

TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 25 STATE FIRE MARSHAL
PART 16 APPEALS OF STATE FIRE MARSHAL ORDERS OR MODIFICATIONS TO THE FIRE SERVICES COUNCIL

10.25.16.1 ISSUING AGENCY: State Fire Marshal.
[10.25.16.1 NMAC – N, 4/7/2026]

10.25.16.2 SCOPE: This part governs the filing, consideration and resolution of appeals of orders and modifications of the state fire marshal made to the fire services council.
[10.25.16.2 NMAC – N, 4/7/2026]

10.25.16.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to Sections 59A-52-1.1 NMSA 1978.
[10.25.16.3 NMAC – N, 4/7/2026]

10.25.16.4 DURATION: Permanent.
[10.25.16.4 NMAC – N, 4/7/2026]

10.25.16.5 EFFECTIVE DATE: April 7, 2026, unless a later date is cited at the end of a section.
[10.25.16.5 NMAC – N, 4/7/2026]

10.25.16.6 OBJECTIVE: The purpose of this rule is to establish the process for administrative hearings of appeals of orders and modifications by the state fire marshal or the deputy fire marshal.
[10.25.16.6 NMAC – N, 4/7/2026]

10.25.16.7 DEFINITIONS:
A. “Council” means the fire services council.
B. “Order” or “modification” means any order of the state fire marshal imposed on a third party pursuant to the statutory authority of the state fire marshal under 1) Section 59A-52 NMSA 1978, or 2) the Fireworks Licensing and Safety Act (Section 60-2C-1 to 11 NMSA 1978) or any modification of such an order. “Order or modification” does not include any personnel or disciplinary action taken by the state fire marshal.
[10.25.16.7 NMAC – N, 4/7/2026]

10.25.16.8 APPLICABILITY: Pursuant to Subsection D of Section 59A-52-27.1 NMSA 1978, the council is authorized to hear administrative appeals of state fire marshal or deputy state fire marshal orders and modifications. Any person who is adversely affected by an order or modification issued by the state fire marshal or the deputy state fire marshal may file an appeal seeking review of that order or modification from the council.
[10.25.16.8 NMAC – N, 4/7/2026]

10.25.16.9 PROCEDURE:
A. Appeals can be filed via email at or in person at state fire marshal’s office. Appeals filed under this section must be filed within 10 business days of the date the appealing party is served a copy of the state fire marshal’s or deputy state fire marshal’s order or modification and must include:
(1) A copy of the state fire marshal or deputy state fire marshal order or modification being appealed;
(2) a complete statement of facts which led to the filing of the appeal which includes citations to any statutes or rules that the individual filing the appeal relied on to file the appeal;
(3) a statement of how the individuals filing the appeal have been or will be adversely affected by the state fire marshal or deputy state fire marshal’s order or modification and the relief requested; and
(4) the name and address of the person filing the appeal.
B. Service. The appealing party must provide the state fire marshal’s office and the fire services council a copy of the appeal at the time the appeal is filed.

C. Hearing officer appointment. Upon the receipt of the appeal, the council may appoint a hearing officer to review the appeal and issue any recommendations to the council. The hearing officer can be a council member or another individual, including a licensed attorney, that is chosen and selected by the council. Alternatively, a quorum of the council can conduct the hearing.

D. State fire marshal response. The state fire marshal shall have the opportunity to respond to the contents of the appeal within 15 business days from the date of its receipt of the appeal from the council.

E. Notice of appeal hearing. After receipt of the appeal and any response provided by the state fire marshal's office, the hearing officer or the presiding officer of the council, if applicable, shall:

(1) Select a hearing date and issue a notice of hearing not less than 10 business days before the date of the hearing; and

(2) ensure that the notice of hearing contains a statement of time, place and location of the appeal hearing.

F. Hearing procedure. At the hearing on any appeal, the hearing officer (or, if the council is hearing the appeal, the presiding officer) shall:

(1) open the hearing by making a concise statement of the hearing's scope and purpose and announce that a record of the hearing is being made;

(2) allow the parties to introduce themselves for purposes of the record;

(3) allow each party to make an opening statement and present their arguments, evidence, and witnesses, if any, to the hearing officer; and

(4) after opening statements and evidence has been presented by the parties, the hearing officer shall allow the parties to make closing statements.

G. Hearing officer report. The hearing officer will make their report to the council within five business days from the date of the hearing. The report shall contain the hearing officer's findings of fact and conclusions of law and recommendations for the council.

H. Council final decision and order. The council shall issue its final decision and order within 15 days from the date of the hearing. The final decision and order must contain the council's finding of fact and conclusions of law and must be signed by the council chair.

I. If the state fire marshal objects to the council's recommendations, the state fire marshal may provide a statement and any supporting documentation explaining its objections and proposing an alternative resolution to the final decision or order. The objections and proposed alternative resolution must be provided to the council within 15 business days of the date of the council's recommendations, unless the council believes that circumstances exist that threaten the health, safety or welfare of the public, in which case the state fire marshal must submit its objections within five days. The council shall review any objections and proposed alternatives and either affirm or modify its recommendations within 15 business days.

J. Service of final decision and order. A copy of the final decision and order must be provided to the parties within seven days from date of the issuance of the order.

[10.25.16.9 NMAC – N, 4/7/2026]

HISTORY OF 10.25.16 NMAC: [RESERVED]