerk shall mark the number of the voter’s correct precinct on the inner secrecy envelope, but no other information indicating the identity of the voter shall be furnished to the county canvassing board. After the tally of qualified provisional ballots, the county clerk shall deposit the counted provisional ballots in an envelope marked “counted provisional ballots” and retained for a twenty-two (22) months pursuant to 42 USC 1972.

C. The county clerk shall prepare a tally of qualified provisional ballots and include them in the

canvass presented to the county canvassing board. The tally sheet may be a photocopy of a precinct tally sheet, however it shall be clearly marked as designated for provisional ballot tally. Upon the conclusion of the county canvass, the county clerk shall transmit the provisional ballot tally to the office of the secretary of state. The county clerk shall also prepare a report, on behalf of the county canvassing board, on the disposition of all provisional ballots cast within the county. The report shall contain the name, address, date of birth and social security number of each provisional voter. The report shall include an explanation why a provisional voter's name was not included on the signature roster and the reason why any provisional voter's ballot was not counted.

D. The county clerk may designate emergency paper ballots for use as provisional ballots.
[1.10.22.9 NMAC - N, 8-15-2003]

1.10.22.10 SECRETARY OF STATE PROCEDURES:

A. Provisional voters wishing to determine the disposition of their ballot may call the office of the secretary of state fourteen (14) days after the election. The secretary of state shall make the agency toll free number available to county clerks for the purpose of determining the status of provisional ballots. The secretary of state, prior to providing information to a voter on the disposition of his ballot, shall verify the identity of the voter by name, address, date of birth and social security number.

B. The secretary of state shall not discuss the disposition of any provisional ballot with any person other than the provisional voter.
[1.10.22.10 NMAC - N, 8-15-2003]

History of 1.10.22 NMAC: [RESERVED]