

This is an amendment to 1.10.19 NMAC, Sections 3, 7, 8, 9, 13, and 14 effective 8/31/2023.

1.10.19.3 STATUTORY AUTHORITY: This rule is authorized by Section 1-2-1 and Section 1-6-9 NMSA 1978.
[1.10.19.3 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.

D. “Video surveillance” means internet security systems or internet protocol cameras that use the internet by networking to send and receive data.

E. “Sensors” means a device which detects or measures physical property and records, and indicates, or otherwise responds to them.

F. “Sensor alert” means when a device detects events that are not part of the normal working environment and then sends signals to warn of abnormality.

[1.10.19.7 NMAC – N, 8/24/2021; A. 8/31/2023]

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 one ballot box per 25,000 registered voters in the county with a minimum of two secured containers required per county. 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]~~ network access 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)]~~ Act compliant 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. In accordance with Paragraph (1) of Subsection E of Section 1-6-9 NMSA 1978, the county clerk shall set the days and times the secured containers are available. To maximize the convenience to the voters, the county clerk shall, whenever possible, make secured containers available for use by a voter 24 hours a day starting 28 days before an election and on election day.

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 placed inside of a permanent and temporary ballot drop box shall be counted. Under no circumstance should provisional ballots, hand tally sheets, or ballots voted in person be intermingled with voted mailed ballots collected in the drop boxes.
[1.10.19.8 NMAC – N, 8/24/2021; A, 8/31/2023]

1.10.19.9 SECURED CONTAINER SECURITY REQUIREMENTS:

A. 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. The secretary of state shall respond to such requests within 14 days.

~~[A.]~~ B. 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.] A secured container shall have network accessibility and shall have installed heat, humidity and motion sensors.

~~[B.]~~ C. A secured container and monitoring network hardware shall be secured and locked at all times. Only the county clerk or deputy county clerk, election board member or appointed messenger 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] The county clerk shall maintain a key control log on a form prescribed by the secretary of state to document the utilization of and to account for secured container keys. All keys issued by the secretary of state shall be controlled, accounted for, and not easily accessible. Upon the election or appointment of a new county clerk and after each U.S. presidential election, lock combinations shall be changed and documented on a form prescribed by the secretary of state. All forms utilized pursuant to this section shall be retained by the county clerk as a record related to voting pursuant to Subsection G of Section 1-12-69 NMSA 1978.

D. In addition to locks, all secured containers shall be sealed with one or more tamper-evident seals while in use. Lock combinations shall be changed when a new clerk is appointed or elected and after each U.S. presidential election. Combination lock changes shall be documented by the county clerk.

~~[C.]~~ E. 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 through a video surveillance dashboard. The county clerk shall [at a minimum,] immediately review [and monitor] video surveillance footage upon receiving a report of an irregular or illegal incident or upon receipt of a [system] sensor alert and:

(1) beginning 28 days prior to election day and through the certification of the county canvass, the county clerk shall log into the video surveillance dashboard each day. During all other weeks of a calendar year, the county clerk shall log into the video surveillance dashboard on a weekly basis.

(2) The county clerk shall maintain a list of the clerk's office personnel with access to the video surveillance dashboard and shall notify the secretary of state's office of any changes to the list. The county clerk shall contact the secretary of state for required training and shall ensure that all persons granted dashboard access complete required training, provided by the secretary of state, prior to utilizing the dashboard.

F. The county clerk shall contact the secretary of state's office with security or operational concerns immediately upon discovery.

~~[D.]~~ G. When secured containers are not in use and immediately after 7:00 P.M. on election day as is practical, 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; Rn & A, 8/31/2023]

1.10.19.13 BALLOT RETRIEVAL PROCEDURES:

A. [Paragraph] Pursuant to Paragraph (5) of Subsection E of Section 1-6-9 NMSA 1978, the county clerk, [or a full-time] deputy county clerk, election board member or an appointed messenger 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~~] every three days 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.

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; A, 8/31/2023]

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.]~~ **A.** 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.]~~ **B.** 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.

~~[D.]~~ **C.** The secretary of state shall reimburse county clerks for all expenses deemed by the secretary of state to be in compliance with this section.

[1.10.19.14 NMAC – N, 8/24/2021; A, 8/31/2023]