

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS
PART 23 PROCEDURES FOR RECOUNTS, AUDITS, RECHECKS AND CONTESTS

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

[1.10.23.1 NMAC - N/E, 10-2-08]

1.10.23.2 SCOPE: This rule applies to recounts, rechecks, audits, and contests conducted pursuant to Sections 1-14-1 *et seq.* NMSA 1978.

[1.10.23.2 NMAC - N/E, 10-2-08]

1.10.23.3 STATUTORY AUTHORITY: Election Code, Sections 1-2-1, and 1-14-1 *et seq.* NMSA 1978.

[1.10.23.3 NMAC - N/E, 10-2-08]

1.10.23.4 DURATION: Permanent.

[1.10.23.4 NMAC - N/E, 10-2-08]

1.10.23.5 EFFECTIVE DATE: October 2, 2008, unless a later date is cited at the end of a section.

[1.10.23.5 NMAC - N/E, 10-2-08]

1.10.23.6 OBJECTIVE: The purposes of this rule is to provide procedures for conducting audits, contests, rechecks, and recounts pursuant to Sections 1-14-1 *et seq.* NMSA 1978.

[1.10.23.6 NMAC - N/E, 10-2-08]

1.10.23.7 DEFINITIONS:

A. Abbreviated name means shortened given or surname including, but not limited to, 'Pat' for Patrick, Patricio, or Patricia, 'Wm' or 'Bill' for William, 'Rick' for Ricardo or Richard, 'Mtz' for Martinez.

B. 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.

C. Absent voter precinct board means the voters of a county who are appointed by the county clerk to open, tabulate, tally and report absentee ballot results.

D. Absentee provisional ballot means the paper ballot issued to a provisional absentee voter.

E. Audit means a check of the voting systems conducted pursuant to Section 1-14-13.1 NMSA 1978.

F. Ballot means a paper ballot card that is tabulated on an optical scan vote tabulating system or hand tallied.

G. Contest means court litigation that seeks to overturn the outcome of an election pursuant to Sections 1-14-1 *et seq.* NMSA 1978.

H. County canvassing board means the board of county commissioners in each county.

I. Designated polling place means the voting location assigned to a voter based on that voter's residence within a precinct of the county.

J. High speed central count marksense ballot tabulator means a self-contained optical scan vote tabulating system that uses an automatic ballot feeder to process ballots placed in the tabulator in any orientation. Ballots are processed at high speed and the tabulator has a built in sorting system to divert processed ballots into appropriate bins.

K. In-lieu of absentee ballot means a ballot provided to a voter at his designated polling place when the absentee ballot was not received by the voter before election day.

L. 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.

M. Optical scan or marksense ballot means a ballot used on an optical scan vote tabulating system or EVT marksense voting system.

N. Optical scan vote tabulating system or electronic vote tabulating (EVT) marksense voting system means a voting system which records and counts votes and produces a tabulation of the vote count using one ballot imprinted on either or both faces with text and voting response areas, and includes a high-speed central count marksense ballot tabulator. The marksense or optical scan vote tabulating voting system records votes by means of marks made in the voting response areas.

O. Overvote means the selection by a voter of more than the number of alternatives allowed in a voting response area.

P. Provisional absentee voter means a voter who votes on an absentee provisional ballot after initially attempting to vote by absentee ballot but whose name does not appear on the signature roster or has failed to meet the voter identification requirements in the Election Code.

Q. Provisional ballot means a ballot that is marked by a provisional voter.

- R. Provisional voter** means a voter casting a provisional ballot pursuant to the provisions of the Election Code.
- S. Recheck** shall have the meaning given in Subsection A of Section 1-1-6 NMSA 1978.
- T. Recount** shall have the meaning given in Subsection B of Section 1-1-6 NMSA 1978 and shall include hand recounts conducted pursuant to this part.
- U. Signature roster** means the certified list of voters at a polling place which is signed by a voter when presenting himself on election day.
- V. Tally sheet** means a document prepared by the county clerk and used for the counting of ballots.
- W. Undervote** means the failure of a voter to select any of the alternatives in a voting response area.
- X. Vote** shall have the meaning given in Subsection A and Paragraphs (1) through (4) of Subsection B of Section 1-9-4.2 NMSA 1978.
- Y. 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.
- Z. Voting response area** means the place on a ballot where the voter is instructed to mark his preference for a candidate or question.
- [1.10.23.7 NMAC - N/E, 10-2-08; A/E, 11-3-08]

1.10.23.8 PUBLIC NOTICE AND OBSERVATION OF AUDITS, VOTING SYSTEM CHECKS, RECHECKS AND RECOUNTS:

- A. Public notice.** In addition to the notice required to be provided by Section 1-14-16 NMSA 1978 for rechecks and recounts, at least three (3) days prior to an audit, voting system check, recount or recheck, the county clerk shall post, in at least one conspicuous place in the county, the time and location of the audit, voting system check, recount or recheck. In addition, if the county clerk has a web site, at least three (3) days prior to an audit, voting system check, recount or recheck, the county clerk shall post the time and location on its web site.
- B. Public observation.** Consistent with Subsection A of Section 1-14-13.2 NMSA 1978, county canvass observers may be present during the audit process and shall be subject to Section 1-2-31 NMSA 1978. Pursuant to Section 1-14-16 NMSA 1978, members of the public may be present during a recheck or recount. The county clerk shall provide instructions to all observers, watchers and members of the public regarding any rules governing their conduct during an audit, voting system check, recheck, or recount. At all times during an audit process, those present to observe shall wear self-made badges designating themselves as an authorized observer of the organization or candidate which they represent or as a member of the public. Those present to observe shall not:
- (1) wear any identification other than the badge described above;
 - (2) wear any party or candidate pins;
 - (3) perform any duty of the recount, recheck, or audit workers;
 - (4) handle any election material;
 - (5) interfere with the orderly conduct of workers conducting the process; or
 - (6) use cell phones, audio, or video tape equipment while observing the process.

[1.10.23.8 NMAC - N/E, 10-2-08; A/E, 10-15-10]

1.10.23.9 VOTING SYSTEM CHECK PROCEDURES: This section applies to voting system checks for all federal offices, for governor, and for the statewide elective office other than the office of the governor for which the winning candidate won by the smallest percentage margin of all candidates for statewide office in New Mexico, as required by Section 1-14-13.2 NMSA 1978.

- A. Auditor functions**
- (1) **Selection of precincts for the voting system check.** The number of precincts to be selected for each contest shall be based on the margin between the top two candidates as determined in Table 1 of Section 1-14-13.2 NMSA 1978. (The calculations for determining the number of precincts in the sample assume that the maximum margin shift in any precinct will not exceed 30%. Achieving the 90% probability of detection with the number of precincts in the sample as indicated in Table 1 requires that the probability of selecting a precinct is proportional to the precinct size.)
 - (a) By no later than 12 calendar days after the election, the auditor shall select the precincts for the voting system check pursuant to the precinct selection process set forth in Section 1-14-13.2 NMSA 1978.
 - (b) The auditor will conduct an agreed upon procedures engagement in accordance with AICPA statements on standards for attestation engagements for procedures set forth in Section 1-14-13.2 NMSA 1978 and 1.10.23.9 NMAC.
 - (c) Precincts will be randomly selected using a process that is visually observable, such as rolling dice or selecting pieces of paper from a box, with the probability of selection being proportional to the number of persons registered to vote in the last election in each precinct.
 - (d) The random sampling process shall be open to public observation. At least seven days prior to the random sampling conducted pursuant to this subsection, the secretary of state shall post notice on its web site of the time, date, and location of the random sampling.

(2) Notification of the county clerks: By no later than 13 days after the election the auditor shall notify the county clerks of the precincts that have been selected for the voting system check.

(a) The auditor shall provide the county clerks with tally sheets for the offices to be subjected to voting system checks in the selected precincts.

(b) The auditor shall reference rules and guidelines that have been provided in advance by the secretary of state for conducting the hand counts and reporting the results to the auditor.

(3) Analysis of results: The auditor shall compare the hand count results with the vote tabulator results to determine if further sampling or a full hand count is needed for any office being subjected to the voting system check.

(a) The auditor determines within 26 days after the election if further sampling is required. The determination is made by 1) calculating the difference between the vote tabulator counts divided by the votes cast for the office in the sample as reported by the vote tabulators and the hand counts divided by the votes cast for the office in the sample as reported by the hand counts for the putative first place candidate, 2) calculating the difference between the vote tabulator counts divided by the votes cast for the office in the sample as reported by the vote tabulators and the hand counts divided by the votes cast for the office in the sample as reported by the hand counts for the putative second place candidate, and 3) subtracting the result in 2) for the putative second place candidate from the result in 1) for the putative first place candidate. For any office being subjected to the voting system check, if the result in 3 exceeds 90% of the reported margin between the first and second place candidates, a voting system check must be conducted on an additional sample of the same size as the original sample. The procedures in subsection A are repeated for selecting the additional sample and notifying the county clerks. If the result in 3) does not exceed 90% of the reported margin between the first and second place candidates, the auditor reports to the secretary of state that no further checking of voting systems for that office pursuant to Section 1-14-13.2 NMSA 1978 is required.

(b) If a second sample was required, the auditor determines within 39 days after the election if a full hand count is required. The determination is made by 1) calculating the difference between the vote tabulator counts divided by the votes cast for the office in both samples as reported by the vote tabulators and the hand counts divided by the votes cast for the office in both samples as reported by the hand counts for the putative first place candidate, 2) calculating the difference between the vote tabulator counts divided by the votes cast for the office in both samples as reported by the vote tabulators and the hand counts divided by the votes cast for the office in both samples as reported by the hand counts for the putative second place candidate, and 3) subtracting the result in 2) for the putative second place candidate from the result in 1) for the putative first place candidate. For any office being subjected to the voting system check, if the result in 3) exceeds 90% of the reported margin between the first and second place candidates, a full hand count of all precincts must be conducted for the contest. If the result in 3) does not exceed 90% of the reported margin between the first and second place candidates, the auditor reports to the secretary of state that no further checking of voting systems for that office pursuant to Section 1-14-13.2 NMSA 1978 is required.

(4) Reporting results: The auditor shall, within three days of receiving the hand counting results from the county clerks for the initial sample, an additional sample, if applicable, and a full hand recount, if applicable, submit a report to the secretary of state and to the public that shall include, for each office subject to the voting system check, the numbers and names of the precincts in the initial sample and, if applicable, the second sample for each office; the outcome of full recounts, if conducted; a comparison of the vote tabulator results with the hand counts in each precinct in the samples and the full recount, if conducted; a comparison of the vote tabulator results with the hand counts for all precincts; a comparison of the reported margin between the first and second place candidates with the error rates in the first sample and, if applicable, in both samples and for a full recount, if conducted. Within 30 days of receiving the hand counting results from the county clerks, a final report to the secretary of state and to the public shall also include a description of the procedures used for the voting system check.

B. Secretary of state functions: The secretary of state shall contract with an auditor whose firm name appears on the state auditor's list of independent public accountants approved to perform audits of New Mexico government agencies.

(1) Within 28 days of the closing of voter registration, the secretary of state shall provide the auditor with the number of registered voters in each precinct in the state.

(2) Upon receipt of the county canvass results and no later than 10 days after the date of the election, the secretary of state shall provide the auditor with the voting results from each county to be used to determine the size of the random sample of precincts for the voting system check.

(3) The secretary of state shall provide a venue and the necessary supplies and equipment for use by the auditor in publicly selecting precincts for each office subject to the voting system check.

(4) The secretary of state shall provide the auditor with the forms or templates to be used by the county clerks and by the auditor for recording, reporting and analyzing results of the voting system check. These forms or templates may include those used for notifying county clerks of the precincts selected for each office, for tallying hand counts, for reporting hand count results to the auditor, for analyzing results of the voting system check by the auditor, and for reporting results of the voting system check to the secretary of state and state canvassing board. The secretary of state shall provide tally sheets to the auditor for only those precincts and offices being tallied as part of the voting system check.

(5) The secretary of state shall arrange for the communications channels and terminals to be used by the auditor for communications of information related to the voting system check to and from the county clerks.

(6) The secretary of state shall provide guidelines to the county clerks for conducting the hand counts and reporting the results to the auditor.

(7) The secretary of state shall post on the web the intermediate and final results reported by the auditor as soon as they are available.

C. County clerk functions

(1) Early voting, absentee voting and election day voting ballots counted by vote tabulators by the time of closing of the polls on election night will be subject to the voting system check. Therefore, it is recommended that sorting of these ballots by precinct should be done in advance.

(a) Within 10 days of the notice to conduct the voting system check, the county clerk shall report their results to the auditor.

(b) The county clerk shall choose a location for the voting system check that is accessible to the public.

(c) The county clerk or her designee shall arrange for transportation of ballots to the site of the voting system check and contact the sheriff or state police to move the ballot boxes from the current place of storage to the site of the voting system check.

(d) At least one person in addition to the county clerk shall witness all movement of ballots during the voting system check, and all movement of ballots from and to the ballot box during the voting system check shall be logged. Each time that ballots are removed from or returned to a ballot box, the number of ballots shall be determined and compared to the number of ballots that should be in that particular ballot box. Any discrepancies shall be noted and the identity of the witness shall be documented.

(e) Prior to conducting the voting system check, the county clerk shall seek an order from the district judge permitting the county clerk to open those ballot boxes containing ballots from the precincts selected for the voting system check.

(f) The county clerk shall assign counting teams of at least two members (a reader and a marker) and preferably three, to particular precincts. The third member, if present, verifies that what the reader reads is correct and is what the marker marks. The team members shall consist of at least two distinct political parties, if possible.

(2) **Hand counting procedures.** The ballots from the precincts selected for auditing shall be hand tallied pursuant to the procedures in this subsection.

(a) For election day voting, and when possible, for absentee and early voting, the counting team shall ensure that the serial number for the voting system and the type of ballot to be counted are prominently displayed on the tally sheet. When multiple vote tabulators are used for a precinct as in early voting and absentee voting, this rule may be ignored.

(b) To count the votes by a two person team, the reader shall read the vote to the marker and the marker shall observe whether the reader has correctly read the vote; the marker shall then mark the tally sheet of the appropriate precinct, and the reader shall observe whether the marker correctly marked the tally sheet. With a three person team the third person verifies that the marker marks correctly and the reader reads correctly. Upon completion of the recount of a precinct, the marker shall add the total number of votes for each candidate as well as any undervotes or overvotes. The reader with the verifier shall confirm these amounts. The marker, the reader and, if present, the verifier shall sign the tally form.

(c) If a two person counting team is used, it is recommended that the ballots be counted again using the sort and stack method. With this method, the ballots are sorted into stacks by candidate, undervotes and overvotes. The stacks are then hand counted. The results of the sort and stack method shall be compared to the hand tally method. Any discrepancies may require the processes in (b) and (c) to be repeated. The reasons for the discrepancies shall be noted on the tally sheet.

(d) If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall make the appropriate determination as provided for in Subsection A and Paragraphs (1) through (4) of Subsection B of Section 1-9-4.2 NMSA 1978. In no case, shall the counting team mark or re-mark the ballot. 1.10.23.12 NMAC contains illustrative examples of how to discern voter intent.

(e) Upon completion of the hand counting of the initial sample of precincts included in the voting system check, and of subsequent samples, if conducted, the results of the hand counting shall be reported to the auditor within 10 days of the notice to conduct the voting system check. If a full hand count is required pursuant to 1-14-13.2, the results shall be reported as soon as practicable.

[1.10.23.9 NMAC - N/E, 10-2-08; A/E, 10-16-08; A/E, 11-3-08; A/E, 10-15-10]

1.10.23.10 RECOUNT AND RECHECK PROCEDURES: This section applies to rechecks and recounts conducted pursuant to Sections 1-14-14 and 1-14-24 NMSA 1978, and recounts resulting from audits performed under Section 1-14-13.2 NMSA 1978. Except as otherwise provided in Subsection E of Section 1-14-23 NMSA 1978 and this section, the recheck and recount procedures in this section shall be used in conjunction with the procedures in Sections 1-14-16 and 1-14-18 through 1-14-23 NMSA 1978.

A. Time and place; ballot security.

(1) Pursuant to Subsection A of Section 1-14-16 NMSA 1978, the recount or recheck shall be held at the county courthouse.

(2) The county clerk shall arrange for transportation of ballots to the recount or recheck site and contact the sheriff or state police to move the ballot boxes from the current place of storage to the recount or recheck site.

(3) The county clerk shall convene the absent voter precinct board no more than 10 days after the filing of the application for a recount or recheck, notice of an automatic recount, or notice of a recount required by Subsection B of Section 1-14-13.2 NMSA 1978.

(4) The presiding judge of the absent voter precinct board shall assign counting teams of at least two members, of opposite political parties if possible, to particular precincts.

(5) At least one person in addition to the district judge or presiding judge shall witness all movement of ballots during the recount, and all movement of ballots from and to the ballot box during the recount process shall be logged. Each time that ballots are removed from or returned to a ballot box, the number of ballots shall be determined and compared to the number of ballots that should be in that particular ballot box. Any discrepancies shall be noted.

B. Random selection of ballots to determine whether the recount shall be hand tallied or electronically tabulated. This subsection does not apply to recounts resulting from audits performed under Section 1-14-13.2 NMSA 1978. To determine whether votes shall be recounted using optical scan vote tabulating systems pursuant to Section 1-14-23 NMSA 1978, the absent voter precinct board shall electronically tabulate absentee ballots from the precincts to be recounted in accordance with the procedures in this subsection.

(1) A separate results cartridge programmed with ballot configurations for all precincts in the county or the ballot configuration for the precinct to be tabulated shall be inserted into an M-100 optical scan vote tabulating system. A summary zeros results report shall be generated and certified by the precinct board.

(2) Absentee ballots equal to at least the number required by Subsection B of Section 1-14-23 NMSA 1978 shall be fed into the optical scan vote tabulating system. Any absentee ballots rejected by the optical scan vote tabulating system shall be placed back into the ballot boxes and additional absentee ballots shall be inserted until the number of ballots tabulated by the system is equal to at least the amount required by Subsection B of Section 1-14-23 NMSA 1978. If the absent voter precinct board uses a results cartridge programmed with only the ballot configuration for the precinct being tabulated, then the procedure in Paragraph (1) of this subsection shall be repeated for each precinct being tabulated.

(3) The absent voter precinct board shall then hand tally the votes from the same ballots counted by the optical scan vote tabulating system in accordance with the procedures in Subsection E of this section.

(4) Pursuant to Subsection C of 1-14-23 NMSA 1978, for statewide or federal offices, if the results of the hand-tally and the electronic vote tabulating system differ by one-fourth of one percent or less, the remaining ballots shall be recounted using optical scan vote tabulating systems pursuant to Subsection C of this section. Otherwise, the remaining ballots shall be recounted by hand in accordance with the procedures in Subsection E of this section.

(5) Pursuant to Subsection D of 1-14-23 NMSA 1978, for offices other than statewide or federal offices, if the results of the hand-tally and the optical scan vote tabulating system differ by the greater of one percent or less, or two votes, the remaining ballots shall be recounted using optical scan vote tabulating systems pursuant to Subsection C of this section. Otherwise, the remaining ballots shall be recounted by hand in accordance with the procedures in Subsection E of this section.

C. Electronic recount procedures.

(1) **Class A counties.** If the remaining ballots in a class A county are to be re-tabulated using optical scan vote tabulating systems, the absent voter precinct board shall use an M-650 optical scan vote tabulating system in accordance with the procedures in this paragraph, provided that the M-650 optical scan vote tabulating system was not used to tabulate voted absentee, early-in person or election day ballots. If the M-650 optical scan vote tabulating system was used to tabulate voted ballots, the absent voter precinct board shall use M-100 optical scan vote tabulating systems in accordance with the procedures in Paragraph (2) of this subsection.

(a) To recount the ballots for a particular ballot type (e.g., absentee ballots, election day ballots, early in-person ballots), a results cartridge programmed with ballot configurations for all precincts to be recounted in the county shall be inserted into the optical scan vote tabulating system. A summary zeros report shall be generated and certified by the absent voter precinct board.

(b) The ballots for the ballot type being recounted shall be inserted into the optical vote tabulating system.

(c) The votes from any ballots rejected by the system shall be tallied by hand in accordance with the procedures in Subsection E of this section.

(d) A machine report shall be generated for each precinct after ballots are tabulated for that precinct, and the machine results shall be zeroed out. The ballots for the next precinct shall be tabulated until all ballots for the ballot type being recounted are tabulated.

(e) The procedures in this paragraph shall be repeated for each ballot type being recounted.

(2) **Non-class A counties.** If the remaining ballots in a non-class A county are to be re-tabulated using optical scan vote tabulating systems, the absent voter precinct board shall use M-100 optical scan vote tabulating systems selected at random by the county clerk in accordance with the procedures in this paragraph.

(a) A separate results cartridge programmed with ballot configurations for all precincts in the county or the ballot configuration for the precinct to be tabulated shall be inserted into the optical scan vote tabulating system chosen by the county clerk.

(b) A summary zeros report shall be generated and certified by the precinct board.

(c) The ballots for the ballot type (e.g., absentee ballots, election day ballots, early in-person ballots) and

precincts to be recounted shall be fed into the optical scan vote tabulating system.

(d) All ballots rejected by the tabulator shall be tallied by hand in accordance with the procedures in Subsection E of this section.

(e) A machine report shall be generated and certified by the absent voter precinct board.

(f) If the absent voter precinct board uses a results cartridge programmed with ballot configurations for all precincts in the county, then the procedures in this paragraph shall be repeated for each ballot type being recounted. If the absent voter precinct board uses a results cartridge programmed with only the ballot configuration for the precinct being tabulated, then the procedures in this paragraph shall be repeated for each precinct being tabulated.

(3) If the voted ballots in a precinct are unavailable or incomplete for recount, the district judge, in consultation with the county clerk, may order that a results tape or report be regenerated from the results cartridge that was used to tabulate the voted ballots.

D. Review of rejected ballots and re-tally of provisional, in-lieu of absentee ballots and other paper ballots in a recount.

(1) The district judge shall orally order that any ballot boxes, envelopes, or containers that hold provisional, in-lieu of absentee, and absentee provisional ballots be opened one at a time.

(2) The presiding judge shall count the total number of provisional, absentee provisional, and in-lieu of absentee ballots in each precinct and the number shall be compared to the previously certified signature roster count in that precinct and noted. Any discrepancies shall be noted.

(3) The county clerk shall review the qualification of all rejected provisional, absentee provisional, and in-lieu of absentee ballots pursuant to Section 1-12-25.4 NMSA 1978 and 1.10.22 NMAC.

(4) The absent voter precinct board shall review the qualification of all rejected absentee ballots in accordance with 1.10.12.15 NMAC and any other rejected ballots in accordance with applicable law.

(5) All previously and newly qualified ballots (including provisional, absentee provisional, in-lieu of absentee ballots, absentee ballots and other paper ballots) shall be recounted and the votes shall be added to the tally of the appropriate precinct.

(6) If any voting data changes as a result of this review, the county clerk shall update the report required in Subsection I of 1.10.22.9 NMAC.

E. Hand counting procedures for recounts. This subsection applies to hand recounts. The secretary of state shall provide tally sheets for only those races being recounted, and shall include options for marking undervotes and overvotes.

(1) The counting team shall ensure that the precinct and the ballot type (eg., election day, early in-person, absentee, in-lieu of absentee, and provisional) being counted are prominently displayed on the tally sheet.

(2) To recount the votes, the reader shall read the vote to the marker and the marker shall observe whether the reader has correctly read the vote; the marker shall then mark the tally sheet of the appropriate precinct, and the reader shall observe whether the marker correctly marked the tally sheet. Upon completion of the recount of a precinct, the marker shall add the total number of votes for each candidate as well as any undervotes or overvotes. The reader shall confirm these amounts. Both the marker and the reader shall sign the tally form.

(3) If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall count a vote as provided for in Subsection A and Paragraphs (1) through (4) of Subsection B of Section 1-9-4.2 NMSA 1978. In no case, shall the counting team mark or re-mark the ballot. 1.10.23.12 NMAC contains illustrative examples of how to discern voter intent.

(4) If a recount for an office selected for a voting system check is conducted pursuant to the provisions of Chapter 1, Article 14 NMSA 1978, the vote totals from the hand count of ballots for that office in precincts selected for the voting system check may be used in lieu of recounting the same ballots for the recount.

F. Recount and recheck reconciliation procedures.

(1) Upon completion of a recount, the district judge or presiding judge shall tabulate the total vote count from the machine generated tapes or reports and the tally sheets from the hand recount.

(2) The county clerk or secretary of state in a statewide race shall compare the results of each recount or recheck to the results of the county or statewide canvass. County clerks shall make available to the public and provide to the secretary of state the results of the recount or recheck within five days of the completion of the recount or recheck. The secretary of state shall combine the county files and place the results on the secretary of state's website.

(3) Pursuant to Subsection A of Section 1-14-18 NMSA 1978, the absent voter precinct board shall send the certificate of recount or recheck executed pursuant to Subsection D of Section 1-14-16 NMSA 1978 to the proper canvassing board.

(4) In the event of a recount or recheck conducted pursuant to Section 1-14-14 NMSA 1978, if no error or fraud appears to be sufficient to change the winner, the county clerk may provide documentation of costs to the secretary of state, or directly to the candidate, for reimbursement from the money provided pursuant to Section 1-14-15 NMSA 1978. [1.10.23.10 NMAC - Rn & A/E, 1.10.22.11 & 12 NMAC, 10-2-08; A/E, 11-3-08; A/E, 10-15-10]

1.10.23.11 CONTEST PROCEDURES:

A. An election contest shall be conducted pursuant to the provisions of the Election Code under Sections 1-

14-1 *et seq.* NMSA 1978.

B. In any election contest the court may order the re-tallying of ballots. The county clerk shall provide tally sheets for the purpose of the contest.

C. In any election contest the court may order comparison of results cartridges from any optical scan vote tabulating systems.

D. No rejected ballot subject to review in an election contest shall be disqualified solely because the signature on the outer envelope or affidavit contains an abbreviated name, lack of a middle initial, or lack of a suffix, provided that the voter can be identified with information provided on the outer envelope or voter's affidavit.

E. If a tally of qualified provisional or other ballots is required in an election contest, the court may summon the county clerk to re-tally all qualified provisional or other ballots and review all rejected provisional or other ballots pursuant to Subsection D of 1.10.23.10 NMAC.

[1.10.23.11 NMAC - Rn & A/E, 1.10.22.13 NMAC, 10-2-08]

1.10.23.12 STANDARDS FOR WHAT CONSTITUTES A VOTE: All optical scan ballots that are read by a ballot scanner shall be counted in accordance with applicable provisions of the New Mexico Election Code. The following standards shall apply in determining whether a ballot has been properly voted and whether a vote should be counted for any office or ballot question when counting ballots by hand. In the event of a recount, a court should provide guidance as to whether the recount shall be conducted by a ballot scanner or by hand. These standards have been adopted in accordance with the New Mexico Election Code, where applicable.

A. Optical Scan 1 - A ballot that is properly marked, as specified by the legally valid ballot instructions, in the target area for an office or ballot question shall be counted as a vote for that candidate or ballot response.

**For Governor
(Vote for one)**



George Washington



Abraham Lincoln



John Adams

Valid Vote for Lincoln

B. Optical Scan 2 - A ballot containing a clear mark indicating the intent of the voter, any portion of which is contained in the target area and does not enter into another target area, shall be counted as a vote for that candidate or ballot response.

**For Governor
(Vote for one)**



George Washington



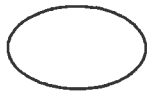
Abraham Lincoln



John Adams

Valid Vote for Washington

**For Governor
(Vote for one)**



George Washington



Abraham Lincoln



John Adams

Valid Vote for Lincoln

C. **Optical Scan 3** - A ballot that has any mark in the target area that partially extends into another target area or areas shall not be counted for that office or ballot question.

**For Governor
(Vote for one)**



George Washington



Abraham Lincoln

John Adams

Invalid vote

D. **Optical Scan 4** - A ballot that has any mark in the target area that partially extends into an area surrounding a candidate or ballot response, other than its target area, shall be counted as a vote for the candidate or ballot response so marked.

**For Governor
(Vote for one)**



George Washington



Abraham Lincoln



John Adams

Valid Vote for Washington

E. Optical Scan 5 - A ballot properly marked with any device other than the marking device provided to the voter shall be counted.

F. Optical Scan 6 - A ballot marked with more than one type of marking device shall not be counted for any office or ballot question on the ballot.

G. Optical Scan 7 - A ballot with marks for more candidates in an office or more responses to a ballot question than permitted shall be deemed an over-vote, and no vote shall be counted for that office or ballot question.

**For Governor
(Vote for one)**



George Washington



Abraham Lincoln



John Adams

Invalid vote

H. Optical Scan 8 - A ballot with a proper mark in the straight party target area and with additional marks for candidates or ballot responses elsewhere on the ballot shall be counted for those candidates or ballot responses properly marked outside the straight party area. For the other offices on the ballot, the ballot shall be counted for the candidates of the political party for which the voter cast a straight party vote.



Straight Democrat



Straight Republican

**For Governor
(Vote for one)**



George Washington (Democrat)



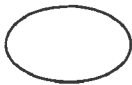
Abraham Lincoln (Republican)



John Adams (Green)

Valid Vote for Lincoln

**For Senator
(Vote for one)**



Bill Clinton (Democrat)



George Bush (Republican)



Dwight David Eisenhower (Green)

Valid Vote for Clinton

I. Optical Scan 9 - A ballot with marks for more than one party in the straight party target areas, and with additional marks in the target areas of candidates or ballot responses elsewhere on the ballot, shall be counted only for those candidates or ballot responses properly marked.



Straight Democrat



Straight Republican

**For Governor
(Vote for one)**



George Washington (Democrat)



Abraham Lincoln ((Republican)



John Adams (Green)

Valid Vote for Adams



Straight Democrat



Straight Republican

**For Governor
(Vote for one)**



George Washington (Democrat)



Abraham Lincoln ((Republican)



John Adams (Green)

Valid Vote for Lincoln



Straight Democrat



Straight Republican

**For Governor
(Vote for one)**



George Washington (Democrat)



Abraham Lincoln (Republican)



John Adams (Green)

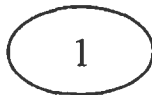
Invalid vote

J. Optical Scan 10 - A ballot on which writings or remarks in the target area appear to be ranking candidates (letters, numbers, etc.) shall be considered valid marks only if they do not exceed the number of candidates permitted to be elected for that office.

**For Governor
(Vote for one)**



George Washington



Abraham Lincoln



John Adams

Valid Vote for Lincoln

**For Governor
(Vote for one)**

2

George Washington

1

Abraham Lincoln

3

John Adams

Invalid vote

**For Governor
(Vote for two)**

2

George Washington

1

Abraham Lincoln

John Adams

Valid Votes for Lincoln & Washington

K. Optical Scan 11 - A ballot with any writings or remarks regarding one or more candidates or ballot responses shall not be counted as a vote for that office or question, unless clarified by an additional mark or marks in the target area(s) that indicate support for those candidates or ballot responses.

**For Governor
(Vote for one)**

George Washington

Abraham Lincoln

✓

John Adams

Valid Vote for Adams

**For Governor
(Vote for one)**



George Washington (Democrat) *Yes*



Abraham Lincoln (Republican)



John Adams (Green)

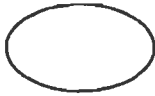
Valid Vote for Adams

L. **Optical Scan 12** - A ballot on which the voter casts a vote on the ballot and properly writes in a different candidate in the write-in area shall be considered an over-vote for that office if the number of chosen candidates exceeds the number permitted to be voted for in that office and no vote shall be counted, except as provided by optical scan 13.

**For Governor
(Vote for one)**



George Washington



Abraham Lincoln



John Adams



Write-In Franklin Roosevelt

Invalid vote

M. **Optical Scan 13** - A ballot on which the voter casts a straight party vote and properly writes in a candidate in the write-in area shall be counted only for the write-in candidate in that office. For the other offices on the ballot, the ballot shall be counted for the candidates of the political party for which the voter cast a straight party vote.

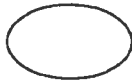


Straight Democrat



Straight Republican

**For Governor
(Vote for one)**



George Washington (Democrat)



Abraham Lincoln (Republican)



John Adams (Green)



Write-In Thomas Jefferson

Valid Vote for Jefferson

N. **Optical Scan 14** - A properly cast write-in vote shall contain a mark in the target area and, in the space provided, the written name of a candidate whose name does not otherwise appear on the ballot for that office.

**For Governor
(Vote for one)**



George Washington



Abraham Lincoln



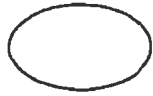
John Adams



Write-In Thomas Jefferson

Valid Vote for Jefferson

**For Governor
(Vote for one)**



George Washington (Democrat)



Abraham Lincoln (Republican)



John Adams (Green)



Write-In Thomas Jefferson

Invalid Vote

**For Governor
(Vote for one)**



George Washington



Abraham Lincoln



John Adams



Write-In Abraham Lincoln

Invalid Vote

**For Governor
(Vote for one)**



George Washington



Abraham Lincoln



John Adams



Write-In *A. Lincoln*

Invalid Vote

**For Governor
(Vote for one)**



George Washington



Abraham Lincoln



John Adams



Write-In *John Adams*

Invalid Vote

- O. **Optical Scan 15** - All properly cast write-in votes must be counted exactly as they appear on the ballot.

**For Governor
(Vote for one)**



George Washington



Abraham Lincoln



John Adams



Write-In H. Trueman

Valid Vote for H. Trueman only

P. Optical Scan 16 - If a voter designates a vote for a named candidate on the ballot and also properly writes in the same candidate in the write-in area, no vote shall count for that candidate.

**For Governor
(Vote for one)**



George Washington



Abraham Lincoln



John Adams



Write-In John Adams

Invalid Vote

Q. Optical Scan 17 - A ballot on which the voter does not mark the voting response area but instead marks the ballot in a consistent manner, such as placing some type of consistent mark (other than a circle), on or around a candidate's name, shall be counted as a vote for that candidate or ballot response.

Example 1)

**For Governor
(Vote for one)**



George Washington *Yes*



Abraham Lincoln



John Adams

**For Auditor
(Vote for one)**



Jane Smith



John Doe *Yes*



Jane Doe

Valid vote for George Washington & John Doe

Example 2)

**For Governor
(Vote for one)**

George Washington



Abraham Lincoln

John Adams

**For Auditor
(Vote for one)**

Jane Smith

John Doe



Jane Doe

Valid vote for George Washington & John Doe

[1.10.23.12 NMAC - N/E, 11-3-08]

HISTORY OF 1.10.23 NMAC:

Pre-NMAC History: None

History of Repealed Material:

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

NMAC History:

1.10.22 NMAC, Provisional Voting, Recounting and Security, filed 4-17-2006.

1.10.23 NMAC, Procedures for Recounts, Audits, Rechecks and Contests, filed 8-2-2008, replaces those portions of 1.10.22 NMAC, Provisional Voting, effective 8-2-2008.