

TITLE 18: TRANSPORTATION AND HIGHWAYS
CHAPTER 19: MOTOR VEHICLE PROCEDURES, LICENSES, PERMITS
PART 9: IMPLIED CONSENT ACT REVOCATIONS

18.19.9.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.
[12/31/1996; 18.19.9.1 NMAC - Rn, 18 NMAC 19.9.1, 9/14/2000]

18.19.9.2 SCOPE: This part applies to all persons holding a New Mexico driver's license and to those charged with or convicted of driving while intoxicated.
[12/31/1996; 18.19.9.2 NMAC - Rn, 18 NMAC 19.9.2, 9/14/2000]

18.19.9.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[12/31/1996; 18.19.9.3 NMAC - Rn, 18 NMAC 19.9.3, 9/14/2000]

18.19.9.4 DURATION: Permanent.
[12/31/1996; 18.19.9.4 NMAC - Rn, 18 NMAC 19.9.4, 9/14/2000]

18.19.9.5 EFFECTIVE DATE: December 31, 1996, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[12/31/1996; 18.19.9.5 NMAC - Rn & A, 18 NMAC 19.9.5, 9/14/2000]

18.19.9.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Motor Vehicle Code.
[12/31/1996; 18.19.9.6 NMAC - Rn, 18 NMAC 19.9.6, 9/14/2000]

18.19.9.7 DEFINITIONS: As used in 18.19.9 NMAC:
A. "Division" means the motor vehicle division of the New Mexico taxation and revenue department.
B. "Revocation" means the termination of a person's driver's license, permit or privilege to drive a motor vehicle upon a highway in New Mexico.
[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.7 NMAC - Rn & A, 18 NMAC 19.9.7, 9/14/2000]

18.19.9.8 [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[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.8 NMAC - Rn & A, 18 NMAC 19.9.8, 9/14/2000; A, 10/13/00; Repealed, 5/24/2022]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 [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[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.9 NMAC - Rn & A, 18 NMAC 19.9.9, 9/14/2000, Repealed, 5/24/2022]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 [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[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.10 NMAC - Rn, 18 NMAC 19.9.10, 9/14/2000, Repealed, 5/24/2022]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 [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[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.11 NMAC - Rn, 18 NMAC 19.9.11, 9/14/2000, Repealed, 5/24/2022]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 [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[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.12 NMAC - Rn, 18 NMAC 19.9.12, 9/14/2000, Repealed, 5/24/2022]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 [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[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.13 NMAC - Rn & A, 18 NMAC 19.9.13, 9/14/2000, Repealed, 5/24/2022]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 [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[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.14 NMAC - Rn, 18 NMAC 19.9.14, 9/14/2000, Repealed, 5/24/2022]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 [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 [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 [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 [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 [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]

18.19.9.20 IMPLIED CONSENT HEARING - STANDARD OF INDIGENCY:

A. The following standard applies to determining whether a driver applying for a hearing pursuant to this section is indigent.

B. A driver is presumed indigent if the driver is represented by a public defender on account of indigency or if the driver is a current recipient of state or federally administered public assistance programs for the indigent, including aid to families with dependent children (AFDC), food stamps, medicaid, supplemental security income (SSI), public assisted housing or department of health case management services (DHMS). A statement of indigency specifying receipt of such assistance must be attached to the application for hearing. No further inquiry regarding indigency is necessary. The amount of the driver's assets, such as home equity, is not to be taken into account if the driver is represented by a public defender on account of indigency or if the driver is a current recipient of any of the programs described above.

C. If the driver is not presumptively indigent, the driver shall submit a statement of the driver's financial resources, with consideration given to net income, assets and exceptional expenses. The driver shall list on or with the statement the names and ages of all the driver's family members living in the driver's household. The department may use its records to verify information submitted by the driver.

(1) Income: The driver shall report the driver's adjusted gross income as reported on the driver's federal income tax return for the driver's most recent taxable year or, if the driver was not required to file a federal income tax return but did file a New Mexico income tax return for that taxable year, the driver's adjusted gross income as reported on the New Mexico income tax return.

(2) Assets: The driver shall list all assets of the driver which are readily convertible into cash within a reasonable period of time. Assets include but are not limited to cash on hand, checking and saving account balances, certificates of deposit, uncashed warrants and checks, claimed but not received tax refunds, stocks and bonds. Real estate shall be included to the extent of the potential proceeds of a loan secured by the property.

(3) Exceptional expenses: Unusual expenses of the driver may so diminish the driver's income as to prevent the driver from paying the required fee for a hearing. Exceptional expenses do not include ordinary living expenses such as food, rent, utilities, transportation costs and repayment of consumer or student loans. Exceptional expenses include but are not limited to medical care costs, family support obligations, child care payments and funeral costs, provided:

- (a)** medical care and funeral costs exclude all costs covered by insurance;
- (b)** family support expenses must be court ordered and actually paid on a regular

basis;

- (c)** child care payments must be paid on a regular basis; and
- (d)** the driver must submit proof of current payments on all exceptional expenses.

D. The driver shall calculate the amount of available funds by adding the amounts determined as the driver's net income and assets and subtracting the amount of the driver's exceptional expenses. If the available funds exceed the maximum amount for the number of family members in the driver's household, the driver is not indigent and must pay the fee required for the hearing.

E. Indigency amounts. For the calendar year beginning January 1, 1994, the maximum amount of available funds for an indigent is \$8,512 plus \$2,975 for each family member in the driver's household. For the

1995 and subsequent calendar years, the two specified dollar amounts will be increased proportionately to the percentage rise in the consumer price index for the 12-month period ending the preceding September 30 over the prior 12-month period.

F. Appeal: If a driver is found to be not indigent under the provisions of this regulation, the driver may appeal that finding to the secretary or to the division director delegated by the secretary to consider appeals. All appeals of a determination that the driver is not indigent must be taken within ten working days from the date of the decision. The secretary or director may hold a hearing on the matter or may decide the issue upon the information submitted by the driver and the department. The decision of the secretary or director is final.

G. The fact that the driver has appealed the finding of non-indigency shall in no way prevent or delay any proceeding by the department against the driver's license under the Implied Consent Act. If the appeal under this regulation is not resolved prior to any hearing on whether the driver's license should be revoked pursuant to the Implied Consent Act, the driver must pay the required fee. If the driver is subsequently found to be indigent upon appeal, the amount of the required fee will be refunded to the driver.

[1/10/1994, 12/31/1996; 18.19.9.20 NMAC - Rn, 18 NMAC 19.9.20, 9/14/2000]

HISTORY OF 18.19.9 NMAC:

Pre-NMAC History: Certain material of this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives:

MVD 77-2, Refusal to Submit to Chemical Test - Revocation of License or Privilege to Drive; 64-22-2.12, 6/7/1977.
Transportation Rule No. 84-3-MVD, Implied Consent Act Administrative Revocation Hearings, 7/23/1984.
MVC 8-112:1 through 8-112:12, Regulations pertaining to the Motor Vehicle Code, TRD Rule MVC 8-93, 1/10/1994.