

TITLE 13 INSURANCE
CHAPTER 1 INSURANCE GENERAL PROVISIONS
PART 6 INFORMAL ADMINISTRATIVE HEARINGS

13.1.6.1 ISSUING AGENCY: New Mexico Office of Superintendent of Insurance.
[13.1.6.1 NMAC - N, 4/9/2019]

13.1.6.2 SCOPE: The rules in this part govern every informal proceeding conducted pursuant to a notice of hearing issued by the Superintendent of Insurance pursuant to Section 59A-4-18 NMSA 1978.
[13.1.6.2 NMAC - N, 4/9/2019]

13.1.6.3 STATUTORY AUTHORITY: Sections 59A-2-9 and 59A-4-18 NMSA 1978.
[13.1.6.2 NMAC - N, 4/9/2019]

13.1.6.4 DURATION: Permanent.
[13.1.6.4 NMAC - N, 4/9/2019]

13.1.6.5 EFFECTIVE DATE: April 9, 2019 unless a later date is specified at the end of a section.
[13.1.6.5 NMAC - N, 4/9/2019]

13.1.6.6 OBJECTIVE: The purpose of this part is to provide rules of procedure to govern informal hearings before the superintendent.
[13.1.6.6 NMAC - N, 4/9/2019]

13.1.6.7 DEFINITIONS: These rules incorporate the definitions found in 13.1.5.7 NMAC.
[13.1.6.7 NMAC - N, 4/9/2019]

13.1.6.8 REQUESTING A HEARING:

A. Written request required. Any person seeking an informal hearing before the superintendent shall file a written request using the form available on the OSI website or as otherwise directed by the superintendent. The request shall include the language “**Request for Informal Hearing**” and the following:
(1) all of the items listed in Paragraphs (1) through (6) of Subsection A of 13.1.5.9 NMAC;
and

(2) **one of the following:**
(a) a written protest or request for hearing challenging that action or inaction; or
(b) a request for the superintendent to issue an order declaring the rights or obligations of the requestor under a specific statute, rule or bulletin within the jurisdiction of the superintendent, and concrete facts showing the requestor’s interest in the declaration.

B. Request rejected. The superintendent shall reject any request for an informal hearing if the request relates to a matter that requires the superintendent to act in fewer than 91 days after the request is made, or for any of the reasons listed in Subsection A of 13.1.5.9 NMAC.

(1) If a request for hearing is rejected, the superintendent will notify the requestor in writing with a brief explanation of the rejection.

(2) If the request for hearing is deficient for any reason, the requestor may correct any deficiency and resubmit the request for hearing.

C. Designation of hearing officer and docket. The superintendent shall proceed as set forth in Subsection C of 13.1.5.9 NMAC.

D. Waiver of right. A request for an informal hearing constitutes a waiver of any right the requestor may have to a hearing under any other provision of the Insurance Code, or its implementing rules, unless the superintendent, *sua sponte*, or for good cause shown, orders the hearing to proceed pursuant to 13.1.5 NMAC.

E. Intervenors. Request to intervene shall be handled as set forth in Subsection D of 13.1.5.9 NMAC.

F. Characterization of request. A hearing request that does not include the language “Request for Informal Hearing” will be treated as a request for a formal hearing governed by 13.1.5 NMAC.
[13.1.6.9 NMAC – N, 4/9/2019]

13.1.6.10 INFORMAL HEARING PROCESS AND DECISION: Any matter or question that is the subject of a notice of an informal hearing shall be determined based solely on the exhibits and pleadings submitted to the superintendent pursuant to these rules. The superintendent shall have 45 days to determine the matter or question following the date set for closing the record. The date set for closing the record shall not be more than 45 days after issuance of the notice of an informal hearing.
[13.1.6.2 NMAC - N, 4/9/2019]

13.1.6.11 REPRESENTATION AT HEARING, FORMAL ENTRY OF APPEARANCE, SUBSTITUTION OF COUNSEL, AND WITHDRAWAL FROM REPRESENTATION: Rules pertaining to legal representation at hearing are as set forth in 13.1.5.10 NMAC.
[13.1.6.11 NMAC - N, 4/9/2019]

13.1.6.12 FILING OF PLEADINGS: Rules pertaining to filing for pleadings are as set forth in 13.1.5.12 NMAC.
[13.1.6.12 NMAC - N, 4/9/2019]

13.1.6.13 CONTINUANCES: Rules pertaining to handling of continuances are as set forth in 13.1.5.15 NMAC.
[13.1.6.13 NMAC - N, 4/9/2019]

13.1.6.14 BURDEN OF PROOF, PRESENTATION OF CASE, EVIDENCE: Rules pertaining to burden of proof, conduct of the case and use of evidence are as set forth in 13.1.5.17 NMAC, with the following modifications:

A. A party may submit written arguments any time before the record closes, or as otherwise ordered by the hearing officer.

B. If OSI staff has not already entered an appearance, the hearing officer may request evidence or briefing from OSI staff, subject to the right of any party to object or respond to the submission. If called by the hearing officer, OSI staff shall be subject to examination by any party.

[13.1.6.14 NMAC - N, 4/9/2019]

13.1.6.15 HEARING OFFICER POWERS AND RESPONSIBILITIES:

A. General authority. The superintendent may preside over OSI's hearings or may designate a hearing officer to preside instead.

B. Duties of the hearing officer. The hearing officer shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the proceedings and to maintain order. The hearing officer shall have the powers necessary to carry out these duties.

C. Independence of the hearing officer. In the performance of these functions, the hearing officer shall not be responsible to or subject to the direction of any other officer, employee or agent of OSI, except that a hearing officer appointed by the superintendent shall be subject to the direction of the superintendent.

D. Ex-parte communication. The rules pertaining to ex-parte communication for an informal hearing are as set forth in 13.1.5.19 NMAC.

E. Final order. After a thorough review of the record and any recommendation prepared by a designated hearing officer, the superintendent shall issue a final order. No party or member of OSI staff shall engage in any *ex parte* communication with the superintendent in an attempt to influence his final decision.

[13.1.6.15 NMAC - N, 4/9/2019]

13.1.6.16 CLOSED OR PUBLIC HEARING, SEALED RECORDS, AND DELIBERATIVE NOTES OF HEARING OFFICER: The rules pertaining to public access to hearings and related records are as set forth in 13.1.5.20 NMAC.

[13.1.6.16 NMAC - N, 4/9/2019]

13.1.6.17 RECONSIDERATION: Rules pertaining to requests of reconsideration are as set forth in 13.1.5.24 NMAC.

[13.1.6.17 NMAC - N, 4/9/2019]

13.1.6.18 APPEALS FOLLOWING HEARING: Rules pertaining to appeals following hearing are as set forth in 13.1.5.25 NMAC.
[13.1.6.18 NMAC - N, 4/9/2019]

13.1.6.19 REQUESTING COPIES OF EXHIBITS, AUDIO, OR THE ADMINISTRATIVE RECORD: Rules pertaining to requests for copies of hearing-related matters following hearing are as set forth in Section 13.1.5.26 NMAC.
[13.1.6.19 NMAC - N, 4/9/2019]

History of 13.1.6 NMAC: [RESERVED]