

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS
PART 19 SECURED CONTAINERS

1.10.19.1 ISSUING AGENCY: Office of the Secretary of State
[1.10.19.1 NMAC - N 8/24/2021]

1.10.19.2 SCOPE: This rule applies to any election covered under the Election Code, Section 1-1-19 NMSA 1978.
[1.10.19.2 NMAC - N, 8/24/2021]

1.10.19.3 STATUTORY AUTHORITY: This rule is authorized by Section 1-2-1 NMSA 1978.
[1.10.19.3 NMAC - N, 8/24/2021]

1.10.19.4 DURATION: Permanent
[1.10.19.4 NMAC - N, 8/24/2021]

1.10.19.5 EFFECTIVE DATE: August 24, 2021, unless a later date is cited at the end of a section.
[1.10.19.5 NMAC - N, 8/24/2021]

1.10.19.6 OBJECTIVE: The objective of this rule is to provide clear guidance and uniform standards in the application, operation, and interpretation of the law related to secured containers and mailed ballot delivery as prescribed by Section 1-6-9 NMSA 1978.
[1.10.19.6 NMAC - N, 8/24/2021]

1.10.19.7 DEFINITIONS:

A. “Permanent ballot drop box” means the same thing as “secured container,” and the terms may be used synonymously.

B. “Secured container” means a permanent and secure receptacle, that meets the requirements of Subsection E of Section 1-6-9 NMSA 1978, and is established by the county clerk whereby voters and those authorized to deliver a voted mailed ballot pursuant to Section 1-6-10.1 NMSA 1978 may return an official mailing envelope to the election official from whom it was obtained.

C. “Temporary ballot drop box” means a secure receptacle supervised by election workers or county employees located inside the office of the county clerk, an alternate voting location, a mobile voting location, or election day voting location to collect official mailing envelopes dropped off pursuant to Subsection D of Section 1-6-9 NMSA 1978.

[1.10.19.7 NMAC – N, 8/24/2021]

1.10.19.8 CAPACITY REQUIREMENTS:

A.To meet the requirement of Subsection E of Section 1-6-9 NMSA 1978, which provides that all voters have the option to use a secured container to return official mailing envelopes, county clerks shall provide a minimum number of secured containers in the county using a voting population-based formula determined by the secretary of state. County clerks may request a waiver from the secretary of state to the minimum requirement set by the formula with consideration given for special geographic or security constraints.

B.Secured containers shall be located in a manner that provides the greatest convenience and accessibility to voters. County clerks may consider providing secured containers at main county or city office buildings. Other locations to consider include college campuses, libraries, community centers, and other public buildings with adequate accessibility, lighting, and the ability to install the required video surveillance system.

C.When possible, secured containers should be placed in such a way to be accessible to voters with disabilities. For example, the secured container should be placed along an accessible path near an Americans with Disabilities (ADA) parking space. If there is no accessible pathway from the parking lot, there should be signs directing the voter to the nearest accessible secured container.

D. Secured containers shall be available for use by a voter 24 hours a day starting 28 days before an election and on election day for all elections conducted pursuant to the election code.

E. A temporary ballot drop box shall be made available to drop off official mailing envelopes inside all in-person voting locations pursuant to Subsection D of Section 1-6-9 NMSA 1978. This is to ensure that a dedicated receptacle is available to secure and isolate voted mailed ballots being returned to a voting location.

F. Only ballots secured in the absentee official mailing envelope shall be placed inside of a permanent and temporary ballot drop box. Under no circumstance should provisional ballots, hand tally ballots, or other ballots voted in person be intermingled with voted mailed ballots collected in the drop boxes.

[1.10.19.8 NMAC – N, 8/24/2021]

1.10.19.9 SECURED CONTAINER SECURITY REQUIREMENTS:

A. A secured container shall be permanently bolted to the ground in accordance with the instructions provided by the container manufacturer. A secured container shall be constructed of weather-resistant metal and capable of securely receiving and holding voted mailed ballots. A county clerk shall request approval from the secretary of state prior to installation of a secured container to ensure it meets minimum security requirements.

B. A secured container shall be secured and locked at all times. Only the county clerk or deputy county clerk shall have access to the keys or combination of the lock. In addition to locks, all secured containers shall be sealed with one or more tamper-evident seals while in use.

C. Secured containers shall be installed in a lighted area and monitored by a centralized video surveillance camera system provided by the secretary of state. The video surveillance system shall otherwise be monitored and controlled by the county clerk. The county clerk shall, at a minimum, review and monitor video surveillance footage upon receiving a report of an incident or upon receipt of a system alert.

D. When secured containers are not in use and at 7:00 P.M. on election day, the county clerk shall install the slot closer on the secured container to prevent access. Covers may also be placed over the secured container to protect the container when not in use.

[1.10.19.9 NMAC – N, 8/24/2021]

1.10.19.10 VIDEO SURVEILLANCE RECORD RETENTION:

A. Video recordings shall operate during the start of absentee voting through election day for all elections conducted under the election code.

B. Video recordings shall be maintained pursuant to the provisions of Section 1-12-69 NMSA 1978, except that recordings shall be retained beyond the normal retention period pending the resolution of any reported incident.

C. The relevant county clerk is responsible for maintaining all camera recordings, is the proper custodian of these recordings, and is responsible for fulfilling public record requests associated with these video recordings.

[1.10.19.10 NMAC – N, 8/24/2021]

1.10.19.11 SECURED CONTAINER ELECTION PREPARATIONS: Prior to every election, county clerks shall conduct the following preparations to ensure secured containers are available:

A. Provide notice to voters pursuant to Paragraph 1 of Subsection E of Section 1-6-9 NMSA 1978;

B. Recruit, hire, and train additional staff members to monitor, maintain, and collect ballots;

C. Plan daily driving routes for ballot collection;

D. Ensure video surveillance system is working properly;

E. Ensure adequate supplies are available including security seals, keys, chain of custody logs, and ballot transport containers; and

F. Inspect, clean, and otherwise ensure the secured container is in proper working order to receive ballots as soon as ballots are mailed.

[1.10.19.11 NMAC – N, 8/24/2021]

1.10.19.12 TEMPORARY BALLOT DROP BOX REQUIREMENTS:

A. A temporary ballot drop box shall be under the direct supervision of county staff or election board member.

B. When not in use, a temporary ballot drop box shall be placed in an area that is inaccessible to the public and otherwise secured and safeguarded.

C. A temporary ballot drop box shall be secured and locked at all times. Only an election official, messenger, or someone designated to retrieve ballots shall have access to the keys or combination of the lock. In addition to locks, all temporary ballot drop boxes shall be sealed with one or more tamper-evident seals.

D. All temporary ballot drop boxes shall be emptied by the end of each day in accordance with a defined chain of custody process in Subsection D of Section 1.10.19.13 of this rule. Only personnel designated to retrieve the ballots may transport the retrieved ballots.

[1.10.19.12 NMAC – N, 8/24/2021]

1.10.19.13 BALLOT RETRIEVAL PROCEDURES:

A. Paragraph (5) of Subsection E of Section 1-6-9 NMSA 1978, the county clerk or a full-time deputy county clerk shall collect the ballots from a secured container. One or more full-time deputy county clerks may be hired by the county clerk on a temporary basis to fulfill this requirement for the time period in which a secured container is available for use. Only personnel designated to retrieve the ballots may transport the retrieved ballots.

B. The county clerk shall provide the approximate time the ballots will be collected from a secured container. Ballots shall be collected at least once a day every day beginning 28 days prior to election day through 7:00 P.M. on election day.

C. Ballots shall be transported in a secure ballot transport container so as not to drop or otherwise misplace a ballot.

D. A chain of custody form shall be completed by the person collecting the ballots every time ballots are collected. A separate chain of custody form is required for each permanent or temporary drop box. The chain of custody form shall be prescribed by the secretary of state and shall include:

- (1) the location of the drop box;
- (2) date and time of arrival;
- (3) number of ballots retrieved;
- (4) security seal number when box is opened;
- (5) security seal number when box is locked and sealed again;
- (6) full name of the person retrieving the ballots; and
- (7) any other observations of note to include any appearance of tampering or damage to the

drop box.

E. The person collecting the ballots from the permanent or temporary drop box shall also record the date, time, drop box location, and identity of the person collecting the boxes on each of the official mailing envelopes collected.

F. Upon the arrival of the collected ballots at the office of the county clerk or other designated ballot intake or central count location, the county clerk or designee shall receive the ballots and complete the bottom of the chain of custody form to include:

- (1) date and time of receipt;
- (2) number of ballots received (which should match the number in the upper section of the form provided by the person collecting the ballots);
- (3) a verified comparison to the previous days seal number, if applicable; and
- (4) full name and signature of the receiving staff member.

G. Any ballots retrieved from a permanent or temporary ballot drop box shall be processed and secured in the same manner as those absentee ballots otherwise delivered to the office of the county clerk, such as by the United States Postal Service.

H. All temporary ballot drop boxes and ballot transport containers shall be numbered and kept in a log to ensure all are returned at the end of a voting day and on election night.

[1.10.19.13 NMAC – N, 8/24/2021]

1.10.19.14 REIMBURSEMENT BY THE SECRETARY OF STATE:

A. County clerks may request reimbursement from the secretary of state for the costs of hiring additional staff necessary for:

- (1) monitoring secured container video surveillance,
- (2) installing and maintaining secured containers, and
- (3) collecting ballots from permanent and temporary ballot drop boxes.

B. County clerks may request reimbursement from the secretary of state for purchasing approved containers and supplies related to maintaining permanent and temporary ballot drop boxes.

C. Requests for reimbursement made to the secretary of state are required to be submitted in a manner prescribed by the secretary of state no later than 45 days after election day.

[1.10.19.14 NMAC – N, 8/24/2021]

History of 1.10.19 NMAC: [RESERVED]