

This is an amendment to 18.19.9 NMAC, Sections 8 through 19, effective 5/24/2022.

18.19.9.8 ~~[IMPLIED CONSENT HEARINGS—REQUEST FOR HEARING—TIME AND PLACE—TELEPHONIC HEARINGS—CONTINUANCES:~~

~~_____A._____ Requests for hearing must be in writing, must be accompanied by the required fee or statement of indigency and must be made within ten days after receipt of notification of revocation as defined in Section 66-8-112 NMSA 1978. Incomplete requests or requests received after this time will not be honored. Timeliness of the request shall be determined either by the date of actual delivery to the department's headquarters in Santa Fe or, if mailed, by the postmark date of the envelope containing the request delivered through the U. S. postal service.~~

~~_____B._____ The department will notify the driver or the driver's agent by certified mail of the time and place scheduled for the hearing. This notice will be directed to the address contained on the request for a hearing or, if no return address is indicated, to the address last given the division pursuant to Section 66-5-22 NMSA 1978.~~

~~_____C._____ The hearing officer may conduct the hearing in person or, with the driver's consent, by telephone. If the hearing is to be conducted by telephone, the notice shall so inform the driver or the driver's agent and provide no less than seven days for the driver or the driver's agent to object to the hearing being conducted telephonically. Such telephonic hearings shall be conducted so that the driver, the driver's agent and any percipient witnesses are present together at a place designated by the department, usually a motor vehicle field office, in the county where the arrest took place. The department will bear the expense of the telephone call. The field office shall have a speaker telephone and unless other arrangements are made, a fax machine available so that all may hear the proceedings and documentary evidence may be transmitted between witnesses and the hearing officer.~~

~~_____D._____ Within ten days prior to the time an in person hearing is scheduled, the driver or the driver's agent may request that one or both appear by telephone. The hearing officer shall grant the request so long as the driver or driver's agent can make arrangements either to have access to a fax machine during the hearing or to exchange all documentary evidence prior to the hearing. It will be the responsibility of the driver or the driver's agent to call the designated telephone number at the time of the hearing. If the driver or driver's agent fails to call, it will be treated as a non appearance.~~

~~_____E._____ At the request of the driver or the driver's agent or on the hearing officer's own motion, the hearing officer may, for good cause, continue the hearing. The hearing officer shall consider only those requests made at least three working days prior to the scheduled hearing absent extraordinary circumstances which the requesting party could not have known earlier. Employees of the department's DWI scheduling section may grant or deny the request on behalf of the hearing officer.] **[RESERVED]**~~

~~[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.8 NMAC - Rn & A, 18 NMAC 19.9.8, 9/14/2000; A, 10/13/00, Repealed, 5/24/2022]~~

18.19.9.9 ~~[IMPLIED CONSENT HEARINGS—SUBPOENAS FOR WITNESSES AND DOCUMENTS—ISSUANCE—COSTS:~~

~~_____A._____ Under the authority granted by Subsection D of Section 66-8-112 NMSA 1978 and by Section 66-2-10 NMSA 1978, the department may subpoena witnesses to give testimony under oath and to require the production of relevant books, or other records.~~

~~_____B._____ The department may issue subpoenas to the law enforcement officer(s) whose name(s) are identified in any affidavit submitted to the department pursuant to Section 66-8-111 NMSA 1978 and to any other person who the department, in its discretion, believes may have relevant testimony to offer at the hearing. Such subpoenas shall be served by personal service as provided by NMRA 1-045(e) or by certified mail.~~

~~_____C._____ The driver or the driver's agent may make written application to the secretary requesting that a subpoena be issued to compel the attendance of a witness and for the production of specific books, papers or other records. Such written application shall set forth reasons supporting the issuance of the subpoena in order that relevancy of the proposed testimony or documents to be produced can be ascertained. The driver or the driver's agent shall be responsible for the service of any such subpoenas. Unless a request for continuance is made at least three working days prior to the scheduled date for the hearing, inability to serve such subpoenas shall not be grounds for continuance.] **[RESERVED]**~~

~~[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.9 NMAC - Rn & A, 18 NMAC 19.9.9, 9/14/2000, Repealed, 5/24/2022]~~

18.19.9.10 ~~[IMPLIED CONSENT HEARINGS—HEARING OFFICER:~~ The secretary shall designate a

hearing officer to conduct the hearings, continue hearings, receive evidence and issue decisions on behalf of the department. Only hearing officers designated by the secretary may conduct Implied Consent Act hearings.]

[RESERVED]

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.10 NMAC - Rn, 18 NMAC 19.9.10, 9/14/2000, Repealed, 5/24/2022]

18.19.9.11 ~~[IMPLIED CONSENT HEARINGS—POWERS AND DUTIES OF HEARING OFFICER:~~

Hearing officers have the duty to conduct fair and impartial hearings, to take appropriate action to avoid unnecessary delay in the disposition of proceedings and to maintain good order and decorum. Hearing officers possess all powers necessary to that end, including the following:

- ~~_____ A. _____ to administer or have administered oaths and affirmations;~~
- ~~_____ B. _____ to receive evidence and to rule upon offers of proof;~~
- ~~_____ C. _____ to consider and rule upon all procedural and other motions and objections appropriate in proceeding;~~
- ~~_____ D. _____ to insure that all, and only, relevant and material issues are considered during the hearing;~~
- ~~_____ E. _____ to require the production or inspection of relevant documents and other items;~~
- ~~_____ F. _____ to participate, when appropriate, in the examination of witnesses;~~
- ~~_____ G. _____ to cause a complete record of the hearing to be made;~~
- ~~_____ H. _____ to regulate the course of the hearing and the conduct of the parties and their representatives therein;~~

- ~~_____ I. _____ to make and issue decisions and orders; and~~

- ~~_____ J. _____ to take such other action as may be necessary and appropriate, consistent with legal authority vested in the department, and with the rules and regulations and policies of the department.] **[RESERVED]**~~

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.11 NMAC - Rn, 18 NMAC 19.9.11, 9/14/2000, Repealed, 5/24/2022]

18.19.9.12 ~~[IMPLIED CONSENT HEARINGS—PARTIES TO THE HEARING—PARTIES' RIGHTS:~~

The parties to the hearing shall be the department and the driver. The parties shall be entitled to call and examine witnesses, to introduce exhibits, to cross-examine witnesses, to make opening and closing arguments and to be represented by counsel at their own expense. Rebuttal evidence and argument may only be allowed at the discretion of the hearing officer.] **[RESERVED]**

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.12 NMAC - Rn, 18 NMAC 19.9.12, 9/14/2000, Repealed, 5/24/2022]

18.19.9.13 ~~[IMPLIED CONSENT HEARINGS—RULES OF EVIDENCE:~~

~~_____ A. _____ The technical rules of evidence shall not apply to the conduct of any hearing held under the provisions of Section 66-8-112 NMSA 1978. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The hearing officer may give probative effect to evidence that is of a kind commonly relied upon by reasonably prudent people in the conduct of serious affairs.~~

~~_____ B. _____ The hearing officer may take notice of judicially cognizable facts and of general technical or scientific facts and of other facts within the specialized knowledge of the division.~~

~~_____ C. _____ All evidence in the possession of the division may be placed in evidence and made part of the record of the proceeding. Documentary evidence may be received in evidence in the form of copies or excerpts.~~

~~_____ D. _____ The experience, technical competence and specialized knowledge of the division and of the hearing officer may be utilized in the evaluation of the evidence]. **[RESERVED]**~~

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.13 NMAC - Rn & A, 18 NMAC 19.9.13, 9/14/2000, Repealed, 5/24/2022]

18.19.9.14 ~~[IMPLIED CONSENT HEARINGS—FAILURE TO APPEAR:~~ If a driver who has requested a hearing fails to appear at the scheduled time and place, either in person or through an attorney licensed to practice law in New Mexico, and notice was given to the driver or to the driver's agent of the time and place, and no continuance has been granted, the right to a hearing shall be forfeited and the revocation shall be sustained.]

[RESERVED]

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.14 NMAC - Rn, 18 NMAC 19.9.14, 9/14/2000, Repealed, 5/24/2022]

18.19.9.15 ~~[IMPLIED CONSENT HEARINGS—ISSUES TO BE CONSIDERED AT THE HEARING:~~

The hearing shall be strictly limited to those issues set out in Subsection E of Section 66-8-112 NMSA 1978 and whether the driver previously has had a driver's license revoked under the provisions of the Implied Consent Act.]

[RESERVED]

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.15 NMAC - Rn & A, 18 NMAC 19.9.15, 9/14/2000, Repealed, 5/24/2022]

18.19.9.16 ~~**[IMPLIED CONSENT HEARINGS—HEARINGS OPEN TO PUBLIC:**~~ The hearing, including any continuations, shall be open to the public]. **[RESERVED]**

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.16 NMAC - Rn, 18 NMAC 19.9.16, 9/14/2000, Repealed, 5/24/2022]

18.19.9.17 ~~**[IMPLIED CONSENT HEARINGS—DECISION AND ORDER:**~~ The hearing officer shall enter a written order either sustaining or rescinding the revocation of the driver's license, permit or privilege to drive. The written order sustaining the revocation shall contain the findings required by Subsection F of Section 66-8-112 NMSA 1978]. **[RESERVED]**

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.17 NMAC - Rn & A, 18 NMAC 19.9.17, 9/14/2000, Repealed, 5/24/2022]

18.19.9.18 ~~**[IMPLIED CONSENT HEARINGS—RECORD OF THE HEARING:**~~ Hearings shall be electronically recorded unless the hearing officer requires recording by stenographic, mechanical or other means.] **[RESERVED]**

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.18 NMAC - Rn, 18 NMAC 19.9.18, 9/14/2000, Repealed, 5/24/2022]

18.19.9.19 ~~**[IMPLIED CONSENT HEARING—TIME FRAMES:**~~ In computing any period of time under this section, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.] **[RESERVED]**

[1/10/1994, 12/31/1996; 18.19.9.19 NMAC - Rn, 18 NMAC 19.9.19, 9/14/2000, Repealed, 5/24/2022]