

TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 9 REGULATORY PROCEDURES
PART 1 GENERAL PROVISIONS - HEARINGS

18.9.1.1 ISSUING AGENCY: New Mexico Department of Transportation.
[18.9.1.1 NMAC - N, 7/1/2024]

18.9.1.2 SCOPE: This rule applies to all transportation service providers subject to the jurisdiction of the department of transportation under the Motor Carrier Act, Sections 65-2A-1 to -41 NMSA 1978, the Ambulance Standards Act, Sections 65-6-1 to -6 NMSA 1978, and the Transportation Network Company Services Act, Sections 65-7-1 to -22 NMSA 1978.
[18.9.1.2 NMAC - N, 7/1/2024]

18.9.1.3 STATUTORY AUTHORITY: Sections 65-2A-4, 65-6-4, 65-7-21 to -22, and 67-3-6.1 NMSA 1978, and 2023 N.M. Laws, Chapter 100, Section 81.
[18.9.1.3 NMAC - N, 7/1/2024]

18.9.1.4 DURATION: Permanent.
[18.9.1.4 NMAC - N, 7/1/2024]

18.9.1.5 EFFECTIVE DATE: July 1, 2024 unless a later date is cited at the end of a section.
[18.9.1.5 NMAC - N, 7/1/2024]

18.9.1.6 OBJECTIVE: The purpose of this rule is to set forth the administrative hearing procedures applicable to motor carrier and transportation network services in New Mexico.
[18.9.1.6 NMAC - N, 7/1/2024]

18.9.1.7 DEFINITIONS:

A. “Applicant” means any party on whose behalf an application is made for approval or authorization of the department.

B. “Calendar days” means that the time period shall be counted as follows:
the day of the event that triggers the period shall be excluded.
all intermediate days shall be counted, including the weekend and legal holidays; and
the last day of the period shall be counted. However, if the last day is a weekend or legal holiday then the period is extended to the next business day.

C. “Commentor” means a person other than a party who provides a statement for consideration on the grounds of a public or private interest.

D. “Complainant” means a person who complains of anything done or omitted to be done in violation of any law, rule, or administrative order.

E. “Confidential information” means information that is personally sensitive or protected by law, and includes driver’s license numbers, taxpayer identification numbers, social security numbers, dates of birth, health treatments or diagnoses, and financial account numbers.

F. “Date and time of filing” means the date and time on the electronic mail transmittal that is received by the records bureau with a request for filing services.

G. “Department” means the New Mexico department of transportation.

H. “Director” means the supervisor of the compliance unit staff tasked with assessing the compliance of transportation services regulated by the department.

I. “Electronic signature” means a full, printed name of the person responsible for the electronic version of the document by scanned or other electronic reproduction of the signature or by typing in the signature line the notation “/s/” followed by the name of the person signing the original document accompanied by the email address of the person signing.

J. “File, filed, or filing” means the electronic mail submission to the department’s records bureau with a request for filing services.

K. “Hearing examiner” means a person employed or designated by the department as the official tasked with conducting an administrative hearing and recommending a decision.

- L. **“Intervenor”** means a person authorized by law or permitted by the hearing examiner to participate as a party in an administrative hearing.
 - M. **“Order”** means a directive, determination or ruling on a disputed matter issued by the department.
 - N. **“Party”** means a person who initiates a proceeding by filing a petition or complaint, a respondent to a filed petition or complaint, any person granted leave to intervene in a matter, and staff.
 - O. **“Petitioner”** means any party on whose behalf a petition is made for a determination or action by the department.
 - P. **“Pleading”** means a petition, complaint, answer, motion, response, exception, or other formal written statement filed in a proceeding.
 - Q. **“Hearing”** means a public proceeding conducted by a hearing examiner, that affords an opportunity for parties to present evidence, testimony and argument as are deemed relevant or material to the disputed issues.
 - R. **“Respondent”** means any party against whom any complaint is filed or any party subject to the department’s jurisdiction to whom a notice is issued instituting a proceeding or investigation.
 - S. **“Secretary”** means the secretary of the department.
 - T. **“Staff”** means persons employed by the department to assess the compliance of motor carrier and transportation network services subject to the jurisdiction of the department.
- [18.9.1.7 NMAC - N, 7/1/2024]

18.9.1.8 HEARING REQUEST:

- A. **Written request required:** Any person seeking a hearing shall timely file a written request for hearing. The request shall be brief and include:
 - (1) the requestor’s name, title, business name and telephone number;
 - (2) a short summary of the reason for the hearing request; and
 - (3) identify or attach the action or proposed action that is the basis for the request.
 - B. **Time limits:** A request for hearing is timely submitted if filed:
 - (1) to contest or protest any application, within the statutorily prescribed notice period of 19 calendar days; and
 - (2) to contest a notice of a proposed action by the department, within 30 calendar days of the notice date.
 - C. **Rejection of request:** A hearing request may be rejected in writing by a hearing examiner (or designee) for only the following reasons: the issues are unripe or moot, the department lacks jurisdiction, a hearing is discretionary, the request is untimely or the request is substantively deficient. Any request rejected as substantively deficient may be corrected and resubmitted but the time for submission will not be tolled. A motion for reconsideration may be filed for any rejected hearing request.
 - D. **Acceptance of request:** Acceptance of a pleading or document for filing is not a determination that the pleading or document complies with all requirements and is not a waiver of such requirements.
 - E. **Consolidation:** Proceedings involving similar questions of law or fact may be consolidated for a single public hearing where the rights of the parties will not be prejudiced by such procedure.
 - F. **Opening of a docket:** A docket shall be opened and assigned an appropriate case docket number by the records bureau upon written request by staff or upon a determination by the hearing examiner that a hearing is warranted.
- [18.9.1.8 NMAC - N, 7/1/2024]

18.9.1.9 ELECTRONIC FILING AND SERVICE OF PLEADINGS:

- A. **Electronic filing required:** All filings must be submitted electronically in PDF format to the records bureau. The hearing examiner may require that any document filed in PDF be additionally supplied directly to hearings or parties in the document’s native format.
- B. **Fees:** A pleading will not be filed until payment of any required fee, as identified in Rule 18.3.5 NMAC, is electronically or physically received by the records bureau.
- C. **Public disclosure and protection of information:** All records submitted, created or held by the department are subject to public disclosure with certain exceptions, as provided by law. Unauthorized or damaging public disclosure of sensitive information is avoided as follows:
 - (1) **Redaction requirements:** Unless critical to a determination of the issues at hearing, all confidential information shall be redacted by blacking out only the affected text prior to the submission of any filing;

(2) **Protective order:** When confidential, sensitive and protected information is critical to the determination of the issues at hearing, a motion for protective order shall be filed along with a redacted version of the document. The request shall provide any legal basis and state with particularity the injury which may result from the disclosure of that information. The hearing examiner shall determine the extent and the manner in which that information is required to be disclosed.

D. Identifying information and signature required: The submitting party must include their name, business name and operating authority numbers as applicable, email address and telephone number, as well as their electronic or scanned signature on each filing.

E. Prompt service required: A true and correct copy of all documents filed in a proceeding shall be promptly served, by email if available, upon all parties and persons (or their attorney representative) identified on the official service list issued by the hearing examiner. If an official service list has not yet been issued for the docket, then service must be made on all known interested parties, including staff.

F. Certificate of service required: A certificate of service listing the name each person or entity served, email or physical address used for service, and date of service shall accompany each petition submitted for filing.

G. Rejection: Documents not in substantial compliance with these rules may be rejected by the records bureau or hearing examiner. Rejected documents may be amended for compliance and refiled within 24 hours after the rejection, or within the prescribed filing timeframe. Rejected filings shall not be included in the record or be considered in the final order.

[18.9.1.9 NMAC - N, 7/1/2024]

18.9.1.10 REPRESENTATION IN PROCEEDINGS:

A. Representation: Only the person challenging the action or for a business, a bona fide majority owner, or an attorney licensed and authorized to practice in New Mexico may represent a person in a proceeding.

B. Entry of appearance: A formal written entry of appearance must be filed by any attorney wishing to represent a person or party to a proceeding.

C. Verification: The hearing examiner may require any person or entity to provide appropriate documentation in order to verify any claimed representational authority.

D. Failure to appear: A party that provides no appearance at a scheduled hearing is deemed to have abandoned and dismissed their request for hearing unless, within 10 calendar days after the date of the scheduled hearing, the party presents good cause for failure to appear; “good cause” includes death in the family, disabling personal illness, or other significant emergency; at the discretion of the hearing examiner, other extraordinary circumstances may be considered good cause.

[18.9.1.10 NMAC - N, 7/1/2024]

18.9.1.11 HEARING EXAMINER AUTHORITY AND DUTIES:

A. Impartiality: A hearing examiner shall disqualify themselves from any case in which they have a personal stake, relationship or prior involvement in the underlying dispute, or when their impartiality is reasonably questioned.

B. Fairness: A hearing examiner shall ensure parties are provided an opportunity to:

- (1) present their position and testimony;
- (2) present witnesses to provide relevant information;
- (3) submit evidence to establish all pertinent facts;
- (4) advance arguments without undue interference;
- (5) challenge evidence and cross examine witnesses.

C. Duties: The hearing examiner shall:

- (1) provide an explanation to participants as to how the hearing will be conducted;
- (2) ensure that witnesses are administered oaths and affirmations;
- (3) issue subpoenas upon proper application and form to compel the attendance of witnesses or the production of specific records;
- (4) request, receive, and make part of the record all evidence considered necessary to decide the issues raised;
- (5) allow parties to state any timely objections for the record;
- (6) direct and regulate the procedural process to ensure the orderly conduct of participants;
- (7) question any witness in order to fully develop the record and to clarify testimony;

- (8) produce and file a recommended decision for review that clearly identifies proposed findings of fact and conclusions of law;
- (9) allow, consider and file a response to any timely submitted party exceptions to the recommended decision; and
- (10) take such other actions as may be reasonable and necessary in the discharge of their duties.

[18.9.1.11 NMAC - N, 7/1/2024]

18.9.1.12 PRE-HEARING EVENTS:

- A. Pre-hearing conference:** A hearing examiner may conduct a pre-hearing conference of the parties as necessary to inform and confer on procedural issues and timelines, clarify issues in dispute, address motions or discovery disputes, and support settlement negotiations between the parties.
- B. Procedural scheduling order:** A hearing examiner may coordinate with the parties to create a schedule of pre-hearing events and a timeline for the hearing.
- C. Subpoena:** At any time prior to the hearing, a party may file a request for the issuance of a subpoena for a witness or specific document to be presented at hearing. Such request must set forth the reasons supporting the issuance and be accompanied by a proposed subpoena form. The return of certificated service, or affidavit of service, shall be promptly filed.
- D. Informal resolution:** The parties are encouraged to engage in informal discussions to identify issues in dispute and consider possible resolutions or stipulations.
- E. Settlement:** The parties may resolve some or all of the issues at any time and file their signed, written agreement in the record. Once filed, the hearing examiner may, subject to reconsideration, limit the scope of the hearing or dismiss the case, as indicated by the agreement.

[18.9.1.12 NMAC - N, 7/1/2024]

18.9.1.13 PRE-FILED DIRECT TESTIMONY:

- A. Force and effect:** Prepared written testimony shall be received with the same force and effect as though it were stated orally by the witness. Witnesses must be present at the public hearing and shall adopt, under oath, their prepared written testimony, subject to cross-examination and motions to strike, unless the witness's presence at public hearing is waived without objection by the parties.
- B. Form:** Written testimony shall be in the following format:
 - (1) the cover page shall contain the case caption, case number, name and title of the witness;
 - (2) all pages are to be typed, double-spaced and numbered in the footer;
 - (3) the top, bottom, and left-hand margins shall be at least one and one-half inches;
 - (4) the name of the witness and the case number, if then known, shall be typed at the top center of each page in the header;
 - (5) line numbers shall be present on the left-hand side of each page of testimony;
 - (6) testimony shall be in question-and-answer format;
 - (7) proposed exhibits relating to the testimony shall be clearly cited in, and attached to, the testimony unless otherwise directed by the hearing examiner; and
 - (8) testimony shall be supported by affidavit.
- C. Supplemental testimony:** The hearing examiner may file written questions directed at any party and require the timely filing of additional sworn testimony to respond to those questions.

[18.9.1.13 NMAC - N, 7/1/2024]

18.9.1.14 ADMISSIBILITY OF EVIDENCE:

- A. Formal rules of evidence and civil procedure do not apply:** An orderly exchange of relevant information is encouraged with consideration for the legal requirement that any final decision be supported by competent evidence.
- B. Limited objections to exclude evidence:** All evidence is subject to appropriate and timely objection. The hearing examiner may exclude irrelevant evidence and limit repetitive or unduly cumulative evidence, with or without objection. Admitted evidence shall be provided the appropriate deference and weight by the hearing examiner with respect to its necessity, competence, availability, and trustworthiness.
- C. Administrative notice:** The hearing examiner may take administrative notice of any matter in which courts of this state may take judicial notice, including of laws, court orders, official agency records, and the department (or its predecessor's) orders, filings and records. Matters noticed are admitted into evidence to the same

extent as other relevant evidence, either by citation to a publicly accessible document or by inclusion in the record of a copy of the relevant portion of the document(s).
[18.9.1.14 NMAC - N, 7/1/2024]

18.9.1.15 EXHIBITS AND STIPULATIONS:

A. Marking of exhibits: Exhibits shall be paginated and marked numerically in the order of introduction by the moving party.

B. Availability:

(1) Evidence to be presented as exhibits must be made available to all parties at least ten (10) calendar days prior to the hearing;

(2) Partial documents. If only a portion of a document is offered as evidence, then the parties and hearing examiner shall be afforded a prior opportunity to examine the complete document that contains that designated portion;

(3) Rebuttal evidence intended to explain, counteract, repel, or disprove evidence submitted by another party or by staff shall be presented at least five (5) calendar days prior to the hearing.

C. Stipulation as to facts:

(1) The parties may, by stipulation in writing filed or entered in the record, agree upon the facts or any portion thereof;

(2) Stipulations shall be binding upon the participating parties and may be regarded and used as evidence in the final decision;

(3) The hearing examiner may, however, require proof or evidence of the facts to which the parties have stipulated.

[18.9.1.5 NMAC - N, 7/1/2024]

18.9.1.16 CONFERENCE AND HEARING FORMAT:

A. In-person or electronic: The hearing examiner may conduct a conference or hearing in-person or electronically by telephone or videoconference.

B. Continuance or reconvening in an alternative format: If at any point in the proceedings the hearing examiner determines that the scheduled format is not sufficient to develop an adequate record, to address credibility issues, or to otherwise ensure a full and fair hearing process, then the proceedings may be continued, or recessed and reconvened in an alternative format. Consideration must be given to any public hearing notice requirements.

[18.9.1.16 NMAC - N, 7/1/2024]

18.9.1.17 HEARING PROCESS:

A. Opening: The hearing examiner will provide an overview of the hearing process to the participants. Any commenters are provided an opportunity to enter an oral or written statement for the record, but comments shall not be considered or entered as evidence. The parties may offer a brief position statement.

B. Order of presentment: Sworn testimony and evidence will ordinarily be received and admitted to the record in the order prescribed in this section unless otherwise directed by the hearing examiner.

(1) **Challenged applications:**

- (a) staff assessment;
- (b) applicant;
- (c) intervenors; and
- (d) rebuttal by staff or applicant.

(2) **Staff petition for sanctions or penalties:**

- (a) staff;
- (b) respondent;
- (c) rebuttal by staff.

(3) **Petition for reinstatement:**

- (a) petitioner;
- (b) staff; and
- (c) rebuttal by petitioner.

B. Examination of witnesses:

(1) **Direct examination:** Except for witnesses appearing in response to subpoena who are subject to direct examination, each witness must be called forward and sworn in prior to authenticating their pre-

filed written testimony as their direct examination, and then such witness must be immediately passed for cross-examination.

(2) **Cross examination:** Each witness is subject to cross-examination by the parties.

(3) **Re-direct:** Following cross examination, each party must be provided an opportunity to re-direct their witness, with questions limited to addressing only the issues raised on cross-examination.

(4) **Hearing examiner inquiries:** The hearing examiner may question witnesses to obtain clarification or to ensure a full record is created.

C. Preponderance of evidence standard: Unless another standard is specifically provided in law, after the testimony and evidence is presented and provided appropriate consideration, the fact finder must be convinced that the alleged fact or event was ‘more likely than not’ to have existed or occurred.

D. Motion and response:

(1) Motions may be made at any time during the course of a proceeding. However, if the grounds for a motion are known to the movant prior to public hearing, the motion shall be filed prior to public hearing, except upon good cause shown. Proposed orders need not be submitted with motions unless the hearing examiner directs otherwise.

(2) Motions must clearly state the relief sought, the grounds therefor, whether the motion is opposed, and if so, by whom.

(3) All motions not specifically acted upon shall be deemed disposed of consistent with the final order.

(4) Response. Failure to make a timely response shall be deemed a waiver of the right to respond. Unless the hearing examiner authorizes additional time to respond, a response is timely if filed within five calendar days of service of the motion.

[18.9.1.17 NMAC - N, 7/1/2024]

18.9.1.18 POST-HEARING:

A. Record of proceedings, evidence and testimony: A full and complete record of all proceedings shall be made electronically by recording and taken and transcribed by a certified court reporter. The transcribed record and entered exhibits shall be filed in the docket upon receipt by the hearing examiner.

B. Corrections: Suggested corrections to the transcript or record must be filed within 10 calendar days after the transcript is filed, except for good cause shown. Failure to timely file suggested corrections without good cause constitutes a waiver of objections to the transcript. The hearing examiner shall, with or without public hearing, determine what changes, if any, shall be adopted.

C. Briefs: At the discretion and direction of the hearing examiner, the parties may file proposed findings of fact and conclusions of law, briefs of arguments and response briefs, or to submit written memoranda on specific points of law. Citations to the transcript shall use the form “Tr.” followed by the transcript page number. If a transcript is made by electronic recording, citation to the transcript shall use time markers.

D. Recommended decision: The hearing examiner shall file and serve a proposed recommended decision with clear findings of fact based solely on the record and conclusions of law. Citations to the recommended decision shall use the form “RD” followed by the page number.

E. Exceptions and response: Parties may file exceptions to the recommended decision’s findings of fact or conclusions of law within 15 calendar days of issuance. Unless otherwise allowed by the hearing examiner, exceptions are limited to 10 pages. No response to an exception is permitted unless directed by the hearing examiner. The hearing examiner shall consider any exceptions and directed responses and shall file either an amended recommended decision or an order that the recommended decision is unchanged.

[18.9.1.18 NMAC - N, 7/1/2024]

18.9.1.19 DECISION AND APPEAL:

A. Final Decision: The secretary (or designee) shall review the record and file a decision to adopt a recommended decision in whole or in part, with specific reference to the parts adopted and rejected. The decision of the secretary (or designee) shall constitute a final decision unless a motion for reconsideration is granted.

B. Motion to Reconsider: Any party may file a motion for reconsideration within 10 calendar days of the filing of a by the secretary (or designee).

(1) such motion must clearly and concisely identify the basis for any alleged factual or legal omissions or errors;

(2) an untimely motion is deemed denied; and

(3) if within five calendar days the secretary (or designee) files a grant of the motion to reconsider, then the time to appeal is stayed pending the revision or reissuance of a final decision.

D. Appeal: An aggrieved party may appeal a final decision as provided by law.
[18.9.1.19 NMAC - N, 7/1/2024]

HISTORY of 18.9.1 NMAC: [RESERVED]