

This is an amendment to 3.1.8 NMAC, Sections 8 through 16, effective 5/24/2022.

3.1.8.8 [GENERAL RULES ON FORMAL HEARINGS:]

~~_____ A. _____ Formal hearings are held in Santa Fe. Hearings are not open to the public except upon request of the taxpayer. Taxpayers may appear at a hearing for themselves or be represented by a bona fide employee or an attorney licensed to practice in New Mexico, certified public accountant or registered public accountant.~~

~~_____ B. _____ Every party shall have the right of due notice, cross examination, presentation of evidence, objection, motion, argument and all other rights essential to a fair hearing, including the right to discovery as provided in these rules.~~

~~_____ C. _____ An adverse party, or an officer, agent or employee thereof, and any witness who appears to be hostile, unwilling or evasive may be interrogated by leading questions and may also be contradicted and impeached by the party calling that person.~~

~~_____ D. _____ The parties may agree to, and the hearing officer may accept, the joint submission of stipulated facts relevant to the issue or issues. The hearing officer may order the parties to stipulate, subject to objections as to relevance or materiality, to uncontested facts and to exhibits. The hearing officer may also order the parties to stipulate to basic documents concerning the controversy, such as audit reports of the department, assessments issued by the department, returns and payments filed by the party taxpayers and correspondence between the parties, and to basic facts concerning the identity and business of a taxpayer, such as the taxpayer's business locations in New Mexico and elsewhere, the location of its business headquarters and, if applicable, the state of its incorporation or registration.] [RESERVED]~~

~~[7/19/1967, 11/5/1985, 8/15/1990, 10/31/1996; 3.1.8.8 NMAC - Rn, 3 NMAC 1.8.8, 1/15/2001, A, 8/30/2001; A, 4/30/07, Repealed, 5/24/2022]~~

3.1.8.9 [HEARING OFFICER:]

~~_____ A. _____ Hearings in adjudicative proceedings shall be presided over by a hearing officer designated by the secretary who will be referred to herein as the hearing officer.~~

~~_____ B. _____ 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, including the following:~~

~~_____ (1) _____ to administer or have administered oaths and affirmations;~~

~~_____ (2) _____ to cause depositions to be taken;~~

~~_____ (3) _____ to require the production and/or inspection of documents and other items;~~

~~_____ (4) _____ to require the answering of interrogatories and requests for admissions;~~

~~_____ (5) _____ to rule upon offers of proof and receive evidence;~~

~~_____ (6) _____ to regulate the course of the hearings and the conduct of the parties and their representatives therein;~~

~~_____ (7) _____ to issue a scheduling order, schedule a prehearing conference for simplification of the issues, or any other proper purpose;~~

~~_____ (8) _____ to schedule, continue and reschedule formal hearings;~~

~~_____ (9) _____ to consider and rule upon all procedural and other motions appropriate in proceeding;~~

~~_____ (10) _____ to require the filing of briefs on specific legal issues prior to or after the formal hearing;~~

~~_____ (11) _____ to cause a complete record of proceedings in formal hearings to be made; and~~

~~_____ (12) _____ to make and issue decisions and orders.~~

~~_____ C. _____ In the performance of these functions, the hearing officer shall not be responsible to or subject to the direction of any officer, employee or agent of the department.~~

~~_____ D. _____ In the performance of these adjudicative functions, the hearing officer is prohibited from ex parte discussions with either party on any protested matter.~~

~~_____ E. _____ Disqualification of a hearing officer:~~

~~_____ (1) _____ When a hearing officer has substantial doubt as to whether the hearing officer has a conflicting interest, the hearing officer shall disqualify himself or herself and withdraw from the hearing by notice on the record.~~

~~_____ (2) _____ Whenever any party believes the hearing officer for any reason should be disqualified in a particular proceeding, such party may file with the secretary a motion to disqualify and remove the hearing officer,~~

such motion to be supported by affidavits setting forth the alleged grounds for disqualification. A copy of the motion shall be served on the opposing party and on the hearing officer whose removal is sought. The hearing officer shall have 25 days from such service within which to accede or to reply to the allegations. If the hearing officer does not disqualify himself or herself within that time, the secretary shall promptly review the validity of the grounds alleged and determine whether or not the hearing officer shall be disqualified. The secretary's decision shall be final.

~~(3) If the hearing officer is disqualified, the secretary shall designate another person to act as hearing officer.~~ **[RESERVED]**

[11/5/1985, 1/4/1988, 5/24/1990, 8/15/1990, 10/31/1996; 3.1.8.9 NMAC - Rn, 3 NMAC 1.8.9, 1/15/2001; A, 8/30/2001, Repealed, 5/24/2022]

3.1.8.10 **[EVIDENCE:**

~~A. The taxpayer shall have the burden of proof, except as otherwise provided by law.~~

~~B. Relevant and material evidence shall be admitted. Irrelevant, immaterial, unreliable or unduly repetitious evidence may be excluded. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded so far as is practicable. The hearing officer shall consider all evidence admitted.~~

~~C. The hearing officer shall take administrative notice of facts to the extent provided in the New Mexico Rules of Civil Procedure for District Courts. When any decision of the hearing officer rests, in whole or in part, upon the taking of administrative notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted any party making timely motion therefor.~~

~~D. Parties objecting to evidence shall timely and briefly state the grounds relied upon. Rulings of the hearing officer on all objections shall appear in the record.~~

~~E. Formal exception to an adverse ruling is not required.~~

~~F. When an objection to a question propounded to a witness is sustained, the examining representative may make a specific offer of what the representative expects to prove by the answer of the witness, or the hearing officer may, with discretion, receive and have reported the evidence in full. Excluded exhibits, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.~~ **[RESERVED]**

[7/19/1967, 11/5/1985, 8/15/1990, 10/31/1996; 3.1.8.10 NMAC - Rn, 3 NMAC 1.8.10, 1/15/2001; A, 8/30/2001, Repealed, 5/24/2022]

3.1.8.11 **[RECORD:** Hearings shall be electronically recorded unless the hearing officer allows recording by any alternative means approved by the New Mexico supreme court for the recording of judicial proceedings. Any party may request that a hearing be recorded by such an alternative means. Unless otherwise ordered by the hearing officer, the party requesting recording by an alternative means will be responsible for the full cost thereof, including the provision of the original transcript to the hearing officer and copies to opposing parties.]

[RESERVED]

[11/5/1985, 5/24/1990, 8/15/1990, 10/31/1996, 1/15/98; 3.1.8.11 NMAC - Rn, 3 NMAC 1.8.11, 1/15/2001; A, 8/30/2001, Repealed, 5/24/2022]

3.1.8.12 **[PROPOSED FINDINGS, CONCLUSIONS AND BRIEFS:** At the close of the reception of evidence, or within a reasonable time thereafter fixed by the hearing officer, the hearing officer may require or any party may file with the hearing officer proposed orders, proposed findings of fact and proposed conclusions of law, together with reasons therefore and briefs in support thereof.] **[RESERVED]**

[11/5/1985, 8/15/1990, 10/31/1996; 3.1.8.12 NMAC - Rn, 3 NMAC 1.8.12, 1/15/2001, Repealed, 5/24/2022]

3.1.8.13 **[DISCOVERY:** The parties are expected to accomplish adequate discovery by the time a formal hearing is held. This discovery is to be achieved by informal consultation, stipulation, deposition, requests for admissions and production of documents and written interrogatories. If adequate discovery is not achieved within a reasonable time prior to the time a formal hearing is scheduled, any party may apply to the hearing officer for an order to require depositions, production of records or answers to interrogatories. Depositions may be taken orally or upon written interrogatories and cross-interrogatories. Unless order otherwise by the hearing officer, responses to interrogatories, requests for production of documents and requests for admission shall be due thirty days after service of same on a party. Unless ordered otherwise by the hearing officer, any notice of deposition shall be served on all opposing parties at least five working days prior to the date of the deposition. The parties have an obligation to cooperate in the scheduling of depositions to avoid unnecessary expense to the parties and inconvenience to witnesses.] **[RESERVED]**

[11/5/1985, 1/4/1988, 5/24/1990, 8/15/1990, 10/31/1996, 1/15/98; 3.1.8.13 NMAC - Rn, 3 NMAC 1.8.13, 1/15/2001, Repealed, 5/24/2022]

3.1.8.14 [CONSEQUENCES OF FAILURE TO COMPLY WITH ORDERS:

~~A. If a party or an officer or agent of a party fails to comply with an order of the hearing officer for the taking of a deposition or otherwise relating to discovery, the hearing officer may, for the purpose of resolving issues and disposing of the proceeding without unnecessary delay despite such failure, take such action in regard thereto as is just, including but not limited to the following:~~

~~(1) infer that the admission, testimony, documents or other evidence sought by discovery would have been adverse to the party failing to comply;~~

~~(2) rule that, for the purposes of the proceeding, the matter or matters concerning which the order was issued be taken as established adversely to the party failing to comply;~~

~~(3) rule that the noncomplying party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer or agent or upon the documents or other evidence discovery of which has been denied;~~

~~(4) rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents or other evidence would have shown; or~~

~~(5) dismiss the protest or order that the protest be granted.~~

~~B. Any such action may be taken by written or oral order issued in the course of the proceeding or by inclusion in the decision of the hearing officer. It shall be the duty of parties to seek and the hearing officer to grant such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the withheld testimony, documents or other evidence.~~

~~C. Any party who previously requested the secretary to issue a subpoena may request the secretary to seek the assistance of the court in the enforcement of any subpoena issued to any person who fails to provide the information or documents requested in the subpoena under the provisions of Subsection 7-1-4D NMSA 1978.]~~

[RESERVED]

[11/5/1985, 8/15/1990, 10/31/1996; 3.1.8.14 NMAC - Rn & A, 3 NMAC 1.8.14, 1/15/2001; A, 8/30/2001, Repealed, 5/24/2022]

3.1.8.15 [PREHEARING CONFERENCES:

~~A. The hearing officer may, and upon motion of any party shall, direct representatives for all parties to meet with the hearing officer for a prehearing conference to consider any or all of the following:~~

~~(1) simplification and clarification of the issues;~~

~~(2) stipulations and admissions of fact and of the contents and authenticity of documents;~~

~~(3) expedition in the discovery and presentation of evidence, including, but not limited to, restriction on the number of expert, economic or technical witnesses;~~

~~(4) matters of which administrative notice will be taken; and~~

~~(5) such other matters as may aid in the orderly and expeditious disposition of the proceeding, including disclosure of the names of witnesses and the identity of documents or other physical exhibits which will be introduced in evidence in the course of the proceeding.~~

~~B. Prehearing conferences may be recorded in the discretion of the hearing officer.~~

~~C. The hearing officer may enter in the record an order which recites the results of the conference. Such order shall include the hearing officer's rulings upon matters considered at the conference, together with appropriate directions to the parties. The hearing officer's order shall control the subsequent course of the proceeding, unless modified to prevent manifest injustice.]~~ **[RESERVED]**

[7/19/1967, 11/5/1985, 8/15/1990, 10/31/1996; 3.1.8.15 NMAC - Rn, 3 NMAC 1.8.15, 1/15/2001; A, 8/30/2001, Repealed, 5/24/2022]

3.1.8.16 [MOTIONS:

~~A. After a formal hearing is scheduled on a protest, all motions shall be addressed to the hearing officer with copies to the opposing parties and shall be ruled upon by the hearing officer.~~

~~B. All written motions shall state the particular order, ruling or action desired and the grounds therefor.~~

~~C. Within ten calendar days after personal service or service by facsimile transmission of any written motion, or within thirteen calendar days after the motion is mailed or within such longer or shorter time as may be designated by the hearing officer, the opposing party shall answer or shall be deemed to have consented to the~~

~~granting of the relief asked for in the motion. The moving party shall have no right to reply, except as permitted by the hearing officer.] **[RESERVED]**~~
[11/5/1985, 8/15/1990, 10/31/1996; 3.1.8.16 NMAC - Rn, 3 NMAC 1.8.16, 1/15/2001; A, 8/30/2001, Repealed, 5/24/2022]