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**TITLE 21      AGRICULTURE AND RANCHING  
CHAPTER 9     SOIL AND WATER CONSERVATION DISTRICTS  
PART 3        CONDUCTING A REFERENDUM**

**21.9.3.1      ISSUING AGENCY:** New Mexico Soil and Water Conservation Commission  
[21.9.3.1 NMAC - Rp, 21.9.3.1 NMAC, 9-30-05]

**21.9.3.2      SCOPE:** This part applies to soil and water conservation districts seeking voter approval for authority to levy taxes and the soil and water conservation commission when in the process of establishing new districts or modifying the boundaries of existing districts.  
[21.9.3.2 NMAC - Rp, 21.9.3.2 NMAC, 9-30-05]

**21.9.3.3      STATUTORY AUTHORITY:** This part is adopted pursuant to the Soil and Water Conservation District Act, Sections 73-20-25, et. seq. NMSA 1978.  
[21.9.3.3 NMAC - Rp, 21.9.3.3 NMAC, 9-30-05]

**21.9.3.4      DURATION:** Permanent.  
[21.9.3.4 NMAC - Rp, 21.9.3.4 NMAC, 9-30-05]

**21.9.3.5      EFFECTIVE DATE:** September 30, 2005 unless a later date is cited at the end of a section.  
[21.9.3.5 NMAC - Rp, 21.9.3.5 NMAC, 9-30-05]

**21.9.3.6      OBJECTIVE:** The objective of Part 3 of Chapter 9 is to provide for referenda to be conducted in accordance with law.  
[21.9.3.6 NMAC - Rp, 21.9.3.6 NMAC, 9-30-05]

**21.9.3.7      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 a referendum, 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 area affected by the referendum.

B.      **"Referendum superintendent"** shall mean the person appointed to conduct the referendum.

C.      **"Referendum"** shall mean an election to decide a question, which may be held at one or more designated polling places which will be open a minimum of eight hours, or conducted solely by mailed ballots as provided in these rules. Due notice must be given. Absentee voting as provided in these rules is permitted.

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.

[21.9.3.7 NMAC - Rp, 21.9.3.7 NMAC, 9-30-05]

**21.9.3.8      SCHEDULING A REFERENDUM:** A referendum shall be held on the next succeeding first Tuesday in May, if practicable. A referendum shall not be held within 42 days prior to a statewide election. A referendum may be held in conjunction with election of supervisors.

[21.9.3.8 NMAC - Rp, 21.9.3.8 NMAC, 9-30-05]

**21.9.3.9 DUTIES OF BOARD OF SUPERVISORS OR COMMISSION:**

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

- (1) geographical area affected;
- (2) location of polling place(s), if any;
- (3) date and time when ballots may be cast, or date by which mailed ballots must be received;
- (4) the resolution of the board of supervisors or commission to hold the referendum;
- (5) a statement that the commission has approved the referendum (only for mill levy referendum of a district); and
- (6) instructions for absentee balloting, including the hours and days of the week that absentee ballot applications will be available.

B. Notify the county clerks of all counties located within the district boundaries of the referendum at least 120 days preceding the referendum. Each county clerk must be provided the following:

- (1) district boundary description,
- (2) district boundary map,
- (3) date of the referendum,
- (4) the referendum timeline, and
- (5) a copy of the referendum rules.

C. At least 60 days prior to the referendum appoint a referendum 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 (referendum superintendent or polling officer) for the (name of district) soil and water conservation district.

D. 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, 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.

E. Maintain a file of all records pertaining to the election in compliance with the state records retention schedule. [See 1.19.11 NMAC]

F. Prepare ballots for the election.  
[21.9.3.9 NMAC - Rp, 21.9.3.9 NMAC, 9-30-05]

**21.9.3.10 REFERENDUM SUPERINTENDENT DUTIES:**

A. Assure that all absentee ballots requested by eligible voters in writing were sent as indicated in the referendum notice. All applications will be compared with the absentee ballot register.

B. Conduct the voting during the period stated in the “due notice”.

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

D. Prepare documentation regarding all challenges of voter ineligibility.

E. 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.

F. Prepare a list of eligible voters 28 days prior to the election. The eligible voter list must be completed and available for inspection at least five days before the election.

G. Determine eligibility of voters. Persons who are not on the eligible voter list and cannot show proof of eligibility must complete a provisional ballot.

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

[21.9.3.10 NMAC - Rp, 21.9.3.10 NMAC, 9-30-05]

**21.9.3.11 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 voters’ 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.  
[21.9.3.11 NMAC - Rp, 21.9.3.11 NMAC, 9-30-05]

**21.9.3.12 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.

[21.9.3.12 NMAC - Rp, 21.9.3.12 NMAC, 9-30-05]

**21.9.3.13 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 business size envelope. Use separate envelope for each voter. Use smaller envelopes for ballots, only one ballot per envelope.

[21.9.3.13 NMAC - Rp, 21.9.3.13 NMAC, 9-30-05]

**21.9.3.14 CANVASSING BOARD:**

A. The canvassing board shall be composed of a minimum of three members, who may not also serve as referendum superintendent or poll worker:

(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 member of the governing body of the district; and

(3) a local elected public official or their designee.

B. The canvassing board will:

(1) establish appropriate procedures for securing, transporting, storing and opening ballot boxes;

(2) resolve any challenges of voter eligibility or conduct of election; and  
(3) 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.  
[21.9.3.14 NMAC - Rp, 21.9.3.14 NMAC, 9-30-05]

**21.9.3.15 MAIL BALLOT REFERENDUM:** Upon the adoption of a resolution by the commission or board of supervisors to conduct an election by an all-mailed ballot, each registered voter who would be eligible to vote in a polling place referendum shall be mailed an absentee ballot along with a statement that there will be no polling place for the referendum. The voter shall not be required to file an application for the absentee ballot. The ballot shall be mailed to each voter no earlier than the thirty-fifth day prior to the election, and the mailing shall be completed by the fifth day before the election.

A. The referendum superintendent may include in the mailing a printed notice to the voters informing the voters that they shall return the voted ballot by mail.

B. The referendum superintendent shall prepare a checklist of eligible voters. The checklist of registered voters shall be marked indicating that the voter has returned his all-mail ballot immediately upon receipt.

C. A referendum conducted solely by mailed ballot shall not include names of candidates to be nominated for or elected to office.

[21.9.3.15 NMAC - Rp, 21.9.3.15 NMAC, 9-30-05]

**21.9.3.16 DEADLINES:** Deadlines in these rules which fall on a weekend or holiday shall be carried over until the next business day.

[21.9.3.16 NMAC - N, 9-30-05]

#### **HISTORY OF 21.9.3 NMAC:**

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

SWCD 84-1, Procedures for Conducting a Referendum for Soil and Water Conservation Districts, filed 7/26/84.

SWCC Rule 90-II, Rule for Conducting a Referendum by the Soil and Water Conservation Districts or by the Soil and Water Conservation Commission, filed 7/2/90.

#### **History of Repealed Material:**

SWCD 84-1, Procedures for Conducting a Referendum for Soil and Water Conservation Districts, filed 7/26/84 - Repealed 12/20/89.

21 NMAC 9.3, Conducting a Referendum, filed 12/17/96 - Repealed effective 12/15/2003.

21.9.3 NMAC, Conducting a Referendum, filed 11/26/2003 - Repealed effective 9/30/2005.