

**TITLE 1           GENERAL GOVERNMENT ADMINISTRATION**  
**CHAPTER 10       ELECTIONS AND ELECTED OFFICIALS**  
**PART 12           ABSENTEE VOTING**

**1.10.12.1           ISSUING AGENCY:** Office of the Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, New Mexico 87503.  
[1.10.12.1 NMAC - N, 3-31-2000]

**1.10.12.2           SCOPE:** This rule applies to any special statewide election, general election, primary election or elections to fill vacancies in the office of United States representative, special county wide and regular or special school district elections as modified by the School Election Law (Sections 1-22-1 to 1-22-19 NMSA 1978).  
[1.10.12.2 NMAC - N, 3-31-2000; A, 3-15-2012]

**1.10.12.3           STATUTORY AUTHORITY:** Election Code, Section 1-2-1 NMSA 1978; Election Code, Section 1-6-5.4 NMSA 1978. The issuing authority shall adopt rules for protecting the integrity, security and secrecy of the absentee ballot.  
[1.10.12.3 NMAC - N, 3-31-2000]

**1.10.12.4           DURATION:** Permanent.  
[1.10.12.4 NMAC - N, 3-31-2000]

**1.10.12.5           EFFECTIVE DATE:** March 31, 2000 unless a later date is cited at the end of a section.  
[1.10.12.5 NMAC - N, 3-31-2000]

**1.10.12.6           OBJECTIVE:** The Absent Voter Act (Sections 1-6-1 through 1-6-18 NMSA 1978) hereinafter referred to as the act was enacted by Laws 1969, Chapter 240, Section 127. Pursuant to the New Mexico Constitution, Art. IV, Section 23, the act was amended by Laws 1999, Chapter 267, Laws 2001, Chapter 58, Laws 2003, Chapter 357 and Laws 2005, Chapter 270. The purpose of the act is to allow voters to vote twenty-eight (28) days prior to an election on paper ballots by mail or on paper ballots on voting systems in person at the office of their county clerk or to vote in person at an alternate voting location or mobile alternate voting location established by the county clerk. The Absent Voter Precinct Act (Sections 1-6-19 through 1-6-25 NMSA 1978) was enacted by Laws 1969, Chapter 54, Section 1. The objective of this rule is to establish rules and regulations protecting the integrity, security and secrecy of the absentee ballot.  
[1.10.12.6 NMAC - N, 3-31-2000; A, 4-30-2002; A, 7-15-2003; A, 4-28-2006; A, 9-15-2008; A, 3-15-2012]

**1.10.12.7           DEFINITIONS:**

- A.           “Absentee ballot”** means a method of voting by ballot, accomplished by a voter who is absent from the voter’s polling place on election day.
- B.           “Absentee ballot register”** means a list of the name and address of each applicant; the date and time of receipt of the application; the disposition of the application; the date of issue of the absentee ballot; the applicant’s precinct; whether the applicant is a voter, federal voter, qualified federal elector or an overseas citizen voter; and the date and time of receipt of the ballot.
- C.           “Absentee voting daily report”** means a form prescribed and approved by the office of the secretary of state consisting of the voting machine serial number, beginning public counter number, ending public counter number, and daily total number of voters per machine. It shall contain a signature line for the county clerk or authorized deputy and a line for the date.
- D.           “Alternate voting location”** means a site outside the office of the county clerk, established by the county clerk, where a voter may cast an absentee ballot and includes mobile alternate voting locations.
- E.           “Application”** means an absentee ballot application, prescribed by the secretary of state.
- F.           “Ballot”** means a system for arranging and designating for the voter the names of candidates, constitutional amendments and other questions to be voted on and for the marking, casting or otherwise recording or such votes, and the term includes absentee ballots, provisional ballots and all other paper ballots.
- G.           “Blank ballot”** means a paper ballot on which the voter has not selected any of the alternatives allowed in any candidate contest or ballot question.
- H.           “Challenger”** means a voter of a precinct located in that county to which the voter is appointed as challenger.

**I. “County canvassing board”** means the board of county commissioners in each county (Section 1-13.1 NMSA 1978).

**J. “Election”** means any special statewide election, general election, primary election or special elections to fill vacancies in the office of United States representative, special county wide and regular or special school district elections.

**K. “Early voter”** means a voter who votes in person before election day, and not by mail.

**L. “Electronic vote tabulating (EVT) marksense voting system” or “optical scan vote tabulating system”** means a voting system which records and counts votes and produces a tabulation of the vote count using one ballot card imprinted on either or both faces with text and voting response locations. The marksense or optical scan vote tabulating voting system records votes by means of marks made in the voting response locations.

**M. “High-speed central count marksense ballot tabulator”** means a self-contained optical scan ballot tabulator, that uses an automatic ballot feeder to process ballots placed in the tabulator. Ballots are processed at high-speed and the tabulator has a built in sorting system to divert processed ballots into appropriate bins.

**N. “Marksense ballot”** means a paper ballot card used on an electronic vote tabulating marksense vote tabulating system, optical scan vote tabulating system or high speed central count marksense vote tabulator.

**O. “Overvoted ballot”** means a ballot on which the voter has voted for more than the number of candidates to be elected for that office, or in both the affirmative and negative on a ballot question.

**P. “Precinct board”** means the deputized individuals who staff the absent voter ballot counting location or alternate voting location, who are appointed election officials pursuant to the provisions of the Election Code.

**Q. “Required voter identification”** means the forms of identification as specified in Section 1-1-24 NMSA 1978.

**R. “Undervoted ballot”** means a paper ballot that is not a blank ballot and on which the voter has selected at least one candidate or answered at least one ballot question in accordance with the instructions for that ballot type, but on which the voter has selected fewer than the number of alternatives allowed in a candidate contest or on a ballot question.

**S. “Voter”** means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provisions of the Election Code of the state of New Mexico.

**T. “Voting response area”** means the place on an absentee ballot where the voter is instructed to mark his preference for a candidate or question.

[1.10.12.7 NMAC - N, 3-31-2000; A, 4-30-2002; A, 7-15-2003; A, 4-30-2004; A, 4-28-2006; A, 9-15-2008; A, 3-15-2012]

#### **1.10.12.8 APPLICATION:**

**A.** An application for an absentee ballot may be made only on a blank form prescribed by the secretary of state. The prescribed form may not be altered without approval of the secretary of state.

**B.** Completed applications shall be signed by the voter and returned to the voter’s county clerk. Applications returned to the county clerk by facsimile means shall not be accepted except as provided by Subsection D of Section 1-6-4.1 NMSA 1978 and Subsection G of Section 1-6-5 NMSA 1978. The county clerk shall not accept any application without the original signature of the voter except as provided by Subsection D of Section 1-6-4.1 NMSA 1978 and Subsection G of Section 1-6-5 NMSA 1978.

[1.10.12.8 NMAC - N, 3-31-2000; A, 4-30-2002; A, 7-15-2003; A, 4-30-2004; A, 4-28-2006; A, 3-15-2012]

#### **1.10.12.9 ABSENTEE VOTING:**

**A.** A voter may vote absentee by:

(1) completing and subscribing an absentee ballot application, wherein the ballot is mailed to the voter; the voter shall mark the ballot, seal the envelope and sign as provided according to the instructions; the voter may mail or hand-deliver the ballot to the office of the county clerk only, or designate another individual to deliver the ballot pursuant to the Absentee Voter Act; the voter may also deliver the ballot to any polling place within the voter’s county of registration before the close of the polls;

(2) completing and signing an absentee ballot application in the office of the county clerk; the voter shall mark the ballot, seal the envelope and sign as provided according to the instructions; the voter shall hand-deliver the ballot to the county clerk or designated deputy prior to leaving the office of the county clerk;

(3) completing and signing an absentee ballot application in the office of the county clerk twenty-eight (28) days prior to the election; the voter may cast the vote on a paper ballot electronic vote tabulating

marksense voting system certified and approved for use in New Mexico elections pursuant to Section 1-9-14 NMSA 1978;

(4) completing and signing an early voter absentee ballot application at an alternate location or mobile alternate voting location established by the county clerk and voting on a electronic vote tabulating marksense voting system certified and approved for use in New Mexico elections pursuant to Section 1-9-14 NMSA 1978; or

(5) requesting electronic transmission of an absentee ballot pursuant to the provisions of Section 1-6-4.1 NMSA 1978 and 1-6-9 NMSA 1978.

**B.** Upon receipt of the absentee ballot application from the voter, the county clerk or precinct board member shall review it for completeness. When it is determined that the application is complete and that the applicant has a valid certificate of registration on file in that county, the county clerk or precinct board member shall mark the application “accepted” with the date and time of receipt and enter the required information in the absentee ballot register. If the applicant is voting absentee in-person, the county clerk or precinct board member shall instruct the voter on how to proceed to vote. The county clerk or precinct board member shall ensure that the applicant votes before leaving the office of the county clerk or alternate location.

**C.** An absentee in-person voter who requests assistance may be assisted only by a person of the voter’s own choice, provided that the voter is visually impaired, physically disabled, unable to read or write, or a member of a language minority who has an inability to read well enough to exercise the elective franchise. The precinct board shall note the fact that the voter received assistance and the identity of the person providing the assistance.

**D.** For the purposes of absentee voting, electioneering is not permitted in the office of the county clerk, alternate voting location, or mobile alternate voting location. Electioneering consists of any form of campaigning within one hundred (100) feet of the door of the county clerk’s office or alternate voting location. Electioneering includes the display of signs or campaign literature, campaign buttons, t-shirts, hats, pins, or other such items and includes the verbal solicitation of votes for a candidate or question.

**E.** Alternate voting locations shall be sited with respect to serving the convenience of the greatest number of voters, reducing travel time and ensuring a high level of voting system security.

**F.** An absentee voter who is required to present identification pursuant to the Election Code and has not done so at the time the voter’s ballot is mailed, shall be mailed instructions by the county clerk. The instructions shall inform the voter that failure to submit the required documents with the ballot may result in the ballot not being counted. The county clerk shall also instruct the voter not to place the required documents in the inner envelope with the ballot. A voter entitled to vote by absentee ballot pursuant to the provisions of the Uniformed and Overseas Citizens Absentee Voting Act or a voter provided the right to vote under the provisions of the Voting Accessibility for the Elderly and Handicapped Act is exempt from the requirement that first time voters who registered by mail must provide identification pursuant to the provisions of the Election Code and Section 303 of the Help America Vote Act.

**G.** Transmittal and receipt of electronically transmitted ballots pursuant to the provisions of Section 1-6-4.1 NMSA 1978 shall be by a computer, within the office of the county clerk. Electronically transmitted and received ballot materials shall be processed in the office of the county clerk by a computer that is equipped with secured intrusion detection and protection systems, protecting the firewall and local network from network intrusions, managed at the county level. Ballots may also be transmitted by facsimile means.

[1.10.12.9 NMAC - N, 3-31-2000, A, 4-30-2002; A, 7-15-2003, A, 4-30-2004; A, 4-28-2006; A, 9-15-2008; A, 3-15-2012]

**1.10.12.10 ABSENTEE PAPER BALLOTS:** Except as otherwise provided in Section 1-6-4.1 NMSA 1978 and the Uniformed and Overseas Citizens Absentee Voting Act, 1 U.S.C. Sections 101 et seq., there shall be one uniform paper ballot. No visual distinction shall be made between absentee ballots, emergency paper ballots, alternative or provisional ballots.

[1.10.12.10 NMAC - N, 3-31-2000; A, 7-15-2003; A, 4-30-2004; A, 9-15-2008; A/E, 9-30-2008; A, 3-15-2012]

**1.10.12.11 VOTING MACHINE BALLOT SECURITY:**

**A.** At least ten (10) days before the absentee voting period commences the county clerk shall prepare, inspect and seal any electronic voting machine in accordance with the specifications provided by the manufacturer and the provisions of state law.

**B.** At least one day before the absentee voting period commences, the county clerk shall certify to the secretary of state and all political party county chairs, in a primary, general election or special election for U.S. representative, the type and serial number of each voting machine used in the county for absentee voting. The

certification shall be transmitted to the bureau of elections at the office of the secretary of state.

**C.** Each electronic voting machine shall be situated within the office of the county clerk, alternate voting location or mobile alternate voting location in a physical location that best safeguards the secrecy of the vote and protects the security of the voting system. Only the voter or the person assisting the voter shall be allowed to enter the voting booth or handle the ballot while the voter votes.

**D.** The county clerk shall ensure that each voting machine located within the office of the county clerk or alternate voting location shall be secured by a lock and key or seal. Each day during the early voting period, the county clerk or designated deputy shall, in the presence of one other employee of the county clerk or precinct board member, unlock the office where the voting machine is located. Similarly, at the close of regular office hours, the county clerk or designated deputy shall, in the presence of one other employee of the county clerk or precinct board member, lock the office where the voting machine is located. Immediately after unlocking or locking the office where the voting machine is located, the county clerk and the employee or precinct board member present shall sign or initial the absentee voting daily report. The report shall immediately be transmitted to the bureau of elections at the office of the secretary of state. Early voting daily reports for a mobile alternate voting location shall be submitted for the previous day's activity on the next regular business day.

**E.** The county clerk shall prepare a list of those individuals who have authorized access to alternate voting locations or mobile alternate voting location. This list shall indicate those persons authorized as custodians of voting machine or ballot box keys or seals. A copy of this list shall be provided to the office of the secretary of state and, in a primary, general election or special election for U.S. representative, the chairs of each county's political parties.

**F.** Ninety (90) days prior to the beginning of early voting, a county clerk who establishes an alternate location or mobile alternate voting location shall notify the secretary of state of the dates, times and locations. The county clerk shall train all county clerk's staff and precinct board members who process early and absentee voters ensuring that no voter who has cast a ballot at an alternate location or mobile alternate voting location may then cast a ballot at the voter's polling place on election day. Certificates of voting machine preparation for voting systems at alternate voting locations and mobile alternate voting locations shall be submitted to the secretary of state pursuant to Section 1-11-7 NMSA 1978.

**G.** The county clerk shall publicize the date, time of operation and location of any alternate voting location or mobile alternate voting location using media directed to, and appropriate for, the voters of that area.

**H.** A county clerk may exercise the discretion to designate a mobile alternate voting location if the clerk deems it will assist voters in rural areas of the county, or on an Indian nation, tribal area or pueblo land in the county. Mobile alternate voting locations shall be staffed by a precinct board consisting of a minimum of two registered voters of the county of different political parties or without political party affiliation. The county clerk shall ensure that each mobile alternate voting location has interpreters as may be required by state or federal law or federal consent decree. The mobile alternate voting location may not be staffed by the county clerk if the county clerk's name appears on the ballot.

[1.10.12.11 NMAC - N, 3-31-2000; A, 7-15-2003, A, 4-30-2004; A, 4-28-2006; A, 9-15-2008; A, 3-15-2012]

#### **1.10.12.12 ABSENTEE BALLOT BOX SECURITY:**

**A.** The county clerk or authorized deputy shall be the sole custodian of absentee ballot box keys or seals and shall take all appropriate measures to provide for the security of such keys or seals.

**B.** Absentee ballot boxes shall not be opened from the commencement of absentee voting until election day, except as provided by Section 1-6-11 NMSA 1978.

**C.** Absentee ballot boxes shall be located in a physical location in the county clerk's office or alternate voting location that best safeguards the security and secrecy of the ballot.

[1.10.12.12 NMAC - N, 3-31-2000; A, 4-28-2006; A, 9-15-2008; A, 3-15-2012]

#### **1.10.12.13 VOTE TABULATION:**

**A.** Any absentee in-person voter voting by electronic vote tabulating marksense voting system shall be instructed to mark and personally feed the ballot into the voting machine in order to tabulate the voter's vote. The absentee precinct board shall feed all absentee by-mail ballots into the voting machine in order to tabulate the voter's vote.

**B.** Absentee votes cast on any voting device in the office of the county clerk twenty-eight (28) days prior to an election shall not be combined and counted with hand-delivered or mailed absentee ballots. A separate voting machine or voting machine removable storage media device shall be used to tabulate these ballots.

**C.** Any counties in possession of high-speed central count marksense ballot tabulators shall use such

machines in the tabulation of hand-delivered or mailed marksense absentee ballots.

**D.** High-speed central count marksense vote tabulators used to tabulate marksense absentee ballots shall be programmed to tabulate ballots by precinct.

[1.10.12.13 NMAC - N, 3-31-2000; A, 4-30-2002; A, 7-15-2003; A, 4-30-2004; A, 9-15-2008; A, 3-15-2012]

**1.10.12.14 OVERVOTED, BLANK, MISREAD AND UNDERVOTED BALLOTS:**

**A.** Electronic vote tabulating marksense voting systems shall be programmed to ensure that no overvoted, blank, or misread ballots are accepted or scanned by the voting system, and that all undervoted ballots are accepted or scanned by the voting system. Overvoted, blank or misread ballots shall be rejected by the voting system and returned to the voter, if the voter is voting absentee in-person.

**B.** If an absentee in-person ballot is returned as overvoted, the overvoted ballot shall be spoiled and the county clerk or precinct board member shall instruct the voter to insert the spoiled ballot into a spoiled ballot envelope and return the spoiled ballot envelope to the office of the county clerk, pursuant to Section 1-12-62 D, NMSA 1978. The voter shall then be issued a new ballot and be instructed to return to the voting booth and mark the ballot. Upon emerging from the voting booth the voter shall personally feed the ballot into the electronic vote tabulating marksense voting system.

**C.** If an absentee in-person ballot is misread, the voter shall be instructed to insert the ballot in a different orientation. If the ballot is misread again, the ballot will be spoiled and the county clerk or precinct board member shall instruct the voter to insert the spoiled ballot into a spoiled ballot envelope and return the spoiled ballot envelope to the office of the county clerk, pursuant to Section 1-12-62 D, NMSA 1978. The voter shall then be issued a new ballot and be instructed to return to the voting booth and mark the ballot. Upon emerging from the voting booth the voter shall personally feed the ballot into the electronic vote tabulating marksense voting system.

**D.** If an absentee by-mail ballot that is overvoted, blank or misread is rejected when scanned by the voting system, it shall be fed a second time into the voting system which shall have been programmed to tabulate overvoted, blank, misread or undervoted ballots. Any absentee by-mail ballot that is rejected a second time shall be hand tallied by the absentee precinct board.

[1.10.12.14 NMAC - N, 3-31-2000; A, 9-15-2008; A, 3-15-2012]

**1.10.12.15 ABSENTEE PRECINCT BOARDS:**

**A.** On election day, or pursuant to Section 1-6-11 NMSA 1978, prior to 7:00 a.m., the county clerk shall issue a receipt for all voting machines and ballot boxes to a special deputy county clerk. The receipt shall indicate the date and time the machine was removed from the office of the county clerk or alternate location, by whom, the serial number of the machine and the number of votes recorded on the machine. At 7:00 a.m. on election day, or pursuant to Section 1-6-11 NMSA 1978, a special deputy county clerk shall deliver the electronic voting machines, all ballot boxes, the absentee ballot register and signature roster to the absentee precinct board. The special deputy county clerk shall obtain a receipt executed by the presiding judge and each election judge specifying the serial number of the machine, the number of votes recorded on the machine, the number of ballot boxes delivered and shall return such receipt to the county clerk for filing.

**B.** The county clerk shall issue red pencils or pens to be used as writing instruments by the precinct board, except the presiding judge shall be issued an ink pen for the purpose of signing and filling out documents required by the Election Code. Precinct board members handling or counting ballots shall have no other writing or marking instruments.

**C.** If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall count the ballot as provided for in Section 1-1-5.2 NMSA 1978. In no case, shall the counting team mark or re-mark the ballot. 1.10.23.12 NMAC contains illustrative examples of how to discern voter intent. In the instance of machine malfunction or inability of the voting system to read the ballot, the precinct board shall hand tally ballots.

**D.** Absentee ballots received by mail or hand delivered during the twenty-eight (28) day absentee voting period and absentee ballots cast in-person on a voting machine in the office of the county clerk or at an alternate location shall be counted by precinct.

**E.** Absentee ballots received by mail or hand delivered during the twenty-eight (28) day absentee voting period shall not be counted on the same voting system used for in-person voting at the office of the county clerk or on any voting system used at an alternate location.

**F.** The absentee precinct board shall tally alternative, replacement and presidential ballots only after determination that the voter has not voted with an absentee ballot or in person as an early voter.

**G.** An absentee ballot without a signature on the outer envelope shall be rejected, pursuant to the

provisions of the Election Code, however a signature shall not be rejected because it contains an abbreviated name, lack or middle initial or name, or lack of suffix, provided that the absentee precinct board can identify the voter with other information provided on the outer envelope.

**H.** When an absentee ballot is received by a county clerk's office without a signature, the county clerk shall secure the unsigned ballot within the clerk's office and report on the total number of unsigned ballots to the canvassing board. The report shall be forwarded to the office of the secretary of state with other canvassing materials.

[1.10.12.15 NMAC - N, 3-31-2000, A, 4-30-2002; A, 7-15-2003, A 4-30-2004; A, 4-28-2006; A, 9-15-2008; A/E, 9-30-2008; A/E, 11-3-2008; A, 3-15-2012]

**1.10.12.16 CANVASSING:**

**A.** The county canvassing board shall ensure that absentee ballots received by mail or hand delivered during the twenty-eight (28) day absentee voting period and absentee ballots cast in-person on a voting machine in the office of the county clerk or alternate location shall be counted by precinct.

**B.** The canvassing of absentee ballots shall not extend to correcting errors in election returns. The canvassing board may only detect errors on the face of the returns and summon the precinct board. The canvassing board shall not have access to absentee ballots and shall not determine the validity of any absentee ballot cast.

**C.** The canvassing board shall not order hand tallying of any absentee ballots, unless so ordered by a court of law, and shall be bound by the results of an initial voting machine recheck, if such recheck has occurred.

[1.10.12.16 NMAC - N, 3-31-2000; A, 4-30-2002; A, 7-15-2003, A, 4-30-2004]

**1.10.12.17 PAPER BALLOT TRANSFER:**

**A.** If a tabulated ballot holding bin on an optical scanning voting system at an alternate voting location or polling place becomes full prior to the close of voting, the presiding judge and a member of the precinct board of another political party or undeclared political party affiliation shall unlock the bin, in the presence of the precinct board and transfer the contents of the bin to a locked or sealed ballot box. The precinct board shall execute a certificate of ballot transfer, prescribed by the secretary of state, which shall include the date and time of the ballot transfer and be signed by the members of the precinct board. The presiding judge shall then transfer the locked or sealed ballot box to the custody of the county clerk or a deputy county clerk who shall sign for receipt of the locked ballot box.

**B.** The deputy county clerk delivering the locked or sealed ballot box to the custody of the county clerk shall execute a certificate of transmittal, prescribed by the secretary of state, which includes the date and time of receipt of the locked or sealed ballot box from the precinct board. The county clerk or a deputy county clerk shall sign for receipt of the locked or sealed ballot box on the certificate of transmittal and secure the ballot box in accordance with 1.10.12.12 NMAC.

[1.10.12.17 NMAC - N, 9-15-2006; A, 3-15-2012]

**1.10.12.18 SECURITY FOR UNVOTED PRE-PRINTED BALLOTS AT ALTERNATE VOTING LOCATION:**

**A.** On the first day of early/absentee voting at the alternate location, the county clerk or a deputy county clerk shall deliver to the alternate voting location a storage box containing unvoted marksense ballots locked with two padlocks.

**B.** In the presence of the alternate voting location precinct board members, the county clerk or a deputy county clerk shall open the storage box. The precinct board members and the county clerk or a deputy county clerk shall complete an affidavit that verifies the number of ballots by style that were issued to that early/absentee alternate voting location. Those numbers shall be documented on the affidavit.

**C.** The county clerk shall distribute one key per judge for the padlocks on the storage box. One key shall be for one padlock and the other key for the other padlock. These judges shall be from different political parties or without party affiliation. The keys shall remain in their custody until the early/absentee voting period ends and then returned to the county clerk.

**D.** At the end of each day of early/absentee voting, the county clerk or a deputy county clerk or the presiding judge and the two judges from different major political parties shall verify and document the number of the unvoted marksense ballots at the alternate location and place them in the storage box. The storage box shall be locked with the two padlocks by the two judges from different major political parties and placed in a locked room at the alternate location along with the early voting tabulator. The presiding judge, county clerk, or a deputy county clerk shall have sole possession of the key to the locked room. If a location does not have a locked room, the county

clerk shall provide a cabinet with a locking device to be placed on the site for the presiding judge to place the storage box.

**E.** At the beginning of each day until the final day of early/absentee voting at the alternate location, the county clerk, or a deputy county clerk, or the presiding judge shall unlock the room. In the presence of the presiding judge, the judges from different major political parties who are in possession of the storage box keys shall open the padlocks on the storage box to retrieve the unvoted marksense ballots to be used at that early/absentee voting location.

**F.** The beginning ballot number for that day must match the ending ballot number from the prior day. If it does not match, the county clerk must be notified immediately. No voting at that alternate location shall be allowed until the discrepancy has been resolved to the satisfaction of the county clerk.

**G.** All voted marksense ballots shall remain in the voting tabulator except in accordance with 1.10.12.17 NMAC. [1.10.12.18 NMAC - N, 9-29-2006; A, 9-15-2008; A, 3-15-2012]

**1.10.12.19 SECURITY FOR ON DEMAND TYPE BALLOT GENERATION SYSTEMS AT ALTERNATE VOTING LOCATION:**

**A.** The county clerk, county clerk staff and precinct board shall have unlimited access to the alternate voting location using on-demand type ballot generation systems and access during the voting period shall not be controlled by any third party.

**B.** User names and passwords for precinct board users, county clerk staff users, and county clerk staff administrators shall not be shared or disclosed to any person.

**C.** If a county clerk pre-prints ballots on an on-demand type ballot generation system for emergency purposes, the ballots shall be stored under the provisions of 1.10.12.18 NMAC. [1.10.12.19 NMAC - N, 3-15-2012]

**1.10.12.20 EMERGENCY PROCEDURES FOR VOTING SYSTEM FAILURE AT ALTERNATE LOCATIONS:**

**A.** If the removable storage media device fails in a voting system at an alternate location, the precinct board shall cease all tabulating on that voting system and contact county technicians. The technicians shall certify a new removable storage media device and, in the presence of the presiding judge and another precinct board member of different or no party affiliation, re-insert all ballots into the voting system for tabulation. After tabulation the ballots shall be removed to a locked or sealed ballot box and another certified removable storage media device shall be used for the balance of voting at that alternate location. The locked or sealed ballot box shall be secured in county clerk's office or the location where absentee ballots are stored.

**B.** If failure is caused by the voting system and not the removable storage media device, the voting system shall be replaced. If the precinct board determines that the number of ballots inserted into the voting system that failed matches the number of ballots cast, as shown on the public counter of the replacement voting system into which the removable storage media device has been inserted, then voting on that replacement voting system may proceed. If the number of ballots inserted into the voting system that failed does not match the number of ballot cast, as shown on the public counter of the replacement voting system in which the removable storage media device has been inserted, then ballots shall be re-tabulated and stored under the provisions of Subsection A of 1.10.12.20 NMAC. A county clerk may institute a policy requiring re-tabulation of all ballots due to voting system or removable storage media device failure.

**C.** In all cases of failure, retabulated ballots shall be kept separate from ballots cast and tabulated thereafter.

**D.** The secretary of state shall be notified of any machine failure within twenty-four (24) hours and the county clerk shall transmit appropriate recertification documents. [1.10.12.20 NMAC - N, 3-15-2012]

History of 1.10.12 NMAC: [Reserved]