

# U.S. ELECTION ASSISTANCE COMMISSION



## *2014 Election Administration & Voting Survey*

**New Mexico**

## *Statutory Overview*

In order to better understand state laws governing federal elections, the U.S. Election Assistance Commission, as part of its biennial Election Administration and Voting Survey, is collecting information on state election laws and procedures. These answers will help EAC to better understand the quantitative data relating to the 2014 general election that we are collecting from all U.S. states and territories.

EAC understands that responding to this Statutory Overview may require significant staff time on the part of your office. Please be assured that we have attempted to minimize the burden, and we appreciate your cooperation in this very important project.

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## DIRECTIONS AND EXAMPLE

Please provide your state's legal citation for the responses to these questions (where applicable). Prior to beginning the Statutory Overview, please ensure that "track changes" is turned on; this will provide a record of all changes that are made including insertions, deletions, and formatting changes. To turn on track changes hold down "Control" and "Shift" and "E" at the same time. For additional assistance in working with "track changes" please contact your Technical Assistance point of contact at ICF International.

Please answer each question to the best of your ability. If terms are ambiguous or not relevant, please explain why. If a question is not applicable to your state, please explain why. If a definition or term lacks statutory reference but is widely understood in practice, please explain. If election procedures vary at the local level within your state, please explain to the best of your ability.

We have provided you with your answers to the 2012 Statutory Overview. If there has not been a change in your State's laws or legal citation in the response to a question, please mark No Change Since 2012 with an "X" as shown below:

X No Change Since 2012

If the response has changed since 2012, please mark Changed Since 2012 with an "X" and modify the answer as needed using track changes. If you need to replace the entire answer, please delete the 2012 response and record your 2012 response between the red bracketed text lines, as described below.

X Changed Since 2012

Please answer each question to the best of your ability. If terms are ambiguous or not relevant, please explain why. If a question is not applicable to your state, please explain why. If a definition or term lacks statutory reference but is widely understood in practice, please explain. If election procedures vary at the local level within your state, please explain to the best of your ability.

If state laws are currently enjoined or otherwise blocked from enforcement by a state or federal court, or executive decision, please specify.

Please put your responses between the red, bracketed text lines. This will help us extract your answers into our central database.

**Example:**

A1. How does your state define the following terms related to votes and ballots? Please provide your state's legal citation defining these terms, where applicable.

a. Over-vote

[Begin definition (a) below this line.]

*Currently the State of NM does not allow for over-votes*

[End definition (a) above this line.]

## SECTION A: GENERAL

**A1. How does your state define the following terms related to votes and ballots? Please provide your state's legal citation defining these terms, where applicable.**

**a. Over-vote**

☒ No Change Since 2012    ☐ Changed Since 2012

**2012 Response:**

[Begin definition (a) below this line.]

Over-vote *means the selection by a voter of more than the number of alternatives allowed in a voting response are.*

[End definition (a) above this line.]

**b. Under-vote**

☒ No Change Since 2012    ☐ Changed Since 2012

**2012 Response:**

[Begin definition (b) below this line.]

Under-vote *means the failure of a voter to select any of the alternatives in a voting response area.*

[End definition (b) above this line.]

**c. Blank ballot**

☒ No Change Since 2012    ☐ Changed Since 2012

**2012 Response:**

[Begin definition (c) below this line.]

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.*

[End definition (c) above this line.]

**d. Void/Spoiled ballot**

☒ No Change Since 2012    ☐ Changed Since 2012

**2012 Response:**

[Begin definition (d) below this line.]

A voter who accidentally spoils or erroneously prepares the voter's paper ballot may return the spoiled or erroneously prepared paper ballot to the presiding judge and receive a new paper ballot.

The voter shall mark the spoiled or erroneously prepared paper ballot with the word "SPOILED" and shall place it in a separate envelope marked "**SPOILED BALLOTS**", which shall be returned to the county clerk.

[End definition (d) above this line.]

**e. Provisional/Challenged ballot**

  X   No Change Since 2012          Changed Since 2012

**2012 Response:**

[Begin definition (e) below this line.]

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

[End definition (e) above this line.]

**f. Absentee**

  X   No Change Since 2012          Changed Since 2012

**2012 Response:**

[Begin definition (f) below this line.]

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.*

[End definition (f) above this line.]

**g. Early voting**

  X   No Change Since 2012          Changed Since 2012

**2012 Response:**

[Begin definition (g) below this line.]

Early voting -Commencing on the third Saturday prior to an election and ending on the Saturday immediately preceding the election, an early voter may vote in

person on a voting system at an alternate voting location established by the county clerk.

[End definition (g) above this line.]

**h. Active Voter**

**X** **No Change Since 2012**    **\_\_\_\_\_ Changed Since 2012**

**2012 Response:**

[Begin definition (h) below this line.]

Active Voter *means* registered voter: (1) who has no change of address; (2) who has had a change of address and who has informed the county clerk of that change of address; (3) who has had a change of address, been sent a confirmation mailing, and who has voted in any election since the confirmation mailing was sent; or (4) is a registered voter who has not been declared to be an inactive voter.

[End definition (h) above this line.]

**i. Inactive Voter**

**X** **No Change Since 2012**    **\_\_\_\_\_ Changed Since 2012**

**2012 Response:**

[Begin definition (i) below this line.]

Inactive Voter *means* means a voter who has been mailed a confirmation card in accordance with [42 U.S.C. 1993](#) gg 6(d) and who has either failed to respond or has failed to vote in any election conducted after the mailing of the confirmation card.

[End definition (i) above this line.]

**j. Other terms (please specify) \_\_\_\_\_**

**X** **No Change Since 2012**    **\_\_\_\_\_ Changed Since 2012**

**2012 Response:**

[Identify each TERM and definition separately and begin below this line.]

[End TERM(s) and definition(s) above this line.]

**A2. Please provide the legal citation for any significant changes to election laws or procedures that have been enacted or adopted since the previous Federal election. “Significant” does not include routine or technical changes (such as changes to election**

**district boundaries or polling place changes). However, EAC would like to learn about any new identification requirements for voters or registrants; changes in eligibility for voting or registering; adoption of alternative voting methods; and other changes that you believe represent a significant change in the way your state runs its elections.**

**X** **No Change Since 2012**             **Changed Since 2012**

**2012 Response:**

[Begin response to above question (A2) below this line.]

In 2011, New Mexico adopted statutes allowing for voting convenience centers. By statute, when precincts are consolidated for a primary and general election, the resolution required by [Section 1-3-2 NMSA 1978](#), in addition to the other matters required by law, shall state therein which precincts have been consolidated and the designation of the polling place. In addition, when consolidating precincts for primary and general elections:

- (1) any voter of the county shall be allowed to vote in any consolidated precinct polling location in the county;
- (2) each consolidated precinct shall be comprised of no more than ten precincts;
- (3) each consolidated precinct shall comply with the provisions of [Section 1-3-7 NMSA 1978](#);
- (4) each consolidated precinct polling location shall have a broadband internet connection and real-time access to the statewide voter registration electronic management system;
- (5) the county clerk may maintain any alternative voting locations previously used in the same election open for voting on election day for any voter in the county, in addition to the polling location established in each consolidated precinct; and
- (6) the board of county commissioners may permit rural precincts to be exempted from operating as or being a part of a consolidated precinct; provided that if the precinct is not designated as a mail ballot election precinct pursuant to [Section 1-6-22.1 NMSA 1978](#) and the polling place for the rural precinct does not have real-time access to the statewide voter registration electronic management system, voters registered in a rural precinct as described in this paragraph are permitted to vote in any consolidated precinct polling location on election day only by use of a provisional paper ballot, which shall be counted after the county clerk confirms that the voter did not also vote in the rural precinct.

[End response to above question (A2) above this line.]

## SECTION B: VOTER REGISTRATION

**B1. Is your state's voter registration database system best described as a bottom-up, a top-down, or a hybrid? (Note: A bottom-up system generally uploads information retained at the local level and compiled at regular intervals to form the statewide voter registration list. A top-down system is hosted on a single, central platform/mainframe and is generally maintained by the state with information supplied by local jurisdictions. A hybrid is some combination of both systems described above.)**

☒ **No Change Since 2012**      ☐ **Changed Since 2012**

**2012 Response:**

[Begin response to above question (B1) below this line.]

*New Mexico operates a top-down system. The statewide voter file is a single, central platform which is the ES&S Voter Registration Election Management System. Information is supplied to the system at the county level.*

[End response to above question (B1) above this line.]

**If your state uses a bottom-up or hybrid system, how often do local jurisdictions transmit registration information to the state list?**

☒ **No Change Since 2012**      ☐ **Changed Since 2012**

**2012 Response:**

[Begin response to above clarification question to B1 below this line.]

*Not applicable. The system operates in real time.*

[End response to above clarification question to B1 above this line.]

**B2. Please describe the process used in your state to move voters from the active list to the inactive list, and from the inactive list to the active list. Is a different process used for UOCAVA voters?**

☐ **No Change Since 2012**      ☒ **Changed Since 2012**

**2012 Response:**

[Begin response to above question (B2) below this line.]

*In 2007 and 2009, the Secretary of State's office failed to comply with the NVRA. Voters were incorrectly flagged as Inactive based on any undeliverable mailing, rather than based on an undeliverable confirmation mailing. In 2012, the Secretary of State, working with the Department of Justice, sent out 177,700 confirmation mailings to voters who had previously*



*had an undeliverable mailing. Those voters were flagged as Inactive. In 2014, the Secretary of State, working with the Department of Justice, sent 186,000 confirmation mailings to voters who had previously had an undeliverable mailing. They will be flagged as Inactive. Upon either confirmation of address - by returning the confirmation postcard, or updating voter registration- the voters are returned to Active status. Additionally, a voter is returned to Active status upon voting in any election between the time of the confirmation mailing through the next two federal elections. These procedures are the same for UOCAVA voters.*

[End response to above question (B2) above this line.]

**B3. Please describe your state's process for removing voters from the voter registration rolls (not merely moving them from active to inactive). Please include information regarding notices and confirmations. Are these procedures the same for UOCAVA voters?**

  X   No Change Since 2012             Changed Since 2012

**2012 Response:**

[Begin response to above question (B3) below this line.]

*NMAC 1.10.26 was amended to comply with the NVRA following notification from the USDOJ that it contained invalid provisions.*

**1.10.35.9 FILE MAINTENANCE:**

**A.** The secretary of state shall contract with a postal service approved vendor of the national change of address program (NCOA) pursuant to Section 1-4-28, NMSA 1978. The entire statewide voter file shall be compared to the NCOA listings for the confirmation mailing.

**B.** The secretary of state shall also create a file of all active voters designated NVRA on the statewide voter file due to an initial undeliverable mailing returned to the county clerk and so designated by the county clerk in the county voter file.

**C.** All active voters appearing in either the NCOA or the NVRA files shall be mailed a confirmation card to the voter's mailing address. The confirmation card shall be returned by the voter no later than twenty-eight (28) days prior to the next general election.

**D.** The secretary of state shall deliver returned and address corrected confirmation cards to the county clerk and the county clerk shall enter the corrected address into the voter file, scan the confirmation card and attach the scanned image to the voter's record in the voter file. The physical confirmation card shall be attached to the voter's certificate of registration to be filed in the county register.

**E.** The secretary of state shall return to the county clerk any confirmation card with an address indicating that the voter has moved to another state or county. If the voter has moved to another county, the county clerk shall forward a photocopy or scanned image of the confirmation card to the county clerk of that county and the voter shall be mailed a new certificate of registration by the county clerk of the county where the voter now resides.

**F.** If the voter's confirmation card indicates they have moved to another state or country, they shall be removed from the file and the voter's certificate of registration, with the confirmation card attached, shall be removed from the county register, and retained for six (6) years.

**G.** A voter whose confirmation card is returned undeliverable shall be designated on the voter file as "inactive" The designation shall be carried out only by the secretary of state.

**H.** A voter is eligible for removal from the voter file if the voter has not been returned to active status, corrected the voter's address on the certificate of registration and not appeared to vote during a period beginning on the date of the confirmation mailing and ending on the day after the date of the second general election that occurs after the date of the confirmation mailing.

**I.** Cancellation of voter registration shall be by the board of registration and subject to the provisions of the election code. Upon cancellation, the county clerk shall remove the certificate of registration from the county register and retain it for six (6) years.

**O.** List maintenance activities shall be conducted in a non-discriminatory manner and in no instance shall select groups of voters be targeted for cancellation or removal from the voter file.

[1.10.35.9 NMAC - N, 3-15-2012]

[End response to above question (B3) above this line.]

**B4. Can your state's voter registration database (or equivalent) share information electronically with your state's driver's license agency (for example, to match records or trace changes in address)? Can your voter registration database be similarly linked with databases in any other state or federal agencies? Please describe these links, including any use of database matching to verify voter registration applications.**

  X   No Change Since 2012             Changed Since 2012

**2012 Response:**

[Begin response to above question (B4) below this line.]

*No, the Voter Registration Election Management System does not currently interface with any other state or federal agencies.*

[End response to above question (B4) above this line.]

**B5. Please describe how your state uses National Change of Address (NCOA). What has been your state's experience with NCOA?**

  X   No Change Since 2012             Changed Since 2012

**2012 Response:**

[Begin response to above question (B5) below this line.]

*The NCOA mailing is used as the confirmation mailing.* **A.** The secretary of state shall contract with a postal service approved vendor of the national change of address program (NCOA) pursuant to Section 1-4-28, NMSA 1978. The entire statewide voter file shall be compared to the NCOA listings for the confirmation mailing.

[End response to above question (B5) above this line.]

**B6. Please describe your state's voting eligibility requirements as they relate to individuals with a felony conviction. (For example, are convicted felons allowed to vote while in prison or while on parole or probation? Are voting rights automatically restored or does the individual have to apply for a pardon, certificate of eligibility or other similar certificate? Does an individual whose voting rights have been restored have to produce documentation of his/her status when registering to vote?)**

  X   No Change Since 2012             Changed Since 2012

### 2012 Response:

[Begin response to above question (B6) below this line.]

*Pursuant to Section 31-13-1 N.M.S.A. 1978 as amended in 2005 and Section 1-4-27.1 of the Election Code provide that a convicted felon can vote if that person has:*

- *Completed the terms of their suspended deferred sentence; or*
- *Was unconditionally or conditionally discharged from a State correctional facility or unconditionally discharged from a federal correctional facility and completed all conditions of probation and parole; or*
- *Was granted a pardon or certificate by the Governor restoring their full rights of citizenship.*

*The Secretary of State is to notify all County Clerks when a convicted felon is eligible to register as a voter when:*

- *A State District Court notifies the Secretary of State that a person has completed the terms of that person's suspended or deferred sentence; or*
- *The New Mexico Corrections Department or the corrections department of another state or federal corrections agency issues the persons a certificate of completion.*

*To ensure compliance with the provisions of State law cited above, County Clerks are directed to:*

- *Permit anyone who states they have completed the terms of their sentence but who appears to be ineligible to vote because of a felony conviction to vote on a provisional ballot;*
- *Advise anyone who has received a letter of rejection – in writing if possible – that they can vote on a provisional ballot;*
- *Provide the Secretary of State with a list of all persons who have been sent a rejection letter or were not permitted to vote based on a felony conviction.*

[End response to above question (B6) above this line.]

**B7. Does your state currently use the Internet in any way to facilitate voter registration? If yes, please describe how your state allows voters to use the Internet in the registration process (e.g., entire registration completed online; completed online but then must be printed, signed, and mailed by voter, etc.).**

  X   **No Change Since 2012**             **Changed Since 2012**

### 2012 Response:

[Begin response to above question (B7) below this line.]

*Voters may download the federal registration form. The Secretary of State's office does not provide a website for applications to be completed online but does accept applications that*

*are completed online and then printed, signed and mailed by the voter. New Mexico does not have true online voter registration.*

[End response to above question (B7) above this line.]

## SECTION C: ELECTION ADMINISTRATION

**C1. Please describe how all votes cast at a place other than the voter's precinct of registration are tabulated (for example, please include descriptions of such votes as absentee ballots, mail-in ballots, votes cast at vote centers, provisional ballots, early voting locations, etc.).**

**a. Are the votes counted centrally or at the precincts?**

  X   No Change Since 2012             Changed Since 2012

**2012 Response:**

[Begin response to above question (a) below this line.]

*New Mexico votes are tabulated using M100 tabulators at the polling place. Tabulator totals are uploaded to a central statewide file.*

[End response to above question (a) above this line.]

**b. If centrally tabulated, are the votes redirected to the appropriate precinct for reporting in the canvass?**

  X   No Change Since 2012             Changed Since 2012

**2012 Response:**

[Begin response to above question (b) below this line.]

All vote totals are reported by precinct.

[End response to above question (b) above this line.]

**c. Are the absentee, mail, etc., votes reported separately for each precinct, or are they added to the in-precinct results and reported as just a single number?**

  X   No Change Since 2012             Changed Since 2012

**2012 Response:**

[Begin response to above question (c) below this line.]

*New Mexico statute, 1-12-70, provides "the county clerk shall maintain voting data by precinct that includes the number of voters who voted early in-person, absentee by mail and on election day and the number of voters who voted using each type of voting system."*

[End response to above question (c) above this line.]

**d. How are UOCAVA ballots counted and reported?**

☒ **No Change Since 2012**      ☐ **Changed Since 2012**

**2012 Response:**

[Begin response to above question (d) below this line.]

*UOCAVA ballots are counted and reported by precinct as absentee ballots.*

[End response to above question (d) above this line.]

**C2. Does your state require a reason for voting absentee, or does your state allow no-excuse absentee voting? (If a reason is required, please provide the legal citation.)**

☒ **No Change Since 2012**      ☐ **Changed Since 2012**

**2012 Response:**

[Begin response to above question (C2) below this line.]

*No, a reason is not required.*

[End response to above question (C2) above this line.]

**C3. Does your state provide for in-person early voting? If so, how is early voting defined? When early voting is used, are the ballots counted at the precinct or at a central location? How are these votes reported?**

☒ **No Change Since 2012**      ☐ **Changed Since 2012**

**2012 Response:**

[Begin response to above question (C3) below this line.]

*Pursuant to Section 1-6-5.7., NMSA 1978, commencing on the third Saturday prior to an election and ending on the Saturday immediately preceding the election, an early voter may vote in person on a voting system at an alternate voting location established by the county clerk. Early voting ballots are tabulated using tabulators at each early voting site and reported by precinct.*

[End response to above question (C3) above this line.]

**C4. Do any jurisdictions in your state use a vote-by-mail system to replace (and not merely supplement) at-the-precinct voting in any elections?**

☒ **No Change Since 2012**      ☐ **Changed Since 2012**

## **2012 Response:**

[Begin response to above question (C4) below this line.]

*Yes, a local government may elect to have an all mail ballot election. As used in the Mail Ballot Election Act [1-23-1 to 1-23-7 NMSA 1978], “local government” means any county, school district or incorporated municipality.*

*Pursuant to Section 1-23-3, NMSA 1978, notwithstanding any other provision of law and regardless of the number of eligible voters within its boundaries, a local government may, by resolution of its governing body, conduct by all-mailed ballot any bond election, any election on the imposition of a mill levy or a property tax rate for a specified purpose or any special election at which no candidates are to be nominated for or elected to office.*

*Pursuant to Section 1-6-22.1, NMSA 1978, states:*

*A. Notwithstanding the provisions of Section 1-1-11 NMSA 1978, a board of county commissioners may designate a precinct as a mail ballot election precinct if, upon a written request of the county clerk, it finds that the precinct has fewer than fifty voters and the nearest polling place for an adjoining precinct is more than thirty miles driving distance from the polling place designated for the precinct in question.*

*B. If a precinct is designated a mail ballot election precinct, in addition to the notice required pursuant to Section 1-3-8 NMSA 1978, the county clerk shall notify by registered mail all voters in that precinct at least forty days before an election that each voter will be sent an absentee ballot twenty-eight days before the election and that there will be no polling place for the precinct on election day. The county clerk shall include in the notice a card informing the voter that if the voter does not want to receive an absentee ballot, the voter should return the card before the date the county clerk is scheduled to mail out absentee ballots. The card shall also inform the voter that a voting system equipped for persons with disabilities will be available at all early voting sites before election day and in the office of the county clerk on election day in case the voter prefers to vote in person and not by mail.*

*C. The county clerk shall mail each voter in the mail ballot election precinct an absentee ballot on the twenty-eighth day before an election, unless the voter has requested otherwise, along with a notice that there will be no polling place in that precinct on election day.*

*D. The county clerk shall keep a sufficient number of ballots from a mail ballot election precinct such that if a voter from that precinct does not receive an absentee ballot before election day, the voter may vote on an absentee ballot in the office of the county clerk on election day in lieu of voting on the missing ballot.*

[End response to above question (C4) above this line.]

**C5. Please list each of the situations that require a provisional ballot in your state. Please provide the relevant legal citation for each situation.**

X   No Change Since 2012

       Changed Since 2012

**2012 Response:**

[Begin response to above question (C5) below this line.]

*Pursuant to 1-12-.8 NMSA 1978, states:*

*A person shall be permitted to vote on a provisional paper ballot even though the person's original certificate of registration cannot be found in the county register or even if the person's name does not appear on the signature roster, provided:*

*(1) the person's residence is within the boundaries of the county in which the person offers to vote;*

*(2) the person's name is not on the list of persons submitting absentee ballots; and*

*(3) the person executes a statement swearing or affirming to the best of the person's knowledge that the person is a qualified elector, is currently registered and eligible to vote in that county and has not cast a ballot or voted in that election.*

*A voter shall vote on a provisional paper ballot if the voter:*

*(1) has not previously voted in a general election in New Mexico or has been purged from the voter list;*

*(2) registered to vote by mail;*

*(3) did not submit the physical form of the required voter identification with the certificate of registration form; and*

*(4) does not present to the election judge a physical form of the required voter identification.*

*A voter shall vote on a provisional ballot in accordance with the provisions of Section 1-12-7.1 NMSA 1978 if the voter does not provide the required voter identification to the election judge.*

For voting convenience centers, voters registered in a rural precinct are permitted to vote in any consolidated precinct polling location (convenience center) on election day only by the use of a provisional paper ballot, which shall be counted after the county clerk confirms that the voter did not also vote in rural precinct (1-3-4 NMSA 1978)

[End response to above question (C5) above this line.]



**C6. Does your state count provisional ballots of voters who are registered in different precincts, or are those ballots automatically rejected? Please describe the process used by local election officials in determining whether to count a provisional ballot.**

  X   No Change Since 2012             Changed Since 2012

**2012 Response:**

[Begin response to above question (C6) below this line.]

When counting provisional paper ballots, votes shall be counted for only those positions or measures for which the voter was eligible to vote in the precinct where the ballot was cast. See 1.10.22 NMAC.

[End response to above question (C6) above this line.]

**C7. Please describe your state's laws regarding post-election audits, if any. A post-election audit refers to hand-counting votes on paper records and comparing those counts to the corresponding vote counts originally reported, as a check on the accuracy of election results, and resolving discrepancies using accurate hand counts of the paper records as the benchmark.**

**If your state has post-election auditing, consider including in your response information such as the unit being audited (e.g., precincts, machines); the sampling method (e.g., fixed percentages); whether there is a specific trigger for the audit; the location of the random selection (e.g., state, county); and the races that can be audited.**

  X   No Change Since 2012             Changed Since 2012

**2012 Response:**

[Begin response to above question (C7) below this line.]

*Pursuant to Section 1-14-13.2, NMSA 1978 states that a post-election voting system check shall be conducted.*

*A. At least ninety days prior to each general election, the secretary of state shall contract with an auditor qualified by the state auditor to audit state agencies to oversee a check on the accuracy of precinct electronic vote tabulators, alternate voting location electronic vote tabulators and absent voter precinct electronic vote tabulators. The voting system check shall be conducted 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.*

*B. For each selected office, the auditor shall publicly select a random sample of precincts from a pool of all precincts in the state no later than twelve days after the election. The random sample shall be chosen in a process that will ensure, with at least ninety percent*

probability for the selected offices, that faulty tabulators would be detected if they would change the outcome of the election for a selected office. The auditor shall select precincts starting with the statewide office with the largest winning margin and ending with the precincts for the statewide office with the smallest winning margin and then, in the same manner, select precincts from each congressional district. The size of the random sample for each office shall be determined as provided in Table 1 of this subsection. When a precinct is selected for one office, it shall be used in lieu of selecting a different precinct when selecting precincts for another office in the same congressional district, or for any statewide office. If the winning margin in none of the offices for which a voting system check is required is less than fifteen percent, a voting system check for that general election shall not be required.

C. The auditor shall notify the appropriate county clerks of the precincts that are to be included in the voting system check upon their selection. The auditor shall direct the appropriate county clerks to compare the original machine count precinct vote totals, including early absentee and absentee by mail machine count vote totals, for candidates for offices subject to the voting system check from the selected precincts for each office with the respective vote totals of a hand recount of the paper ballots from those precincts. The county clerks shall report their results to the auditor within ten days of the notice to conduct the voting system check.

D. Based on the results of the voting system check and any other auditing results, the auditor shall determine the error rate in the sample for each office. If the winning margin decreases and the error rate based on the difference between the vote totals of hand recounts of the paper ballots and the original precinct vote totals exceeds ninety percent of the winning margin for an office, another sample equal in size to the original sample shall be selected and the original precinct vote totals compared to the vote totals of hand recounts. The error rate based on the first and second sample canvassing board shall order that a full hand recount of the ballots for that office be conducted.

E. The auditor shall report the results of the voting system check to the secretary of state upon completion of the voting system check and release the results to the public.

F. Persons designated as county canvass observers may observe the hand recount described in Subsection C of this section. Observers shall comply with the procedures governing county canvass observers as provided in Section 1-2-31 NMSA 1978.

G. 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.

H. All costs of a voting system check or required hand recount shall be paid in the same manner as automatic recounts.

[End response to above question (C7) above this line.]

**C8. Please describe any state requirements for poll worker training.**

X   No Change Since 2012             Changed Since 2012

**2012 Response:**

[Begin response to above question (C8) below this line.]

*Pursuant to Section 1-2-17, NMSA 1978, precinct board schools of instruction shall be conducted.*

*The secretary of state may supervise and the county clerk shall cause to be held a public school of instruction for all presiding judges, precinct boards and others who will be officially concerned with the conduct of elections.*

*The schools for instruction provided for in this section shall be as follows:*

- (1) one school not less than seven days before the primary election;*
- (2) one school not less than seven days before the general election; and*
- (3) one school not less than seven days before any other statewide election.*

*All major details of the conduct of elections shall be covered by the secretary of state or the secretary's authorized representative or the county clerk or the clerk's authorized representative at such school, with special emphasis being given to recent changes in the Election Code [Chapter 1 NMSA 1978].*

*The school of instruction shall be open to any interested person, and notice of the school shall be given to the public press at least four days before the school is to be held. Each member of the precinct board shall be notified by mail at least seven days prior to commencement of the school .*

*A person shall not serve as a judge or member of a precinct board in any election unless that person has attended at least one such school of instruction in the calendar year of the election at which the person is appointed to serve or has been certified by the county clerk with respect to the person's completion of the school of instruction. This subsection shall not apply to filling of vacancies on election day as provided in Subsection B of Section 1-2-15 NMSA 1978.*

[End response to above question (C8) above this line.]

## SECTION D: ELECTION DAY ACTIVITIES

**D1. Please describe your state's process for capturing "over-vote" and "under-vote" counts.**

  X   No Change Since 2012             Changed Since 2012

**2012 Response:**

[Begin response to above question (D1) below this line.]

*Over voted ballots are rejected by the tabulator. A new ballot will be issued to the voter and the over voted ballot will be spoiled.*

*Under voted ballots are accepted by the tabulator.*

[End response to above question (D1) above this line.]

**D2. What identification does your state require from voters in the following situations:**

**a. registering to vote;**

  X   No Change Since 2012             Changed Since 2012

**2012 Response:**

[Begin response to above question (a) below this line.]

*Any person who will be a qualified elector at the date of the next ensuing election shall be permitted within the provisions of the Election Code [Chapter 1 NMSA 1978] to register and become a voter, provided, however, he shall not register in New Mexico without canceling his registration in the state of previous residence if such there be.*

*Pursuant to Section 1-4-5.1, NMSA 1978, allows:*

*A qualified elector may apply for registration by mail, in the office of the secretary of state or county clerk or with a registration agent or officer. If the form is submitted by mail by the applicant and the applicant is registering for the first time in New Mexico, the applicant must submit with the form a copy of:*

- 1) a current and valid photo identification; or*
- 2) a current utility bill, bank statement, government check, paycheck, student identification card or other government document, including identification issued by an Indian nation, tribe or pueblo, that shows the name and current address of the applicant; and*

*If the applicant does not submit the required identification, the applicant will be required to do so when voting in person or absentee; and*

*a statement requiring the applicant to swear or affirm that the information supplied by the applicant is true.*

[End response to above question (a) above this line.]

**b. casting an in-person ballot;**

  X   No Change Since 2012             Changed Since 2012

**2012 Response:**

[Begin response to above question (b) below this line.]

**§ 1-1-24. Required voter identification**

As used in the Election Code, “required voter identification” means any of the following forms of identification as chosen by the voter:

A. a physical form of identification, which may be:

(1) an original or copy of a current and valid photo identification with or without an address, which address is not required to match the voter's certificate of registration; or

(2) an original or copy of a utility bill, bank statement, government check, paycheck, student identification card or other government document, including identification issued by an Indian nation, tribe or pueblo, that shows the name and address of the person, the address of which is not required to match the voter's certificate of registration; or

B. a verbal or written statement by the voter of the voter's name, registration address and year of birth; provided, however, that the statement of the voter's name need not contain the voter's middle initial or suffix. (This has not changed since 2010, but the prior response was incorrect)

[End response to above question (b) above this line.]

**c. casting a mail-in or absentee vote;**

  X   No Change Since 2012             Changed Since 2012

**2012 Response:**

[Begin response to above question (c) below this line.]

*The voter is required to include the required voter identification set forth above - the voter's name, registration address and year of birth. For first time New Mexico voters who registered by mail, the NVRA identification is required.*

[End response to above question (c) above this line.]

**d. casting a ballot under UOCAVA;**

  X   No Change Since 2012             Changed Since 2012

**2012 Response:**

[Begin response to above question (d) below this line.]

*The identification requirements for UOCAVA voters are the same as for other voters.*

[End response to above question (d) above this line.]

**e. any other stage in registration or voting process in which identification is required (please specify).**

       No Change Since 2012             Changed Since 2012

**2012 Response:**

[Begin response to above question (e) below this line.]

N/A

[End response to above question (e) above this line.]

**D3. Please describe your state's laws regarding access to the polling place for election observers. Election observers are people allowed inside the polling place who are not poll workers, election officials or voters. If decisions on access to observers are left to local jurisdictions, please explain.**

  X   No Change Since 2012             Changed Since 2012

**2012 Response:**

[Begin response to above question (D3) below this line.]

*Under our State law, in order to observe what is occurring at individual precincts, it is required to have a written request from the organization that specifies the polling locations that will be observed, and the names of the persons who will be observing. The State law also limits the number of watchers from any organization to one per polling place. This includes the "absent voter precinct" (for early voting and mail ballots). In addition, to observe the canvassing of the votes in any counties, a similar request will need to be made.*

[End response to above question (D3) above this line.]

## SECTION E: OTHER

**E1. Under HAVA, Section 402, states are required to establish and maintain administrative complaint procedures to remedy grievances. Has your state revised its administrative complaint procedures since they were first implemented? If so, how?**

  X   No Change Since 2012             Changed Since 2012

### 2012 Response:

[Begin response to above question (E1) below this line.]

*Pursuant to Section 1-2-2.1, NMSA 1978, the Administrative complaints procedures are mandated.*

*The secretary of state shall adopt rules for an administrative procedure for hearing complaints on violations of the provisions of Title III of the federal Help America Vote Act of 2002 [42 U.S.C. § 15481 et seq.], including provisions related to voting system standards, provisional voting procedures, voter registration procedures and operational standards of the statewide voter registration system. A person who determines that there is a violation or that a violation is about to occur pursuant to this section may file a complaint with the secretary of state. Complaints may be consolidated by the secretary. Complaints shall be in writing, signed and sworn by the person filing the complaint and notarized. The hearing shall be on the record if the complainant requests. If the hearing officer determines that there is a violation, an appropriate remedy shall be provided. If there is no violation, the complaint shall be dismissed and the results of the hearing made available to the public. A final decision shall be made within ninety days of the filing of the complaint unless the complainant consents to extending the deadline. If the deadline is not met, the complaint shall be resolved within sixty days through alternative dispute resolution procedures established pursuant to the Governmental Dispute Resolution Act [12-8A-1 to 12-8A-5 NMSA 1978]. Records and materials from the hearing shall be available for use in an alternative dispute resolution procedure.*

*Attached , please review NMAC 1.10.18, Administrative Complaint Procedure. This administrative rule was promulgated to implement a procedure for hearing complaints on violations of Title III of the Help America Vote Act of 2002, including provisions relating to voting system standards, provisional voting procedures, voter registration procedures and operational standards of the statewide voter registration system in New Mexico.*

[End response to above question (E1) above this line.]

**E2. Please add any additional comments or information about your state's election administration processes that would help to inform the EAC's interpretation of your data.**

  X   No Change Since 2012             Changed Since 2012

## 2012 Response:

[Begin response to above question (E2) below this line.]

N/A

[End response to above question (E2) above this line.]

\* The information collection associated with the Election Administration and Voting Survey is required for the EAC to meet its statutory requirements under the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301), the National Voter Registration Act (NVRA) (42 U.S.C. 1973gg-1 et seq.), and the Uniformed and Overseas Citizens Absentee Voters Act (UOCAVA) (42 U.S.C. 1973ff-1). Respondent's obligation to reply to this information collection is mandatory as required under NVRA (42 U.S.C. 1973gg-1 et seq.) and UOCAVA (42 U.S.C. 1973ff-1). This part of the information collection is being requested to help the EAC to better understand state laws governing federal elections. Respondents include the fifty states, the District of Columbia, and the U.S. Territories. This information will be made publicly available on the EAC website ([www.eac.gov](http://www.eac.gov)). According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. 3265-0006 (expires 04/30/2017). The time required to complete this information collection is estimated to average 59 hours per state response. This estimate includes the time for reviewing the instructions, gathering information, and completing the form. Comments regarding this burden estimate should be sent the U.S. Election Assistance Commission – 2014 Election Administration and Voting Survey, 1335 East West Highway, Suite 4300, Silver Spring MD, 20910.