

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 9 SOIL AND WATER CONSERVATION DISTRICTS
PART 2 CONDUCTING AN ELECTION OF DISTRICT SUPERVISORS

21.9.2.1 ISSUING AGENCY: New Mexico Soil and Water Conservation Commission
[21.9.2.1 NMAC - Rp, 21.9.2.1 NMAC, 9-30-05]

21.9.2.2 SCOPE: This part applies to supervisor elections in all soil and water conservation districts.
[21.9.2.2 NMAC - Rp, 21.9.2.2 NMAC, 9-30-05]

21.9.2.3 STATUTORY AUTHORITY: This part is adopted pursuant to the Soil and Water Conservation District Act, Sections 73-20-25, et. seq. NMSA 1978.
[21.9.2.3 NMAC - Rp, 21.9.2.3 NMAC, 9-30-05]

21.9.2.4 DURATION: Permanent
[21.9.2.4 NMAC - Rp, 21.9.2.4 NMAC, 9-30-05]

21.9.2.5 EFFECTIVE DATE: September 30, 2005 unless a later date is cited at the end of a section.
[21.9.2.5 NMAC - Rp, 21.9.2.5 NMAC, 9-30-05]

21.9.2.6 OBJECTIVE: The objective of Part 2 of Chapter 9 is to provide standard procedures for the election of supervisors in accordance with law.
[21.9.2.6 NMAC - Rp, 21.9.2.6 NMAC, 9-30-05]

21.9.2.7 DEFINITIONS: Terms defined in Section 73-20-27 NMSA 1978 have the same definition in this part. Terms not defined in Section 73-20-27 NMSA 1978 are defined below:

- A. “**Eligible voter**” shall mean a person who, at least 32 days prior to the election, is registered to vote in New Mexico pursuant to the provisions of the election code, and whose address of record on the voter registration is within the soil and water conservation district for which the election is being conducted.
- B. “**Election**” shall mean an election held at one or more designated polling places which will be open a minimum of eight hours. Due notice must be given. Absentee voting as provided in these rules is permitted.
- C. “**Election superintendent**” shall mean the person appointed to conduct the election of supervisors.
- D. “**Canvassing board**” shall mean the persons appointed in accordance with these rules to certify and publish the election results, and give the commission notice of their canvass.
[21.9.2.7 NMAC - Rp, 21.9.2.7 NMAC, 9-30-05]

21.9.2.8 DEADLINES:

- A. Deadlines associated with supervisor elections that fall on a weekend or holiday shall be carried over until the next business day.
- B. The New Mexico soil and water conservation commission shall create and distribute an official election timeline by October 1 preceding the election.
[21.9.2.8 NMAC - N, 9-30-05]

21.9.2.9 DUTIES OF COMMISSION OR BOARD OF SUPERVISORS:

- A. Conduct a supervisor election on the first Tuesday in May of odd-numbered years to fill positions designated by the soil and water conservation commission as being eligible for election.
- B. Notify the county clerks of all counties located within the district boundaries of the election by January 1, preceding the election. Each county clerk must be provided the following:
 - (1) district boundary description;
 - (2) district boundary map;
 - (3) date of the election;
 - (4) the official election timeline;
 - (5) a copy of the supervisor election rules.

C. Provide for "due notice" of the election. There must be two notices: the first notice between 51 and 65 days before the election and the second notice between 23 and 37 days before the election. The notice shall include but is not limited to:

- (1) geographical area affected, including zone within the district if applicable;
- (2) declare which terms expire by name of incumbent and position number, and zone represented if the district is zoned. [Supervisors serving positions #1, #2, #3 and #4, or candidates for those positions, must be resident owners of land within the district, and within the zone if the district is zoned. Position #5 is the supervisor-at-large who does not have to be an owner of land but must be resident within the district.]
- (3) instructions on how to file a declaration of candidacy, including:
 - (a) dates, times and address where declarations of candidacy and declarations of intent to be a write-in candidate may be obtained,
 - (b) the date on which declarations of candidacy must be filed, and
 - (c) the date on which declarations of intent to be a write-in candidate must be filed;
- (4) date, time and place ballots may be cast;
- (5) instructions for absentee balloting, including the hours and days of the week that absentee ballot applications will be available;
- (6) documentation required by the election officials to confirm eligibility to vote (voter registration card, utility bill or other proof of residency within the district);
- (7) questions to be submitted to voters on the same ballot, if any; and
- (8) name and telephone number of a person to contact in case of questions about the election.

D. Prepare and make available declaration of candidacy forms to persons who request them. Declarations of candidacy must be delivered in person by the candidate to the designated place 49 days before the election, and shall take substantially the following form:

"Declaration of Candidacy

Name of candidate (as it should appear on the ballot): _____

Candidate's residence physical address: _____

Candidate's mailing address: _____

Candidate's phone number: _____

Description of land owned within the _____ soil and water conservation district, if different from physical address above: _____

I desire to become a candidate for the office of supervisor, position number ____, at the election of supervisors to be held on the date set by law. I will be eligible to hold this office at the beginning of its term. I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

Declarant's signature: _____

Witness signature: _____

Received by (signature, date, time): _____"

E. Prepare ballots for the election. The names of persons for whom a declaration of candidacy was successfully completed shall appear on the ballot. The ballot must provide for write-in votes if any persons have declared their intent to be a write-in candidate on the appropriate declaration form filed 42 days prior to the election. Such persons shall not be entitled to have their name printed on the ballot.

F. In the event that no more than one candidate has filed a declaration of candidacy for each position to be filled, the board of supervisors shall certify such facts to the canvassing board. If there are no other questions on the ballot the canvassing board shall cancel the election as provided by these rules. The election superintendent shall notify applicants for absentee ballots of the cancellation. Unopposed candidates will assume the office of supervisor according to the Soil and Water Conservation District Act. In the case that there are no candidates for a position, incumbent supervisors continue in office until their successors are elected or appointed as in the case of any other vacancy.

G. At least 60 days prior to the election, appoint an election superintendent who must take the following oath of office before performing the required duties: "I, (name of person), do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the state of New Mexico, and I will faithfully discharge the duties of the office of election superintendent for the (name of district) soil and water conservation district."

H. Assure that candidates for office do not serve as election superintendent or on the canvassing board.

I. Assure that all polling places are staffed with at least two polling officials during the entire voting period. At least one of the officials must not be a district supervisor, district employee, candidate, or immediate family member of any of the aforementioned. Arrange for substitutes if necessary. Polling officials and substitutes must take an oath of office similar to that of the election superintendent before assuming their duties.

J. Maintain a file of all records pertaining to the election in compliance with the applicable records retention schedule. [See 1.19.11 NMAC]
[21.9.2.9 NMAC - Rp, 21.9.2.9 NMAC, 9-30-05; A, 12-30-10]

21.9.2.10 ABSENTEE BALLOTING: Eligible voters wishing to vote absentee must fill out an absentee ballot application. Applications for absentee ballots must be requested by mail, by phone, and in person only, beginning 30 days before the election until 20 days before the election. Only one absentee ballot application may be issued per eligible voter.

A. Upon receipt of the completed application and determination of the voter's eligibility an absentee ballot will be furnished.

B. The district must mail out requested absentee ballots at least 15 days before the election.

C. Absentee ballots must be distributed by the district with two envelopes, with a serial number and voter certification information on the outside of the larger envelope. Districts shall maintain an absentee ballot register by serial number.

D. Absentee ballots returned by mail and received by the district by closing of the polls on election day or before will be counted. Absentee ballots received after election day will not be opened or counted, but will be kept with the election records.

E. All unused absentee ballots shall be destroyed immediately following the close of the absentee balloting period. The destruction shall be certified by the election superintendent and one polling official.

F. Absentee ballots will not be issued if the election is cancelled pursuant to these rules.
[21.9.2.10 NMAC - Rp, 21.9.2.10 NMAC, 9-30-05]

21.9.2.11 ELECTION SUPERINTENDENT DUTIES:

A. Assure that all absentee ballots requested by eligible voters in writing are sent as indicated in the election notice, unless the election is cancelled, in which case eligible voters shall be notified. All applications will be compared with the absentee ballot register.

B. Conduct the voting during the period stated in the election notice.

C. If paper ballots are used, place all ballots in a sealed ballot box.

D. Prepare a complete list of all persons voting and those applying for a ballot and determined ineligible to vote.

E. Prepare documentation regarding all challenges of voter ineligibility.

F. Assist the canvassing board in properly securing, transporting, and storing ballot boxes, and cooperate fully with the canvassing board to determine voting results in a timely manner.

G. Prepare a list of eligible voters 28 days prior to the election, and make it available for inspection.
[21.9.2.11 NMAC - Rp, 21.9.2.11 NMAC, 9-30-05]

21.9.2.12 PROVISIONAL BALLOTS: Persons who are not on the eligible voter list and cannot show proof of eligibility must complete a provisional ballot.

A. A provisional ballot shall consist of a paper ballot, a plain envelope, and a voter certification form printed on a larger envelope.

B. Marked ballots must be sealed in the plain envelope. The plain envelope must be sealed in the larger envelope. Voters are determined to be eligible or ineligible using the voter certification information on the larger envelope, and supporting documentation provided by the voter.

C. The larger envelopes shall be opened only after all ineligible voters are given an opportunity to prove eligibility. The larger envelope of ineligible voters shall not be opened. All of the larger envelopes of eligible voters shall be opened and the plain envelopes placed in the ballot box. The plain envelopes are then removed from the ballot box and ballots are counted. The plain envelopes may be destroyed after the vote is counted, but the larger envelopes and the ballots must be maintained with the election records.

D. Persons who are determined to be ineligible to vote by polling officials must be notified by the polling officials using the most expedient means of communication. When contacted, ineligible voters must be informed of their right to challenge. Challenges must be in writing and be delivered to the contact person shown on the election notice no later than four days following the election.

[21.9.2.12 NMAC - Rp, 21.9.2.12 NMAC, 9-30-05]

21.9.2.13 VOTER CERTIFICATION:

I am a registered voter of precinct no. _____ of the county of _____, state of New Mexico. I reside at _____, within the boundaries of the _____ soil and water conservation district;

I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

(Voter) Printed name and signature

(Mailing Address)

(Residence Address)

Telephone number (if voter wishes to be notified of ineligibility to vote)

NOTE: print the above information on a number 12-business size envelope. Use separate envelope for each voter. Use number 10 envelopes for ballots, only one ballot per envelope.

[21.9.2.13 NMAC - Rp, 21.9.2.13 NMAC, 9-30-05]

21.9.2.14 CANVASSING BOARD:

- A. The canvassing board shall be composed of a minimum of three members:
- (1) an owner of land within the district who is not a supervisor or employee of the district or members of their immediate family; and
 - (2) a supervisor of the district [See Subsection H of 21.9.2.9 NMAC.]; and
 - (3) a local elected official or his/her designee.

- B. The canvassing board will:
- (1) cancel the election upon being notified by the board of supervisors that no more than one candidate has filed a declaration of candidacy for each position to be filled, and there are no other questions on the ballot, and give due notice of such cancellation;
 - (2) establish appropriate procedures for securing, transporting, storing and tallying ballots;
 - (3) resolve any challenges of voter eligibility or conduct of election; and
 - (4) certify election results and report results to the soil and water conservation commission in Las Cruces within seven calendar days following completion of their canvass; a canvass is considered complete when all challenges have been resolved to the satisfaction of the canvassing board; for each question, the highest number of votes shall decide the question without a runoff vote; a tie vote will be broken by lot.

[21.9.2.14 NMAC - Rp, 21.9.2.14 NMAC, 9-30-05]

HISTORY OF 21.9.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

SSCC-200, Outline of Instructions for Conducting District Elections, filed 8/11/69.

SWCD 85-2, Procedures for Conducting an Election of Supervisors in Soil and Water Conservation Districts, filed 7/1/85.

SWCC 90-I, Rules for Conducting an Election of District Supervisors in Soil and Water Conservation Districts, filed 7/2/90.

History of Repealed Material:

21 NMAC 9.2, Conducting an Election of District Supervisors, filed 12/17/96 - Repealed effective 11/26/2003.

21.9.2 NMAC, Conducting an Election of District Supervisors, filed 11/12/2003 - Repealed effective 9/30/2005.