

OFFICE OF THE NEW MEXICO SECRETARY OF STATE

IN REFERENCE:

RULEMAKING PROCEEDING FOR THE ADOPTION OF
1.10.19 NMAC – SECURED CONTAINERS

CONCISE EXPLANATORY STATEMENT

The Office of the New Mexico Secretary of State (“SOS”) hereby adopts the Secured Containers rule; that is codified as 1.10.19 NMAC.

(1) Statutory Authority for Rule Promulgation:

Section 1-2-1 NMSA 1978 authorizes the SOS to adopt and promulgate rules necessary to carry out the purposes of the Election Code.

(2) Effective Date of Rule:

August 24, 2021

(3) Date of Adoption of Rule:

August 11, 2021

(4) Reasons for Adopting Rule:

The purpose 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.

(5) Reasons for changes from Published Rule:

The changes made to published rules are based on written and oral public comment received.

In Part 1.10.19.8 NMAC, the SOS added language to Subsection A specifying the formula used to determine the minimum number of secured containers required in each county. Subsection D was modified to conform with the election code such that the county clerk has the authority to determine the days and times the secured containers are available with a suggestion that, whenever possible, the secured container be made available 24 hours a day during voting to maximize the convenience to voters. Subsection F was modified to improve overall readability.

In Part 1.10.19.9 NMAC, the SOS made minor clarifying changes to Subsection C and D to improve readability.

In Part 1.10.19.10 NMAC, the SOS made changes to Subsection B to clarify conformance with the election code that video surveillance is a record related to voting.

In Parts 1.10.19.12 and 1.10.19.13 NMAC, the SOS made minor clarifying changes to improve readability.

In Part 1.10.19.14 NMAC, Subsection D was added to require the SOS to reimburse county clerks for all expenses identified to be eligible for reimbursement as articulated in the section.

(6) Reasons for Not Accepting Substantive Arguments from Public Comment:

The SOS did not accept the argument that the definition in Subsection A of Part 1.10.19.7 NMAC is not necessary. The definition provided for a permanent ballot drop box aims to clarify that this is a common and synonymously used term for secured container.

The SOS did not accept the argument that the definition in Subsection C of Part 1.10.19.7 NMAC should be changed to “supervised ballot drop box” as the current term is deemed to be more suitable to describe a ballot box that is not permanently installed in a location.

The SOS did not accept the argument that Part 1.10.19.8 NMAC should be modified to provide the county clerk discretion regarding the use of secured containers. The Secretary of State is responsible for providing uniform interpretation and application of the election code. The Secretary of State interprets Subsection E of Section 1-6-9 NMSA 1978 provides that all voters must have the option to utilize secured containers to return mailed ballots. As such, the use of secured containers in all 33 counties is mandatory.

The SOS did not accept the argument that Part 1.10.19.10 NMAC should be modified to exempt video surveillance from the IPRA as this is not allowable under the law. Section 1-6-9 NMSA 1978 specifically provides that video surveillance is a record related to voting and as such record retention and IPRA requirements are prescribed in the law under Section 1-12-69 NMSA 1978.

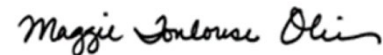
The SOS did not accept the argument that Subsection A of 1.10.19.13 NMAC should strike the language “full time” as this is consistent with language prescribed in statute.

The SOS did not make changes to the rule based upon suggestions received that either fall outside the scope of the rule, are not legally feasible, or determined to be beyond the logical outgrowth of the proposed changes to the rule. This includes the argument to eliminate or minimize absentee voting, to not certify existing voting systems, and to complete a forensic audit to validate the 2020 general election.

The proposed rule is hereby adopted as of the date of this Concise Explanatory Statement.

IT IS SO ORDERED.

ON BEHALF OF THE OFFICE OF THE
NEW MEXICO SECRETARY OF STATE



8/11/2021

DATE

Maggie Toulouse Oliver
Secretary of State