Review of Rule re Commission Procedures on Appeal 19.30.16

New Mexico Department of Game & Fish
May 12, 2016

Scope

Commission regulations that provide for appeal:

- 19.30.5.13—landowner appeal: deeded acres, elk contribution rate, or participation requirements;

- 19.30.12.12—landowner appeal: qualifying acres of pronghorn habitat or participation requirements;

- 19.35.5.11—appeal re. rehabilitation permit

- 19.35.6.15—appeal re. scientific/education possession permit;

- 19.35.7.22—appeal re. importation and release of wildlife.

What the Rule does

- Establishes:

  - who may appeal
    - only the applicant, who has been aggrieved by Department decision

  - deadline and requirements for notice of appeal
    - must file notice of appeal w/in 20 days of decision, and must state reasons for appeal

  - Hearing on appeal
    - heard at next commission meeting, at least 45 days from notice

What the Rule does

- Establishes:

  - Chairman or designee as hearing officer

  - Administrative record
    - contains all materials considered by decision-maker, affidavit attesting to contents, index

  - Schedule for filing admin record and exhibits
    - admin record due 15 days after notice of appeal
    - Department may file response to Notice no later than 15 days before hearing
    - exhibits due no later than 15 days before hearing

  - Prehearing discovery
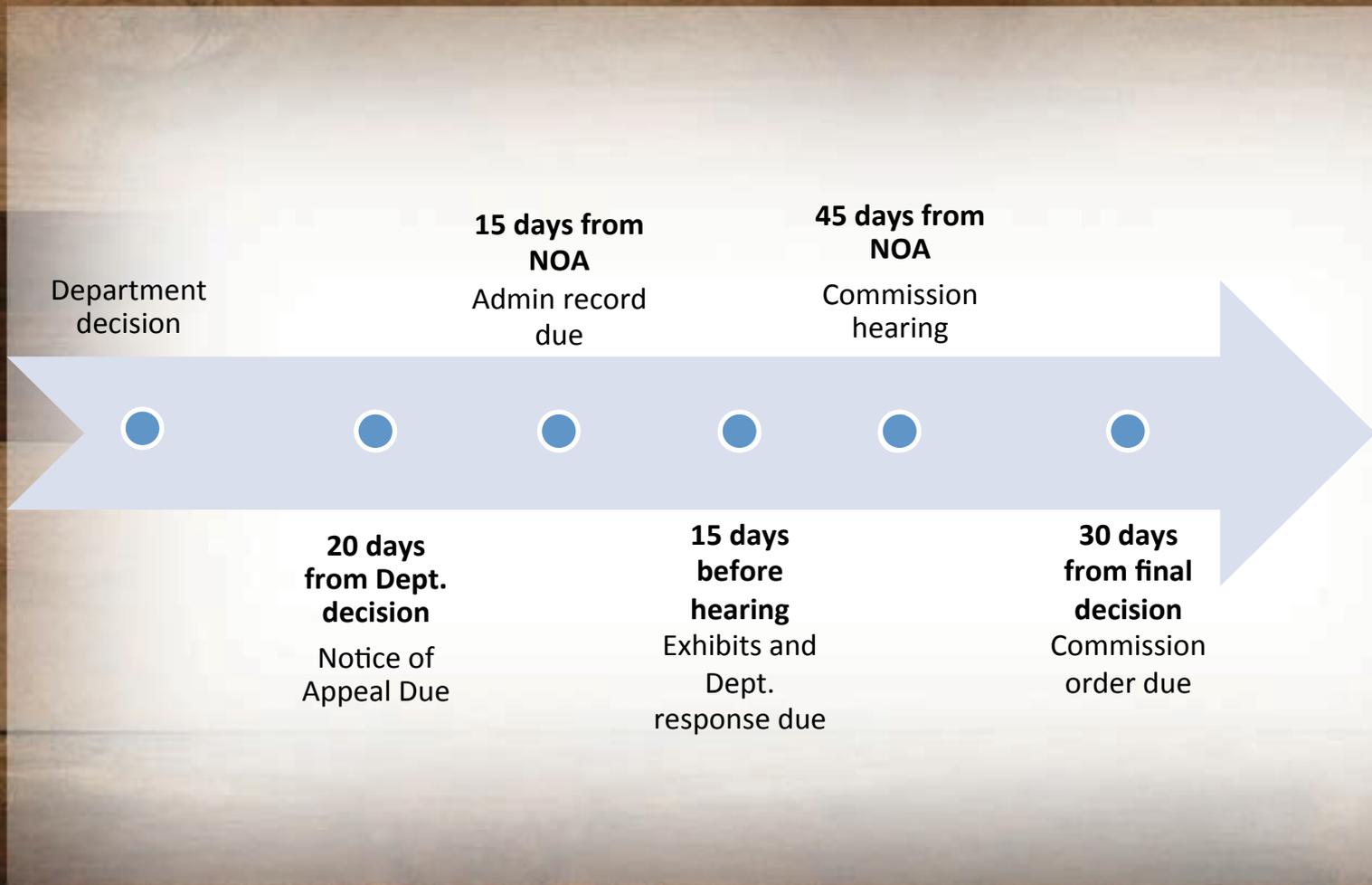   - hearing officer may allow upon request

What the Rule does

- Establishes:

  - Standards regarding admission of evidence

  - Opportunity for oral argument and to be represented by counsel

  - Burden of proof—reversal of decision only if:
    - Arbitrary or capricious
    - Not based on law or regulation
    - Unsupported by substantial evidence
    - Unwarranted by facts
    - Newly-discovered evidence contradicts decision

  - Timing of final decision and commission order
    - Final decision at hearing or at next meeting
    - Order no later than 30 days after decision

General process

Timeline:

- **Department decision**
- **20 days from Dept. decision** — Notice of Appeal Due
- **15 days from NOA** — Admin record due
- **15 days before hearing** — Exhibits and Dept. response due
- **45 days from NOA** — Commission hearing
- **30 days from final decision** — Commission order due

Questions/ Comments