

**STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE**

The New Mexico State Game Commission ("Commission") has scheduled a regular meeting and rule hearing for Friday, November 30, 2018, beginning at 8:00 a.m. at the Roswell Convention and Civic Center, 912 N. Main St, Roswell, NM 88201, to hear and consider action as appropriate on the following: Presentation of proposed changes to the Revocation rule.

**Synopsis:**

The proposal is to adopt a new Revocation rule, 19.31.2 NMAC, which will become effective April 1, 2019.

The proposed new rule changes the revocation point value for hunting, fishing or trapping on private land without written permission. The new rule adds and clarifies language to suspend individuals who fail to appear in court on wildlife violations. The rule adds penalties for individual who purchase licenses or stamps with insufficient funds or individuals who stop payment of their purchases as well as changing timelines throughout the rule for consistency throughout the rule. A more detailed summary, and the full text of changes, is available on the Department's website at: [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us).

Interested persons may submit comments on the proposed changes to the Revocation rule at [DGF-FieldOpsComments@state.nm.us](mailto:DGF-FieldOpsComments@state.nm.us); or individuals may submit written comments to the physical address below. Comments are due by 5:00 p.m. on November 29, 2018. The final proposed rule will be voted on by the Commission during a public meeting on November 30, 2018. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on November 30, 2018.

Full copies of text of the proposed new rule, technical information related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, Santa Fe, New Mexico 87507, or from the Department's website at [www.wildlife.state.nm.us/commission/proposals-under-consideration/](http://www.wildlife.state.nm.us/commission/proposals-under-consideration/). This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us) for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission 17-1-14, et seq. NMSA 1978; Commission's Power to establish rules and regulations 17-1-26, et seq. NMSA 1978.



## Clean Copy-Initial Proposed Rule

**TITLE 19        NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 31    HUNTING AND FISHING**  
**PART 2         HUNTING AND FISHING LICENSE REVOCATION**

**19.31.2.1        ISSUING AGENCY:** New Mexico department of game and fish.  
[19.31.2.1 NMAC - Rp, 19.31.2.1 NMAC, 04-01-2019]

**19.31.2.2        SCOPE:** Person or persons who violate the provisions of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978, the Interstate Wildlife Violator Compact (Chapter 11 NMSA 1978) and the Parental Responsibility Act (Chapter 40 NMSA 1978).  
[19.31.2.2 NMAC - Rp, 19.31.2.2 NMAC, 04-01-2019]

**19.31.2.3        STATUTORY AUTHORITY:** Sections 11-16-5, 11-16-6, 17-1-14, 17-2-10.3, 17-3-34, 30-14-1, 40-5A-3, and 40-5A-6 NMSA 1978.  
[19.31.2.3 NMAC - Rp, 19.31.2.3 NMAC, 04-01-2019]

**19.31.2.4        DURATION:** Permanent.  
[19.31.2.4 NMAC - Rp, 19.31.2.4 NMAC, 04-01-2019]

**19.31.2.5        EFFECTIVE DATE:** April 1, 2019 unless a later date is cited at the end of a section or paragraph.  
[19.31.2.5 NMAC - Rp, 19.31.2.5 NMAC, 04-01-2019]

**19.31.2.6        OBJECTIVE:** To revoke, suspend or deny the privileges of any person: who persistently, flagrantly or knowingly violates or countenances the violation of any of the provisions of Chapter 17 NMSA 1978, any rule adopted by the state game commission, the conditions of their agreement, license, permit or privileges, or Section 30-14-1 NMSA 1978; whose name appears on a HSD certified list of obligors not in compliance with the Parental Responsibility Act, Section 40-5A-1 NMSA 1978; who fails to pay a penalty assessment levied pursuant to Section 17-2-10.1 NMSA 1978; who fails to appear, after proper notice, for hearings as required by law or regulation pursuant to Section 17-2-10.3 NMSA 1978; who has a civil judgment assessed against them pursuant to Section 17-2-26 NMSA 1978 until those damages have been paid in full; whose privileges have been revoked by a wildlife violator compact member state or of any resident that fails to meet the terms of a citation issued from a compact member state pursuant to the Interstate Wildlife Violator Compact, Section 11-16-1 NMSA 1978; or, who does not comply with a department sponsored private lands agreement.  
[19.31.2.6 NMAC - Rp, 19.31.2.6 NMAC, 04-01-2019]

**19.31.2.7        DEFINITIONS:**

- A.        “**Commission**” means the New Mexico state game commission.
- B.        “**Conviction**” means any adjudication of guilt; plea of guilty or nolo contendere accepted by the court; or payment of a fine, court cost, court order or penalty assessment; or forfeiture of collateral; regardless of whether sentencing or imposition of sentencing has been deferred or suspended.
- C.        “**Certificate of Compliance**” means a certified statement from HSD stating that an obligor is in compliance with a judgement and order for support or in compliance with a subpoena or warrant relating to paternity or child support proceedings.
- D.        “**Department**” means New Mexico department of game and fish.
- E.        “**Director**” means the director of the department of game and fish.
- F.        “**HSD**” means the New Mexico human services department.
- G.        “**Notice of contemplated action**” or “**NCA**” means a written notice that the commission is considering taking action against a respondent’s privileges, the basis for the action and the manner in which they can request a hearing.
- H.        “**Notice of intent**” or “**NOI**” means a written notice that the department intends to take action against a respondent’s privileges, the basis for the action and the manner in which they can request a hearing.
- I.        “**Obligor**” means a person who has been ordered to pay child or spousal support pursuant to a judgment and order for support.



J. "Privilege(s)" means the ability to lawfully obtain or hold any license, permit, certificate, registration, authorization or agreement issued by the department, including but not limited to, hunting, fishing, trapping, guiding and outfitting.

K. "Protected species" shall mean any of the following animals:

(1) all animals defined as protected wildlife species and game fish under Section 17-2-3 NMSA 1978;

(2) all animals defined as furbearing animals under Section 17-5-2 NMSA 1978;

(3) all animals listed as endangered or threatened species or subspecies as stated in 19.33.6 NMAC; and

(4) all animals listed under Sections 17-2-13, 17-2-14 or 17-2-4.2 NMSA 1978.

L. "Respondent" means any person who is served a notice of contemplated action or a notice of intent.

M. "Revocation" means when a person's privileges are taken away by the commission or department, after notice and opportunity for a hearing.

N. "Suspension" means when a person's privileges are taken away by the commission or department, after notice and opportunity for a hearing, until the person comes into compliance. [19.31.2.7 NMAC - Rp, 19.31.2.7 NMAC, 04-01-2019]

**19.31.2.8 CRIMINAL REVOCATION CATEGORIES AND POINTS:** Each conviction or penalty assessment for a violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule will result in the assessment of points. Any person with 20 or more points accumulated within any consecutive three-year period shall have all of his or her privileges subject to revocation or suspension. The tolling of time for the three consecutive years shall begin from the date of conviction or the date a penalty assessment was accepted.

A. **20-point criminal violations:**

(1) illegally taking, attempting to take, killing, capturing or possessing any big game species outside of hunting season in violation of Section 17-2-7 or 17-3-33 NMSA 1978;

(2) hunting big game without a license;

(3) criminal trespass, in violation of Section 30-14-1 NMSA 1978, when in connection with hunting, fishing or trapping activity; revocation to be for no less than three years;

(4) hunting with the aid of an artificial light or spotlight, in violation of Section 17-2-31 NMSA 1978;

(5) waste of game in violation of Section 17-2-8 NMSA 1978;

(6) selling, offering for sale, offering to purchase or purchasing any protected species or parts thereof in violation of Section 17-2-7 NMSA 1978;

(7) any violation of Section 17-3-6 NMSA 1978;

(8) any violation of Section 17-3-48 NMSA 1978, provided that any revocation under this section shall commence consecutively to any current revocation;

(9) any violation of Section 17-3-45 NMSA 1978 involving any protected species;

(10) guiding or outfitting without being registered in violation of Section 17-2A-3 NMSA 1978;

(11) using an outfitter or guide license issued to another;

(12) outfitter allowing or using an unregistered person to perform outfitting or guiding services;

(13) applying for or receiving an outfitter or guide registration while revoked;

(14) any violation of Section 17-2-29 NMSA 1978; revocation for a period of one year as prescribed by Section 17-2-30 NMSA 1978;

(15) any violation of Section 17-3-49 NMSA 1978;

(16) any violation of Section 17-2-7.1 NMSA 1978;

(17) except as otherwise provided by Sections 17-2-37 to 17-2-46, taking, possessing, transporting, exporting, processing, selling or offering for sale, or shipping any species or subspecies of wildlife listed on the state list of endangered or threatened species or the United States' list of endangered native and foreign fish and wildlife;

(18) any violation of the provisions of any special use of wildlife permit issued by the department pursuant to Chapter 17 NMSA 1978 and its implementing rules;

(19) any violation of Section 17-2-4.2 NMSA 1978;

- (20) knowingly or willfully introducing an aquatic invasive species, in violation of Section 17-4-35 NMSA 1978;
- (21) any person who obtains any license, permit or stamp by falsely claiming a military discount; or
- (22) accessory to any of the above violations.
- B. 17-point criminal violations:**
- (1) hunting big game outside the ranch boundaries for which a ranch only license is issued or hunting big game in the wrong game management unit, in violation of Section 17-2-7 NMSA 1978;
- (2) hunting on public land (lands owned by the U.S. government, state of New Mexico, state land office or New Mexico game commission) with a license which was valid only on private land;
- (3) hunting, taking or attempting to take any protected game animal, game bird, game fish or furbearer on private land without written permission, in violation of 19.31.10 NMAC; or
- (4) accessory to any of the above violations.
- C. 15-point criminal violations:**
- (1) illegally taking, attempting to take, killing or capturing of any big game species during hunting season;
- (2) illegally taking, attempting to take, killing, capturing or possessing any turkey or small game outside of hunting season in violation of Section 17-2-7 or 17-3-33 NMSA 1978;
- (3) exceeding the bag limit of big game;
- (4) shooting at any protected species from a vehicle;
- (5) shooting at any protected species from a roadway;
- (6) harassing a protected species;
- (7) any violation of Section 17-3-45 NMSA 1978 involving non-protected species;
- (8) illegal use of an aircraft or drone to locate, harass, drive or rally a protected species;
- (9) hunting with a license obtained through the special drawing pool without being accompanied by, and contracted with, a New Mexico outfitter or their guide;
- (10) applying or aiding any person in applying in the special drawing pool with an unregistered or unqualified outfitter number;
- (11) importation or possession of any species listed as group II, III or IV on the director's "species importation list" in violation of Section 17-3-32 NMSA 1978 or 19.31.10 NMAC; or
- (12) accessory to any of the above violations.
- D. 10-point criminal violations:**
- (1) illegal possession of any big game species during hunting season;
- (2) hunting in a closed area;
- (3) illegal possession of any head, horns or antlers of a protected species found in the field;
- (4) procurement, possession or use of any additional big game or turkey license or tag, except as provided by rule;
- (5) fail to properly tag big game species or turkey as prescribed;
- (6) using an invalid or voided tag;
- (7) using a tag of any other person;
- (8) illegally taking, attempting to take, killing, capturing or possessing of any turkey or small game during hunting season;
- (9) hunting turkey without a license;
- (10) exceeding the bag limit of small game or turkey;
- (11) exceeding the bag limit of fish;
- (12) unlawfully using dogs while hunting big game or turkey;
- (13) retention of live protected species;
- (14) refusing or failing to produce an outfitter contract or not having a signed contract prior to hunting;
- (15) applying or allowing someone to apply in the special drawing pool without a contract; or
- (16) accessory to any of the above violations.
- E. seven-point criminal violations:**
- (1) fishing without a license;
- (2) illegal possession of fish;
- (3) hunting small game without a license;
- (4) hunting or collecting non-game without a license or permit; or

- (5) accessory to any of the above violations.
  - F. **five-point criminal violations:**
    - (1) failure to provide sufficient guides; or
    - (2) any provision of Chapter 17 NMSA 1978 and its implementing rules not specifically listed herein.
  - G. **three-point criminal violations:**
    - (1) hunting, fishing or trapping without proper stamp(s); or
    - (2) using any department issued permit without possessing the proper stamp(s).
- [19.31.2.8 NMAC - Rp, 19.31.2.8 NMAC, 04-01-2019]

**19.31.2.9 ADMINISTRATIVE REVOCATION CATEGORIES AND POINTS:** Any person may be assessed administrative revocation points for violations as provided below. Any person with 20 or more points accumulated within any consecutive three-year period shall have all of his or her privileges subject to revocation or suspension. An outfitter, guide or applicant's administrative revocation points shall only be against their outfitting or guiding registration unless they have accumulated 20 or more criminal revocation points. Administrative revocation points for landowners or their authorized ranch contact shall only be for the revocation or suspension of their private land program participation privileges unless they have accumulated 20 or more criminal revocation points.

- A. **20 points:**
    - (1) outfitter or guide failure to comply with registration audit or conditions;
    - (2) outfitter or guide misrepresentation;
    - (3) outfitter or guide failure to disclose;
    - (4) landowner's or authorized ranch contact's misrepresentation or violation of the conditions of a contract, application or agreement with the department;
    - (5) any person submitting, or allowing to be submitted for them, false or fraudulent harvest reporting or pelt tagging information as required by rule; or
    - (6) any person purchasing a license, permit, certificate or registration without sufficient funds to pay or who stops payment for same.
  - B. **10 points:**
    - (1) outfitting on state or federal lands without a proper permit or authorization;
    - (2) outfitter breach of contract; or
    - (3) outfitter, guide, landowner or authorized ranch contact failure to report illegal activity.
  - C. **five points:**
    - (1) outfitter or guide violation of any conditions of a state or federal permit or authorization;
    - (2) outfitter or guide failure to comply with any local, state or federal laws other than outfitting on state or federal lands without a proper permit or authorization;
    - (3) outfitter failure to supervise guides; or
    - (4) any outfitter or guide misconduct not otherwise specifically listed herein.
  - D. outfitters, guides and landowners or their authorized ranch contact shall be notified when points are assessed.
- [19.31.2.9 NMAC - Rp, 19.31.2.9 NMAC, 04-01-2019]

**19.31.2.10 TIMEFRAME:** Paragraph 11 of Subsection B of Section 17-1-14 NMSA 1978 provides that the commission shall establish procedures for the suspension, revocation or withholding of license, permit, certificate and registration privileges for a definite period of time.

- A. Any person found to have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule, after notice and opportunity to be heard by a hearing officer, shall have his or her privileges revoked for a definite period of time, unless otherwise provided for by law.
- B. Any person, who after having had their privileges revoked, is found to have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule, for a second time, after notice and opportunity to be heard by a hearing officer, shall have his or her privileges revoked for up to five years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.
- C. Any person, who after having had their privileges revoked for a second time, is found to have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17 NMSA 1978,

Section 30-14-1 NMSA 1978 or state game commission rule, for a third or subsequent time, shall have his or her privileges revoked for up to seven years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

D. Any person found to have taken or killed a bighorn sheep, ibex, oryx, Barbary sheep, elk, deer or pronghorn, without a valid license or during closed season, which results in the unnecessary or wanton waste of game, shall have his or her privileges revoked for up to seven years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

E. Any person found to have taken or killed a bighorn sheep, ibex, oryx, Barbary sheep, elk, deer or pronghorn, without a valid license or during closed season, which results in the unnecessary or wanton waste of game, for a second or subsequent time, shall have his or her privileges revoked for up to 10 years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

F. Any person that buys, sells, trades or attempts to buy, sell or trade illegal wildlife or the parts thereof, or aids and abets in this activity, shall have his or her privileges revoked for up to five years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

G. Any person that buys, sells, trades or attempts to buy, sell or trade illegal wildlife or the parts thereof, or aids and abets in this activity, for a second or subsequent time, shall have his or her privileges revoked for up to seven years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

H. Any person found to not comply with a department sponsored private lands agreement shall have his or her private lands program privileges revoked for up to three years.

I. Any person not in compliance with the Parental Responsibility Act (Section 40-5A-1 NMSA 1978) or the Interstate Wildlife Violator Compact (Section 11-16-1 NMSA 1978) shall have his or her privileges revoked or suspended for the timeframe designated and allowed by law.

J. The commission may revoke a person's privileges for any definite period of time they deem appropriate if they determine that the person has committed a flagrant or egregious violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule, and provided that any revocation under this section shall commence consecutively to any current revocation.

K. The commission or department may suspend, revoke or deny a person's privileges for any definite period of time they deem appropriate if they determine that the person has violated any provision of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule, or any other license, permit, certificate, registration, authorization or agreement issued by the department that is not otherwise listed in this rule.

L. If the department fails to initiate (initiation shall be calculated based on the post mark on the notice of contemplated action or notice of intent letter) a revocation or suspension action against an individual within one year of the date that the individual is either convicted of an act or accepts a penalty assessment misdemeanor, which results in the accumulation of 20 or more points, the department shall not bring a revocation or suspension action against that individual unless and until that individual is either convicted of an additional violation or accepts an additional penalty assessment misdemeanor of any point value within three years of the most recent point accrual originally equaling or exceeding 20 points.

[19.31.2.10 NMAC - Rp, 19.31.2.10 NMAC, 04-01-2019]

**19.31.2.11 REVOCATION AND SUSPENSION PROCEDURES:** The department shall mail out a notice of contemplated action (NCA) or a notice of intent (NOI) when it determines that there is sufficient evidence that a person has accumulated 20 or more points, or when the commission is contemplating revoking a landowner's or authorized ranch contact's privileges to participate in any department sponsored private land program or when the department determines that there has been a violation of the terms of a permit, license or authorization. The commission grants approval to the department, through the director, to initiate this process without commission consideration. However, the commission retains all authority for final decisions with the exception of decisions made by the director, where no hearing was requested, under the Interstate Wildlife Violator Compact, Parental Responsibility Act or failure to appear, failure to pay a penalty assessment or failure to pay a civil judgement. The NCA or NOI shall clearly describe the proposed action and shall contain a statement that includes the following:

A. **Sufficient evidence:** That the department of game and fish has sufficient evidence which, if not rebutted or explained, will justify taking the proposed action.

B. **Hearing may be requested:** That the respondent may secure a hearing before a hearing officer designated by the commission by depositing in the mail within 20 days after service of the notice, a certified, return

receipt requested letter addressed to the department at PO Box 25112, Santa Fe, NM 87504, and containing a request for a hearing.

**C. Rights of respondent:** Informing the respondent of his or her rights under applicable law.  
[19.31.2.11 NMAC - Rp, 19.31.2.11 NMAC 04-01-2019]

**19.31.2.12 NO HEARING REQUESTED:** If a respondent does not mail a request for a hearing within the time frame and in the manner required by this rule, or the notice mailed by the department is returned as undeliverable or unclaimed at the address the department has on file, the commission may take the action contemplated in the notice and such action shall be final and not subject to judicial review.

**A.** The commission shall consider the department's submission of names of respondents who have not requested a hearing at a properly scheduled commission meeting and the respondent's privileges shall be automatically revoked or suspended pursuant to this rule.

**B.** Within 20 days after the commission's decision is rendered and signed by the chairman of the commission, the department shall serve upon the respondent a copy of the written decision.  
[19.31.2.12 NMAC - Rp, 19.31.2.12 NMAC 4-01-2019]

**19.31.2.13 HEARING REQUESTED:** If a respondent requests a hearing as provided by this rule, the department, within 20 days of receipt of such request, shall notify the respondent of the time and place of the hearing, the name or names of the person or persons who shall conduct the hearing for the commission, and the statutes and rules authorizing the commission to take the contemplated action. The hearing shall be held not more than 90 or less than 30 days from the date of service of such notice unless a continuance is granted to either party by the hearing officer. If a continuance has been requested by the department and granted by the hearing officer the hearing shall be rescheduled within 60 days from the original hearing date. If a continuance has been requested by the violator and granted by the hearing officer all timelines are waived for the hearing. Continuances may only be granted for good cause. The decision to grant or deny a continuance is at the sole discretion of the hearing officer.  
[19.31.2.13 NMAC - Rp, 19.31.2.13 NMAC, 04-01-2019]

**19.31.2.14 RIGHTS OF A PERSON REQUESTING A HEARING:** A person entitled to be heard under this rule shall have the right to be represented by counsel or may appear on his or her own behalf; to present all relevant evidence by means of witnesses, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues. All notices issued pursuant to this rule shall contain a statement of these rights.

**A. Written request:** Upon written request to another party, any party is entitled to:  
(1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and  
(2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

**B. Response time frame:** The party to whom such a request is made shall comply with the request within 20 days after the delivery of the request. No such request shall be made less than 20 days before the hearing.

**C. Stipulated agreements:** At the Department's discretion, a person entitled to be heard under this rule may enter into a written stipulated agreement with the department. Signing such an agreement shall waive the person's right to a hearing and the filing of a written exception. The agreement shall be presented to the commission as the department's recommendation and the commission retains authority for the final decision.  
[19.31.2.14 NMAC - Rp, 19.31.2.14 NMAC, 04-01-2019]

**19.31.2.15 METHOD OF SERVICE:** Any notice or decision required by this rule shall be served by certified mail, return receipt requested, directed to the respondent, at his or her last known address as shown by the records of the department of game and fish.  
[19.31.2.15 NMAC - Rp, 19.31.2.15 NMAC, 04-01-2019]

**19.31.2.16 REVOCATION NOTICE OF SERVICE:** Notice by certified mail shall be deemed to have been served on the date born by the return receipt showing delivery or the last attempted delivery of the notice or decision to the respondent or refusal to accept delivery of the notice or decision.  
[19.31.2.16 NMAC - Rp, 19.31.2.16 NMAC, 04-01-2019]

**19.31.2.17 VENUE:** Hearings held under this rule shall be conducted in Santa Fe county, New Mexico. Under exigent circumstances, and at the discretion of the hearing officer, the hearing may be held in another county in New Mexico. Hearings may be conducted in person or telephonically. Witnesses may appear in person or telephonically.

[19.31.2.17 NMAC - Rp, 19.31.2.17 NMAC, 04-01-2019]

**19.31.2.18 HEARING OFFICER:** All hearings under this rule shall be conducted by a hearing officer who is designated by the commission. The hearing officer may be disqualified as provided for under the rules of civil procedure by filing an affidavit of disqualification with the department.

[19.31.2.18 NMAC - Rp, 19.31.2.18 NMAC, 04-01-2019]

**19.31.2.19 HEARING OPEN TO THE PUBLIC:** All hearings conducted under this rule shall be open to the public.

[19.31.2.19 NMAC - Rp, 19.31.2.19 NMAC, 04-01-2019]

**19.31.2.20 HEARING INTERPRETER PROVIDED:** The commission shall provide technology or an interpreter for individuals requesting a hearing who provide proof of hearing impairment to the extent that he or she cannot understand voice communications. The respondent must give notice of this need to the department at the time they request a hearing or 30 days prior to their hearing.

[19.31.2.20 NMAC - Rp, 19.31.2.20 NMAC, 04-01-2019]

**19.31.2.21 LANGUAGE INTERPRETER PROVIDED:** The commission shall provide an interpreter for individuals requesting a hearing who provide proof of inability to comprehend English well enough to understand the proceedings. The respondent must give notice of this need to the department at the time they request a hearing or 30 days prior to their hearing.

[19.31.2.21 NMAC - Rp, 19.31.2.21 NMAC, 04-01-2019]

**19.31.2.22 RULES OF EVIDENCE:** The hearing officer shall consider a certified copy or a filed copy of a conviction from any court of competent jurisdiction as conclusive evidence of a violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule. In cases where court records associated with a conviction are not available, the official form of the records maintained by either the court or the department of game and fish shall be admissible. These records shall also stand as conclusive evidence of a violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule. In the case of hearings in which a criminal conviction is not germane, the standard of proof shall be a preponderance of the evidence.

**A. Admission of evidence:** In proceedings held under this regulation, the hearing officer may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The hearing officer may, at his or her discretion, exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Documentary evidence may be received in the form of copies or excerpts.

**B. Judicial notice:** The hearing officer may take notice of judicially cognizable facts.

**C. Rules of privilege:** The rules of privilege shall be effective to the extent that they are required to be recognized in civil actions in district courts of the state of New Mexico.

**D. Mitigating circumstances:** The hearing officer may consider mitigating, extenuating and aggravating circumstances surrounding the violations of game and fish laws and rules to determine the recommended period of the revocation or suspension.

[19.31.2.22 NMAC - Rp, 19.31.2.22 NMAC, 04-01-2019]

**19.31.2.23 HEARING AND POST-HEARING PROCEDURES:**

**A. Record of hearing:** In all hearings conducted under this rule, the hearing officer shall cause a complete record to be made by audio recording and shall preserve all evidence received. The hearing officer shall observe any standards pertaining to audio recordings established for the district courts of this state.

**B. Post-hearing briefs:** The hearing officer may require post-hearing briefs, proposed findings of fact and conclusions of law, or both.

**C. Hearing officer's report:** Within 20 days of any hearing, the hearing officer shall make and submit to the department a report setting forth his or her findings of fact, conclusions of law and recommended decision.



**D. Report copies to parties:** The department shall serve a copy of the recommended decision on the parties by certified mail with return receipt requested.

**E. Filing of exceptions to hearing officer's report:** The parties to the proceeding may file exceptions, or supporting briefs, to a hearing officer's recommended decision within a time period set by the hearing officer or within 30 days of the hearing if not otherwise specified by the hearing officer.

**F. Exceptions and briefs served on all parties:** Copies of exceptions to the hearing officer's recommended decision and any briefs shall be served on all parties within the time period set by the hearing officer or no later than 30 days from the hearing if no time period was set.

**G. Exception and brief requirements:** Any exception not specifically made shall be considered waived. Any exception that fails to comply with the foregoing requirements may be disregarded. Any brief or exception shall not contain matters not related to or within the scope of the hearing.

[19.31.2.23 NMAC - Rp, 19.31.2.23 NMAC, 04-01-2019]

**19.31.2.24 FINAL DECISION OF THE COMMISSION:**

**A. Review and consideration of hearing officer's report and filed exceptions and briefs:** After a hearing has been completed, the commission shall review and consider the hearing officer's report and any filed exceptions or briefs to the recommended decision.

**B. No oral arguments; no new evidence:** The commission shall not permit any oral arguments. The commission shall not consider any evidence outside of the hearing officer's report and filed exceptions or briefs.

**C. Final decision:** The commission's final decision shall be made by a quorum of the commission at a properly scheduled commission meeting.

**D. Written decision served:** Within 20 days after the commission's decision is rendered and signed by the chairman of the commission, the department shall serve upon the respondent a copy of the written decision.

[19.31.2.24 NMAC - Rp, 19.31.2.24 NMAC, 04-01-2019]

**19.31.2.25 JUDICIAL REVIEW:** In accordance with Section 17-3-34 NMSA 1978, any person whose privileges have been revoked or suspended by the commission or department, and who has requested and received a hearing, may appeal to the district court for further relief. Upon appeal, the district court shall set aside the decision only if it is found to be:

**A.** arbitrary, capricious or an abuse of discretion;

**B.** not supported by substantial evidence in the record; or

**C.** otherwise not in accordance with law.

[19.31.2.25 NMAC - Rp, 19.31.2.25 NMAC, 04-01-2019]

**19.31.2.26 WILDLIFE VIOLATOR COMPACT SUSPENSION AND REVOCATION:** Any person whose name appears on the wildlife violator compact list or who has been revoked by another wildlife violator compact member state and is in accordance with Subsection B of Section 17-2-10.3 NMSA 1978 shall have his or her privileges revoked or suspended. Any resident who fails to comply with the terms of a citation including failure to appear, from a member state shall have his or her privileges suspended until they have complied with the court appearance or citation requirements in the other state.

**A. Notice procedures:** The information provided by the board of wildlife violator compact administrators or their designee shall be deemed sufficient to allow the department by and through its director to send the same violator a NOI and an opportunity to request a hearing.

**B. Hearing procedures:** If a hearing is requested, it shall be conducted in accordance with this rule with the following limitations:

(1) The issues to be decided at the hearing, if requested, are limited to whether:

(a) the violation(s) leading to a revocation or suspension in another state, if committed in New Mexico, would have accrued 20 or more points;

(b) the respondent is the person whose name appears on the wildlife violator compact list as being revoked by another wildlife violator compact member state;

(c) the revocation or suspension in the other wildlife violator compact member state ended or has been rescinded.

(2) In any hearing under this section, relevant evidence shall be limited to documentary evidence that refutes the issues listed in this subsection.

**C. Default orders for failure to request a hearing:** In the event a respondent does not request a hearing within 20 days of the date that notice was served, the director may administer the suspension or revocation under 19.31.2.26 NMAC without further commission consideration.

**D. Notification to the commission:** The department shall notify the commission of the number of individuals revoked or suspended pursuant to Subsection C of Section 19.31.2.26 NMAC at a properly scheduled commission meeting after the director has taken action to revoke or suspend such individuals.  
[19.31.2.26 NMAC - Rp, 19.31.2.26 NMAC, 04-01-2019]

**19.31.2.27 SUSPENSION:** The Parental Responsibility Act (PRA), Section 40-5A-1 NMSA 1978, provides that the commission shall suspend the privileges of any person not in compliance with the PRA, and allows the reinstatement of such privileges at any time that the obligor comes into compliance and pays the reinstatement fee. Chapter 17 NMSA 1978 provides that the commission shall suspend the privileges of any person who fails to pay a penalty assessment or a civil judgment, until the assessment or judgment is paid in full or who fails to appear, after proper notice, for hearings as required by law or regulation until they have made an appearance in the court.  
[19.31.2.27 NMAC - Rp, 19.31.2.27 NMAC, 04-01-2019]

**19.31.2.28 PARENTAL RESPONSIBILITY ACT:** Any person found to be in violation of the PRA, after notice and an opportunity to request a hearing, shall have his or her privileges suspended until he or she provides a certificate of compliance from the HSD and has paid the reinstatement fee.

**A. Notice procedures:** When the department receives a HSD certified list of obligors not in compliance with the PRA, the director shall send a NOI to any named obligor in the department's database. The NOI shall inform the obligor that the obligor's privileges will be suspended unless the obligor:

(1) files a written request for a hearing within 30 days from the date that the notice is mailed;  
or

(2) provides the department, within 30 days from the date the notice is mailed, a valid certificate of compliance from the HSD.

**B. Hearing procedures:** Hearings shall be in accordance with this rule.

(1) The issues to be decided at the hearing, if requested, are limited to whether the respondent is:

(a) in compliance with a judgment and order for support;  
(b) in compliance with a subpoena or warrant relating to paternity or child support proceedings; and  
(c) the person whose name appears on the certified list sent to the department from the HSD.

(2) In any hearing under this section, relevant evidence shall be limited to documentary evidence that refutes the issues listed in this subsection.

**C. Default orders for failure to request a hearing:** In the event an obligor does not request a hearing, or provide proof of compliance within 30 days of the date the notice was mailed, the director may administer the suspensions without further commission consideration.

**D. Notification to the commission:** The department shall notify the commission of the number of individuals suspended pursuant to Subsection C of Section 28 of 19.31.2 NMAC at a properly scheduled commission meeting after the director has taken action to suspend such individuals.

**E. Reinstatement fee:** Any person whose privileges have been suspended in accordance with the PRA shall be reinstated after demonstrating proof of compliance from the HSD, and having paid the department of game and fish a reinstatement fee of \$25.00 and all costs associated with his or her hearing. The director has the authority to waive this fee in the case of unusual circumstances or clerical errors.  
[19.31.2.28 NMAC - Rp, 19.31.2.28 NMAC, 04-01-2019]

**19.31.2.29 FAILURE TO APPEAR, FAILURE TO PAY PENALTY ASSESSMENT OR CIVIL JUDGEMENT:** In accordance with Section 17-2-10.3 NMSA 1978 the privileges of a person who fails to comply with the terms of a citation including failure to appear in court after proper notice for a hearing as required by law, a person who fails to pay a penalty assessment levied pursuant to Section 17-2-10.1 NMSA 1978, or a person who has a civil judgment assessed against them pursuant to Section 17-2-26 NMSA 1978, shall be suspended until in compliance.

**A. Notice procedures:** Pursuant to Section 17-2-10.3 NMSA 1978, a person who has failed to appear in court for a hearing as required by law, has failed to pay a penalty assessment pursuant to Section 17-2-10.2 NMSA

1978, or a person who owes damages pursuant to a civil judgment in accordance with Section 17-2-26 NMSA 1978, the director shall send a NOI. The NOI shall inform the respondent that the respondent's privileges will be suspended unless the respondent:

- (1) files a written request for a hearing within 30 days from the date that the notice is mailed;
- or
- (2) pays the penalty assessment or civil judgement in full within 30 days from the date the notice is mailed.

**B. Hearing procedures:** Hearings shall be conducted in accordance with this rule with the following limitations:

- (1) The issues to be decided at the hearing are limited to whether the respondent:
  - (a) owes an outstanding penalty assessment or civil judgement; or
  - (b) failed to appear for a court hearing as required by law.
- (2) In any hearing under this section, relevant evidence shall be limited to documentary evidence that refutes the issues listed in this subsection.

**C. Default orders for failure to request a hearing:** In the event a respondent does not request a hearing, or pay their outstanding penalty assessment or civil judgement in full within 30 days of the date that notice was mailed, the commission grants approval to the department through the director to administer the suspension without further commission consideration or notice.

**D. Notification to the commission:** The department shall notify the commission of the number of individuals suspended pursuant to Subsection C of Section 29 of 19.31.2 NMAC at a properly scheduled commission meeting after the director has taken action to suspend such individuals.

**E. Reinstatement:** Any person whose privileges have been suspended in accordance with this section shall be reinstated after paying their outstanding penalty assessment(s) or civil judgement(s) in full. [19.31.2.29 NMAC - Rp, 19.31.2.29 NMAC, 04-01-2019]

#### **HISTORY OF 19.31.2 NMAC:**

##### **NMAC History:**

19.31.2 NMAC Hunting and Fishing License Revocation, filed 04/01/1995; amended 10/31/1998, 11/14/1998, 01/29/1999, 12/14/2001, 12/28/2001, 05/15/2002, 09/30/2002, 06/15/2006, 12/14/2006.

##### **History of Repealed Material:**

19.31.2 NMAC, Hunting and Fishing License Revocation, filed 12-03-2001, repealed effective 09-14-2012.

19.31.2 NMAC, Hunting and Fishing License Revocation, filed 09-14-2012, repealed effective 12-19-2017.

19.31.2 NMAC, Hunting and Fishing License Revocation, filed 12-19-2017, repealed effective 04-01-2019.

## Initial Proposed Rule

**TITLE 19 NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 31 HUNTING AND FISHING**  
**PART 2 HUNTING AND FISHING LICENSE REVOCATION**

**19.31.2.1 ISSUING AGENCY:** New Mexico Department of Game and Fish.

[19.31.2.1 NMAC - Rp, 19.31.2.1 NMAC, 12-19-201704-01-2019]

**19.31.2.2 SCOPE:** Person or persons who violate the provisions of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978, the Interstate Wildlife Violator Compact (Chapter 11 NMSA 1978) and the Parental Responsibility Act (Chapter 40 NMSA 1978).

[19.31.2.2 NMAC - Rp, 19.31.2.2 NMAC, 12-19-201704-01-2019]

**19.31.2.3 STATUTORY AUTHORITY:** Sections 11-16-5, and 11-16-6, NMSA 1978; Sections 17-1-14, and 17-2-10.3, 17-3-34, NMSA 1978; Section 30-14-1, NMSA 1978; and Sections 40-5A-3, and 40-5A-6 NMSA 1978.

[19.31.2.3 NMAC - Rp, 19.31.2.3 NMAC, 12-19-2017-04-01-2019]

**19.31.2.4 DURATION:** Permanent.

[19.31.2.4 NMAC - Rp, 19.31.2.4 NMAC, 12-19-201704-01-2019]

**19.31.2.5 EFFECTIVE DATE:** December 19, 2017 April 1, 2019 unless a later date is cited at the end of a section or paragraph.

[19.31.2.5 NMAC - Rp, 19.31.2.5 NMAC, 12-19-201704-01-2019]

**19.31.2.6 OBJECTIVE:** To revoke, suspend or deny the hunting, fishing, trapping, guiding, and outfitting privileges of any person who persistently, flagrantly or knowingly violates or countenances the violation of any of the provisions of Chapter 17 NMSA 1978, or any rule adopted by the state game commission, the conditions of their agreement, license, permit or privileges, or Section 30-14-1 NMSA 1978; to suspend the hunting, fishing, trapping, guiding, and outfitting privileges or other privileges or authorities granted by an agreement, license or permit issued by the department of game and fish, of any person whose name appears on a human services department HSD certified list of obligors not in compliance with the Parental Responsibility Act, Section 40-5A-1 NMSA 1978; to suspend the hunting, fishing, trapping, guiding, and outfitting privileges of any person who fails to pay a penalty assessment levied under pursuant to Section 17-2-10.1 NMSA 1978; who fails to appear, after proper notice, for hearings as required by law or regulation pursuant to Section 17-2-10.3 NMSA 1978; or who has had a civil judgment assessed against them pursuant to Section 17-2-26 NMSA 1978 until those damages have been paid in full; to revoke or suspend the hunting, fishing, trapping, guiding and outfitting privileges pursuant to the wildlife violator compact, Section 11-16-1 NMSA 1978, of any person who has been placed on revocation whose privileges have been revoked by a wildlife violator compact member state or temporarily suspend those privileges of any resident that fails to meet the terms of a citation issued from a compact member state pursuant to the Interstate Wildlife Violator Compact, Section 11-16-1 NMSA 1978; or, to revoke or deny the private land agreement privileges of any person who does not comply with a department sponsored private lands agreement.

[19.31.2.6 NMAC - Rp, 19.31.2.6 NMAC, 12-19-201704-01-2019]

**19.31.2.7 DEFINITIONS:**

A. "Commission" means the New Mexico state game commission.

B. "Conviction" means any adjudication of guilt; plea of guilty or nolo contendere accepted by the court; or payment of a fine, court cost, court order; or penalty assessment; or forfeiture of collateral; regardless of whether sentencing or imposition of sentencing has been deferred or suspended.

C. "Certificate of Compliance" means a certified statement from HSD stating that an obligor is in compliance with a judgement and order for support or in compliance with a subpoena or warrant relating to paternity or child support proceedings.

CD. "Department" means New Mexico department of game and fish.

DE. "Director" means the director of the department of game and fish.

F. "HSD" means the New Mexico human services department.



**G.** "Notice of contemplated action" or "NCA" means a written notice that the commission is considering taking action against a respondent's privileges, the basis for the action and the manner in which they can request a hearing.

**H.** "Notice of intent" or "NOI" means a written notice that the department intends to take action against a respondent's privileges, the basis for the action and the manner in which they can request a hearing.

**EI.** "Obligor" means a person who has been ordered to pay child or spousal support pursuant to a judgment and order for support.

**J.** "Privilege(s)" means the ability to lawfully obtain or hold any license, permit, certificate, registration, authorization or agreement issued by the department, including but not limited to, hunting, fishing, trapping, guiding and outfitting.

**FK.** "Protected species" shall mean any of the following animals:

(1) all animals defined as protected wildlife species and game fish under Section 17-2-3 NMSA 1978;

(2) all animals defined as furbearing animals under Section 17-5-2 NMSA 1978; and

(3) all animals listed as endangered or threatened species or subspecies as stated in regulation(s) 19.33.6 NMAC; and set by the state game commission.

(4) all animals listed under Sections 17-2-13, 17-2-14 or 17-2-4.2 NMSA 1978.

**GL.** "Respondent" means any person holding a license, permit, certificate, registration, landowner agreement, or applicant thereof, who is served a notice of contemplated action or a notice of intent.

**HM.** "Revocation" means when a person's hunting, fishing, trapping, guiding and outfitting privileges, or other privileges or authorities granted by an agreement, license or permit issued by the department, are taken away by the commission or department, after notice and opportunity for a hearing.

**IN.** "Suspension" means when a person's hunting, fishing, trapping, guiding and outfitting privileges, or other privileges or authorities granted by an agreement, license or permit issued by the department, are taken away by the commission or department, after notice and opportunity for a hearing, until the person comes back into compliance.

[19.31.2.7 NMAC - Rp, 19.31.2.7 NMAC, 12-19-201704-01-2019]

**19.31.2.8 CRIMINAL REVOCATION CATEGORIES AND POINTS:** Each conviction or penalty assessment for a violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule will result in the assessment of points. Any person with 20 or more points accumulated within any consecutive three-year period, shall have all of his or her hunting, fishing, trapping, guiding and outfitting privileges, or other privileges or authorities granted by an agreement, license, permit, registration or certificate issued under Chapter 17 NMSA 1978 and its implementing rules subject to revocation or suspension. The tolling of time for the three consecutive years shall begin from the date of conviction or the date a penalty assessment was accepted.

**A. 20-point criminal violations:**

(1) illegally taking, attempting to take, killing, capturing or possessing any big game species outside of hunting season in violation of Section 17-2-7 or 17-3-33 NMSA 1978;

(2) hunting big game without a license;

(3) criminal trespass, in violation of Section 30-14-1 NMSA 1978, when in connection with hunting, fishing or trapping activity; revocation to be for no less than three years;

(4) hunting with the aid of an artificial light or spotlight, in violation of Section 17-2-31 NMSA 1978;

(5) waste of game in violation of Section 17-2-8 NMSA 1978;

(6) selling, offering for sale, offering to purchase or purchasing any protected species or parts thereof in violation of Section 17-2-7 NMSA 1978 ;

(7) any violation of Section 17-3-6 NMSA 1978;

(8) any violation of Section 17-3-48 NMSA 1978, provided that any revocation under this section shall commence consecutively to any current revocation;

(9) any violation of Section 17-3-45 NMSA 1978 involving any protected species;

(10) guiding or outfitting without being registered in violation of Section 17-2A-3 NMSA 1978;

(11) using an outfitter or guide license issued to another;

(12) outfitter allowing or using an unregistered person to perform outfitting or guiding services;

(13) applying for or receiving an outfitter or guide registration while revoked;

- (14) ~~for violations~~ any violation of Section 17-2-29 NMSA 1978; ~~involving hunting or boating while intoxicated;~~ (revocation for a period of one year, as prescribed by Section 17-2-30 NMSA 1978;
- (15) any violation of Section 17-3-49 NMSA 1978;
- (16) any violation of Section 17-2-7.1 NMSA 1978;
- (17) except as otherwise provided by Sections 17-2-37 to 17-2-46, taking, possessing, transporting, exporting, processing, selling or offering for sale, or shipping any species or subspecies of wildlife listed on the state list of endangered or threatened species or the United States' list of endangered native and foreign fish and wildlife;
- (18) any violation of the provisions of any special use of wildlife permit issued by the department pursuant to Chapter 17 NMSA 1978 and its implementing rules;
- (19) unlawfully taking amphibians and reptiles for commercial purposes, without a permit; ~~in any~~ violation of Section 17-2-4.2 NMSA 1978;
- (20) knowingly or willfully introducing an aquatic invasive species, in violation of Section 17-4-35 NMSA 1978; ~~or~~
- (21) any person who obtains any license, permit or stamp by falsely claiming a military discount; or

~~(2122)~~ accessory to any of the above violations.

**B. 17-point criminal violations:**

- (1) hunting big game outside the ranch boundaries for which a ranch only license is issued or hunting big game in the wrong game management unit, in violation of Section 17-2-7 NMSA 1978;
- (2) hunting on public land (lands owned by the U.S. government, state of New Mexico, state land office or New Mexico game commission) with a license which was valid only on private land; ~~or~~
- (3) hunting, taking or attempting to take any protected game animal, game bird, game fish or furbearer on private land without written permission, in violation of 19.31.10 NMAC; or
- (34) accessory to any of the above violations.

**C. 15-point criminal violations:**

- (1) illegally taking, attempting to take, killing, or capturing of any big game species during hunting season;
- (2) illegally taking, attempting to take, killing, capturing or possessing any turkey or small game outside of hunting season in violation of Section 17-2-7 or 17-3-33 NMSA 1978;
- (3) exceeding the bag limit of big game;
- (4) shooting at any protected species from a vehicle;
- (5) shooting at any protected species from a roadway, as provided in rule;
- (6) harassing a protected species by use of or from a motor-driven vehicle;
- (7) any violation of Section 17-3-45 NMSA 1978 involving non-protected species;
- (8) illegal use of an aircraft or drone to locate, harass, drive or rally a protected species;
- (9) hunting with a license obtained through the special drawing pool without being accompanied by, and contracted with, a New Mexico outfitter or their guide;
- (10) applying or aiding any person in applying in the special drawing pool with an unregistered or unqualified outfitter number;
- (11) importation or possession of any species listed as group II, III or IV on the director's "species importation list" in violation of Section 17-3-32 NMSA 1978 or 19.31.10 NMAC without a permit; or
- (12) accessory to any of the above violations.

**D. 10-point criminal violations:**

- (1) illegal possession of any big game species during hunting season;
- (2) hunting in a closed area;
- (3) hunting, taking or attempting to take protected game, game fish, or furbearers on private land, without written permission, in violation of Chapter 17 NMSA 1978 and its implementing rules;
- (43) illegal possession of any heads, horns or antlers of a protected species found in the field;
- (54) procurement, ~~or possession~~ or use of any additional big game or turkey license or carcass tag, except as provided by rule;
- (65) fail to properly tag big game species or turkey with a carcass or antler tag as prescribed;
- (76) using an invalid or voided carcass or antler tag;
- (87) using a carcass or antler tag of any other person;
- (98) illegally taking, attempting to take, killing, capturing or possessing of any turkey or small game during hunting season;



- (109) hunting turkey without a license;
  - (110) exceeding the bag limit of small game or turkey;
  - (121) exceeding the bag limit of fish;
  - (1312) unlawfully using dogs while hunting big game or turkey;
  - (1413) retention of live animals protected species;
  - (1514) refusing or failing to produce an outfitter contract or not having a signed contract prior to hunting;
  - (1615) applying or allowing someone to apply in the special drawing pool without a contract; or
  - (1716) accessory to any of the above violations.
- E. **seven-point criminal violations:**
- (1) fishing without a license;
  - (2) illegal possession of fish;
  - (3) hunting small game without a license; or
  - (4) hunting or collecting non-game without a license or permit; or
  - (5) accessory to any of the above violations.
- F. **five-point criminal violations:**
- (1) failure to provide sufficient guides; or
  - (2) any provision of Chapter 17 NMSA 1978 and its implementing rules not specifically listed herein.
- G. **three-point criminal violations:**
- (1) hunting, fishing or trapping without proper stamp(s); or
  - (2) using any department issued permit without possessing the proper stamp(s).
- [19.31.2.8 NMAC - Rp, 19.31.2.9 NMAC, 12-19-201704-01-2019]

**19.31.2.9 ADMINISTRATIVE REVOCATION CATEGORIES AND POINTS:** In addition to criminal points, outfitters, guides, outfitter and guide applicants, landowners, authorized ranch contacts or any Any person who submits a false harvest report may be assessed administrative revocation points for violations as provided below. Any person with 20 or more points accumulated within any consecutive three-year period shall have all of his or her the associated privileges, licenses or registrations subject to revocation or suspension. An outfitter, guide or applicant's administrative revocation points shall only be against their outfitting or guiding registration unless they have accumulated 20 or more criminal revocation points. Administrative revocation points for landowners or their authorized ranch contact shall only be for the revocation or suspension of their private land program participation privileges unless they have accumulated 20 or more criminal revocation points.

- A. **20 points:**
- (1) outfitter or guide failure to comply with registration audit or conditions;
  - (2) outfitter or guide misrepresentation;
  - (3) outfitter or guide failure to disclose;
  - (4) landowner's or authorized ranch contact's misrepresentation or violation of the conditions of a contract, application or agreement with the department;
  - (5) any person submitting, or allowing to be submitted for them, false or fraudulent harvest reporting or pelt tagging information as required by rule; or
  - (6) any person purchasing a license, permit, certificate or registration without sufficient funds to pay or who stops payment for same.
- B. **10 points:**
- (1) outfitting on state or federal lands without a proper permit or authorization;
  - (2) outfitter breach of contract; or
  - (3) outfitter, guide, landowner or authorized ranch contact failure to report illegal activity.
- C. **five points:**
- (1) outfitter or guide violation of any conditions of a state or federal permit or authorization;
  - (2) outfitter or guide failure to comply with any local, state, or federal laws other than outfitting on state or federal lands without a proper permit or authorization;
  - (3) outfitter failure to supervise guides; or
  - (4) any outfitter and/or guide misconduct not otherwise specifically listed herein.
- D. outfitters, guides and landowners or their authorized ranch contact shall be notified when points are assessed.

[19.31.2.9 NMAC - Rp, 19.31.2.9 NMAC, 12-19-201704-01-2019]

**19.31.2.10 TIMEFRAME:** Paragraph 11 of Subsection B of Section 17-1-14 NMSA 1978 provides that the commission shall establish procedures for the suspension, revocation, or withholding of license, permit, certificate and registration privileges for a definite period of time.

**A.** Any person found to have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17 NMSA 1978, its implementing rules, or Section 30-14-1 NMSA 1978; or state game commission rule, after notice and opportunity to be heard by a hearing officer, shall have his or her license, permit, certificate, registration, and privileges to hold such, revoked for a definite period of time, unless otherwise provided for by law.

**B.** Any person, who, after having had their privileges revoked, is found to have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule, or its implementing rules, for a second time, after notice and opportunity to be heard by a hearing officer, shall have his or her license, permit, certificate, registration and privileges to hold such, revoked for up to five years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

**C.** Any person, who, after having had their privileges revoked for a second time, is found to have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule or its implementing rules, for a third or subsequent time, shall have his or her license, permit, certificate, registration and privileges to hold such, revoked for up to seven years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

**D.** Any person found to have taken or killed a bighorn sheep, ibex, oryx, bBarbary sheep, elk, deer, or pronghorn antelope, without a valid license or during closed season, which results in the unnecessary or wanton waste of game, shall have his or her license, permit, certificate, registration and privileges to hold such, revoked for up to seven years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

**E.** Any person found to have taken or killed a bighorn sheep, ibex, oryx, bBarbary sheep, elk, deer, or pronghorn antelope, without a valid license or during closed season, which results in the unnecessary or wanton waste of game, for a second or subsequent time, shall have his or her license, permit, certificate, registration and privileges to hold such, revoked for up to 10 years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

**F.** Any person that buys, sells, trades or attempts to buy, sell or trade illegal wildlife or the parts thereof, or aids and abets in this activity, shall have his or her license, permit, certificate, registration and privileges to hold such, revoked for up to five years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

**G.** Any person that buys, sells, trades or attempts to buy, sell or trade illegal wildlife or the parts thereof, or aids and abets in this activity, for a second or subsequent time, shall have his or her license, permit, certificate, registration and privileges to hold such, revoked for up to seven years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

**H.** Any person found to not comply with a department sponsored private lands agreement shall have his or her private lands program privileges revoked for up to three years.

**I.** Any person not in compliance with the Parental Responsibility Act (Section 40-5A-1 NMSA 1978) or the Interstate Wildlife Violator Compact (Section 11-16-1 NMSA 1978) shall have his or her license, permit, certificate, registration and privileges to hold such, revoked or suspended for the timeframe designated and allowed by law.

**J.** The commission may revoke a person's license, permit, certificate, registration and privileges to hold such, for any definite period of time they deem appropriate if they determine that the person has committed a flagrant or egregious violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule or its implementing rules, and provided that any revocation under this section shall commence consecutively to any current revocation.

**K.** The commission or department may suspend, revoke or deny a person's privileges for any definite period of time they deem appropriate if they determine that the person has violated any provision of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule, or any other license, permit, certificate, registration, authorization or agreement issued by the department that is not otherwise listed in this rule.

**KL.** If the department fails to initiate (initiation shall be calculated based on the post mark on the notice of contemplated action or notice of intent letter) a revocation or suspension action against an individual



within one year of the date that the individual is either convicted of an act or accepts a penalty assessment misdemeanor, which results in the accumulation of 20 or more points, the department shall not bring a revocation or suspension action against that individual unless and until that individual is either convicted of an additional violation or accepts an additional penalty assessment misdemeanor of any point value within three years of the most recent point accrual originally equaling or exceeding 20 points.

[19.31.2.10 NMAC - Rp, 19.31.2.8 NMAC, 12-19-201704-01-2019]

**19.31.2.11 REVOCATION AND SUSPENSION PROCEDURES:** The department shall mail out a notice of contemplated action ("~~NCA~~") or a notice of intent (NOI) when it determines that there is sufficient evidence that a person has accumulated 20 or more points, or when the commission is contemplating revoking a landowner's or authorized ranch contact's privileges to participate in any department sponsored private land program or when the department determines that there has been a violation of the terms of a permit, license or authorization. The commission grants approval to the department, through the director, to initiate this process without commission consideration. However, the commission retains all authority for final decisions with the exception of decisions made by the director, where no hearing was requested, under the Interstate Wildlife Violator Compact, Parental Responsibility Act or failure to appear, failure to pay a penalty assessment or failure to pay a civil judgement. The NCA or NOI shall clearly describe the proposed action that the commission is contemplating, and shall contain a statement that includes the following:

A. **Sufficient evidence:** That the department of game and fish has sufficient evidence which, if not rebutted or explained, will justify the commission taking the contemplated proposed action.

B. **Hearing may be requested:** That the respondent may secure a hearing before a hearing officer designated by the commission by depositing in the mail within 20 days after service of the notice, a certified, return receipt requested letter addressed to the department at PO Box 25112, Santa Fe, NM 87504, and containing a request for a hearing.

C. **Rights of respondent:** Calling the attention of Informing the respondent to of his or her rights under applicable law, under Section 17-3-34 NMSA 1978 and this rule.

[19.31.2.11 NMAC - NRp, 12-19-201704-01-2019]

**19.31.2.12 NO HEARING REQUESTED:** If a respondent does not mail a request for a hearing within the time frame and in the manner required by this rule, or the NCA notice mailed by the department is returned as undeliverable or unclaimed at the address the department has on file, the commission may take the action contemplated in the notice and such action shall be final and not subject to judicial review.

A. The commission shall consider the department's submission of names of respondents who have not requested a hearing at a properly scheduled commission meeting and the respondent's these license(s), permit(s), certificate(s), registration(s), landowner agreement(s), or application(s) privileges shall be automatically revoked and associated privileges or suspended pursuant to this rule.

B. Within 4520 days after the commission's decision is rendered and signed by the chairman of the commission, the department shall serve upon the respondent a copy of the written decision.

[19.31.2.12 NMAC - Rp, 19.31.2.11 NMAC, 12-19-201704-01-2019]

**19.31.2.13 HEARING REQUESTED:** If a respondent requests a hearing as provided by this rule, the department, within 20 days of receipt of such request, shall notify the respondent of the time and place of the hearing, the name or names of the person or persons who shall conduct the hearing for the commission, and the statutes and rules authorizing the commission to take the contemplated action. The hearing shall be held not more than 90 or less than 30 days from the date of service of such notice unless a continuance is granted to either party by the hearing officer. If a continuance has been requested by the department and granted by the hearing officer the hearing shall be rescheduled within 60 days from the original hearing date. If a continuance has been requested by the violator and granted by the hearing officer all timelines are waived for the hearing. Continuances may only be granted for good cause. The decision to grant or deny a continuance is at the sole discretion of the hearing officer.

[19.31.2.13 NMAC - Rp, 19.31.2.12 NMAC, 12-19-201704-01-2019]

**19.31.2.14 RIGHTS OF A PERSON REQUESTING A HEARING:** A person entitled to be heard under this rule shall have the right to be represented by counsel or may appear on his or her own behalf; to present all relevant evidence by means of witnesses, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues. All notices issued pursuant to this rule shall contain a statement of these rights.

A. **Written request:** Upon written request to another party, any party is entitled to:  
(1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

B. **Response time frame:** The party to whom such a request is made shall comply with the request within ~~1020~~ days after the mailing or delivery of the request. No such request shall be made less than ~~1520~~ days before the hearing.

C. **Stipulated agreements:** At the Department's discretion, Aa person entitled to be heard under this rule may enter into a written stipulated agreement with the department. Signing such an agreement shall waive the person's right to a hearing and the filing of a written exception. The agreement shall be presented to the commission as the department's recommendation and the commission retains authority for the final decision.

[19.31.2.14 NMAC - Rp, 19.31.2.13 NMAC, 12-19-201704-01-2019]

**19.31.2.15 METHOD OF SERVICE:** Any notice or decision required by this rule shall be served by certified mail, return receipt requested, directed to the holder of a license, permit, registration or certificate, landowner agreement or applicant thereof respondent, at his or her last known address as shown by the records of the department of game and fish.

[19.31.2.15 NMAC - Rp, 19.31.2.14 NMAC, 12-19-201704-01-2019]

**19.31.2.16 REVOCATION NOTICE OF SERVICE:** Notice by certified mail shall be deemed to have been served on the date born by the return receipt showing delivery or the last attempted delivery of the notice or decision to the addressee respondent or refusal of the addressee to accept delivery of the notice or decision.

[19.31.2.16 NMAC - Rp, 19.31.2.15 NMAC, 12-19-201704-01-2019]

**19.31.2.17 VENUE:** Hearings held under this rule shall be conducted in Santa Fe county or Bernalillo county, New Mexico. Under exigent circumstances, and at the discretion of the hearing officer, the hearing may be held in another county in New Mexico. Hearings may be conducted in person or telephonically. Witnesses may appear in person or telephonically.

[19.31.2.17 NMAC - Rp, 19.31.2.16 NMAC, 12-19-201704-01-2019]

**19.31.2.18 HEARING OFFICER:**

~~A. Conducts hearing:~~ All hearings under this rule shall be conducted by a hearing officer who is designated by the commission.

~~B. Disqualification of hearing officer:~~ The hearing officer may be disqualified as provided for under the rules of civil procedure by filing of an affidavit of disqualification with the department.

[19.31.2.18 NMAC - Rp, 19.31.2.17 NMAC, 12-19-201704-01-2019]

**19.31.2.19 HEARING OPEN TO THE PUBLIC:** All hearings conducted under this rule shall be open to the public.

[19.31.2.19 NMAC - Rp, 19.31.2.18 NMAC 12-19-201704-01-2019]

**19.31.2.20 HEARING INTERPRETER PROVIDED:** The commission shall provide technology or an interpreter for individuals requesting a hearing who provide proof of hearing impairment to the extent that he/ or she cannot understand voice communications. The respondent must give notice of this need to the department at the time they request a hearing or 30 days prior to their hearing.

[19.31.2.20 NMAC - Rp, 19.31.2.19 NMAC 12-19-201704-01-2019]

**19.31.2.21 LANGUAGE INTERPRETER PROVIDED:** The commission shall provide an interpreter for individuals requesting a hearing who provide proof of inability to comprehend English well enough to understand the proceedings. The respondent must give notice of this need to the department at the time they request a hearing or 30 days prior to their hearing.

[19.31.2.21 NMAC - Rp, 19.31.2.20 NMAC, 12-19-201704-01-2019]

**19.31.2.22 RULES OF EVIDENCE:** The hearing officer shall consider a certified copy or a filed copy of a conviction from any court of competent jurisdiction, certified by the clerk of the court entering the conviction, as



conclusive evidence of a violation of Chapter 17 NMSA 1978, ~~its implementing rules, or~~ Section 30-14-1 NMSA 1978 ~~or state game commission rule~~. In cases where ~~magistrate~~ court records associated with a conviction are not available, the official form of the records maintained by either the ~~magistrate~~ court or the department of game and fish shall be admissible. These records shall also stand as conclusive evidence of a violation of Chapter 17 NMSA 1978, ~~its implementing rules, or~~ Section 30-14-1 NMSA 1978 ~~or state game commission rule~~. In the case of hearings in which a criminal conviction is not germane, the standard of proof shall be a preponderance of the evidence.

A. **Admission of evidence:** In proceedings held under this regulation, the hearing officer may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The hearing officer may, at his ~~or her~~ discretion, exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Documentary evidence may be received in the form of copies or excerpts.

B. **Judicial notice:** The hearing officer may take notice of judicially cognizable facts.

C. **Rules of privilege:** The rules of privilege shall be effective to the extent that they are required to be recognized in civil actions in district courts of the state of New Mexico.

D. **Mitigating circumstances:** The hearing officer may consider mitigating, extenuating, and aggravating circumstances surrounding the violations of game and fish laws and rules to determine the recommended period of the revocation or suspension.

[19.31.2.22 NMAC - Rp, ~~19.31.2.21 NMAC, 12-19-201704-01-2019~~]

#### 19.31.2.23 HEARING AND POST-HEARING PROCEDURES:

A. **Record of hearing:** In all hearings conducted under this rule, the hearing officer shall cause a complete record to be made by ~~tape or digital~~ audio recording and shall preserve all evidence received. The hearing officer shall observe any standards pertaining to ~~tape or digital~~ audio recordings established for the district courts of this state.

B. **Post-hearing briefs:** The hearing officer may require post-hearing briefs, ~~and the preparation and~~ ~~submittal to the hearing officer of~~ proposed findings of fact and conclusions of law, ~~or both~~.

C. **Hearing officer's report:** Within ~~30~~20 days of any hearing, the hearing officer shall make and submit to the department a report setting forth his ~~or her~~ findings of fact, conclusions of law, and recommended decision.

D. **Report copies to parties:** The department shall serve a copy of the recommended decision on the parties by certified mail with return receipt requested.

E. **Filing of exceptions to hearing officer's report:** The parties to the proceeding may file exceptions, ~~with~~ supporting briefs, to a hearing officer's recommended decision within a time period set by the hearing officer or within 30 days of the hearing if not otherwise specified by the hearing officer.

F. **Exceptions and briefs served on all parties:** Copies of exceptions to the hearing officer's recommended decision and any briefs shall be served ~~on all parties within the time period set by the hearing officer or no later than 30 days from the hearing if no time period was set, simultaneously on all parties, and a statement of such service may be furnished to the hearing officer.~~

G. **Exceptions and briefs -requirements:** Any exception not specifically made shall be considered waived. Any exception that fails to comply with the foregoing requirements may be disregarded. Any brief ~~in support of~~ exceptions shall not contain matters not related to ~~and/or~~ within the scope of the ~~exceptions~~hearing.

[19.31.2.23 NMAC - Rp, ~~19.31.2.22 NMAC 12-19-201704-01-2019~~]

#### 19.31.2.24 FINAL DECISION OF THE COMMISSION:

A. **Review and consideration of hearing officer's report and filed exceptions ~~and briefs~~:** After a hearing has been completed, the commission shall review and consider the hearing officer's report and any filed exceptions ~~or briefs~~ to the recommended decision.

B. **No oral arguments; no new evidence:** The commission shall not permit any oral arguments. The commission shall not consider any evidence outside of the hearing officer's report and filed exceptions ~~or briefs~~.

C. **Final decision:** The commission's final decision shall be made by a quorum of the commission at a properly scheduled commission meeting.

D. **Written decision served:** Within ~~15~~20 days after the commission's decision is rendered and signed by the chairman of the commission, the department shall serve upon the respondent a copy of the written decision.

[19.31.2.24 NMAC - Rp, ~~19.31.2.23 NMAC 12-19-201704-01-2019~~]

**19.31.2.25 JUDICIAL REVIEW:** In accordance with Section 17-3-34 NMSA 1978, any person whose ~~license, permit, certificate, registration or landowner agreement~~ ~~privileges~~ ~~has~~ ~~have~~ been ~~revoked~~ ~~or~~ ~~suspended~~ by the commission ~~or~~ department, and who has requested and received a hearing, may appeal to the district court for further relief. Upon appeal, the district court shall set aside the decision only if it is found to be:

- A. arbitrary, capricious; or an abuse of discretion;
- B. not supported by substantial evidence in the record; or
- C. otherwise not in accordance with law.

[19.31.2.25 NMAC - Rp, ~~19.31.2.24 NMAC, 12-19-2017~~04-01-2019]

**19.31.2.26 WILDLIFE VIOLATOR COMPACT SUSPENSION AND REVOCATION:** Any person whose name appears on the wildlife violator compact list or who has been revoked by another wildlife violator compact member state and is in accordance with Subsection B of Section 17-2-10.3 NMSA 1978 shall have his or her ~~license, permit, certificate or registration~~ ~~privileges~~ immediately revoked or suspended. Any resident who fails to comply with the terms of a citation including failure to appear, from a member state shall have his or her ~~license, permit, certificate or registration~~ ~~privileges~~ withheld or suspended until they have complied with the court appearance or citation requirements in the other state.

**A. Notice procedures:** The information provided by the board of wildlife violator compact administrators or their designee shall be deemed sufficient to allow the department by and through its director to send the same violator a notice of commission contemplated action NOI and an opportunity to request a hearing. Revocation proceedings and hearings shall be in accordance with this rule.

**B. Hearing procedures:** If a hearing is requested, it shall be conducted in accordance with this rule with the following limitations:

- (1) The issues to be decided at the hearing, if requested, are limited to whether:
  - (a) the violation(s) leading to a revocation or suspension in another state, if committed in New Mexico, would have accrued 20 or more points;
  - (b) the respondent is the person whose name appears on the wildlife violator compact list as being revoked by another wildlife violator compact member state;
  - (c) the revocation or suspension in the other wildlife violator compact member state ended or has been rescinded.

(2) In any hearing under this section, relevant evidence shall be limited to documentary evidence that refutes the issues listed in this subsection.

**BC. Default orders for failure to request a hearing:** In the event a respondent does not request a hearing within 20 days of the date that notice was mailed/served, the director may administer the suspension or revocation under 19.31.2.26 NMAC without further commission consideration.

**D. Notification to the commission:** The department shall notify the commission of the number of individuals revoked or suspended pursuant to Subsection AC of Section 19.31.2.26 NMAC at a properly scheduled commission meeting after the director has taken action to revoke or suspend such individuals.

[19.31.2.26 NMAC - Rp, ~~19.31.2.25 NMAC, 12-19-2017~~04-01-2019]

**19.31.2.27 SUSPENSION:** The Parental Responsibility Act ("PRA"), Section 40-5A-1 NMSA 1978, provides that the commission shall suspend the ~~license, permit, certificate or registration, and the associated~~ ~~privileges~~ of any person not in compliance with the PRA, and allows the reinstatement of such privileges at any time that the obligor comes into compliance and pays the reinstatement fee. Chapter 17 NMSA 1978 provides that the commission shall suspend the privileges of any person who fails to pay a penalty assessment or a civil judgment, until the assessment or judgment is paid in full or who fails to appear, after proper notice, for hearings as required by law or regulation until they have made an appearance in the court.

[19.31.2.27 NMAC - Rp, ~~19.31.2.26 NMAC, 12-19-2017~~04-01-2019]

**19.31.2.28 PARENTAL RESPONSIBILITY ACT:** Any person found to be in violation of the PRA, after notice and an opportunity for review to request a hearing by a hearing officer, shall have his or her ~~license, permit, certificate, or registration and associated~~ ~~privileges~~ suspended until he or she provides a certificate of compliance from the ~~human services department~~ HSD and has paid the reinstatement fee.

**A. Notice procedures:** When the department receives a ~~human services department~~ HSD certified list of obligors not in compliance with the PRA, the director may send a NCA to the listed obligors. The department



shall send a NCANOI as required by this section to any named obligor in the department's database, who holds a license, permit, certificate, or registration. The NCANOI sent by certified mail with return receipt requested, shall consist of a written notice advising in form the obligor that the department has grounds to take action, and that on behalf of the commission, it shall suspend the obligor's license(s), permit(s), certificate(s) or registration(s), and the privileges will be suspended thereof, unless the obligor:

(1) files a timely written request for a hearing protesting the proposed suspension within 30 days from the date that the notice is mailed; or

(2) provides the department, within 30 days from the date the notice is mailed, with a valid certificate of compliance from the human services department HSD.

**B. Hearing procedures:** The obligor may request a hearing by filing a written request for hearing protesting the proposed suspension of the license, permit, certificate or registration, and the privileges thereof.

(1) The request for hearing must be filed within 30 days from the date the notice is mailed. The request shall be mailed to Law Enforcement Division, New Mexico Department of Game and Fish, PO Box 25112, Santa Fe, NM 87504.

(2) The commission, through the department, shall appoint a hearing officer.

(3) The department, within 20 days of receipt of such request, shall notify respondent, of the time and place of the hearing, the name or names of the person or persons who shall conduct the hearing for the commission, and the statutes and rules authorizing the commission to take the contemplated action. The hearing shall be held not more than 90 or less than 30 days from the date of mailing of such notice.

(4) The hearing officer shall make and preserve a record of the proceedings as prescribed in Section 22 of this rule.

(5) An obligor may appear at a hearing on their own behalf or be represented by an attorney.

(6) Hearings may be conducted in person or telephonically. Witnesses may appear in person or telephonically.

(7) Hearings may be postponed or continued at the discretion of the hearing officer. If a continuance has been requested by the department and granted by the hearing officer the hearing shall be rescheduled within 60 days from the original hearing date. If a continuance has been requested by the violator and granted by the hearing officer all timelines are waived for the hearing. Continuances may only be granted for good cause. The decision to grant or deny a continuance is at the sole discretion of the hearing officer.

(8) In proceedings held under this rule, the hearing officer may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The hearing officer may, at his discretion, exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Documentary evidence may be received in the form of copies or excerpts. The hearing officer may take notice of judicially cognizable facts. Hearings shall be in accordance with this rule.

(9) The issues to be decided at the hearing, if requested, are limited to whether the respondent is:

(a) in compliance with a judgment and order for support;

(b) in compliance with a subpoena or warrants relating to paternity or child support

proceedings; and

(c) the person whose name appears on the certified list sent to the department from human services department the HSD.

(10) In any hearing under this section, relevant evidence shall be limited to the following: documentary evidence that refutes the issues listed in this subsection.

(a) a valid certificate of compliance, if one has been issued between the date of the notice and the hearing date;

(b) evidence of compliance with a judgment or order of support, subpoena or warrant relating to paternity or child support proceedings to rebut the absence of a certificate of compliance in cases in which the licensee, permittee, or certificate holder, has cured any non-compliance with a judgment or order of support, subpoena or warrant after the notice date but before the date of hearing;

(c) evidence that the respondent is not the same person as the person whose name appears on the certified list of obligors sent to the department by human services department; and

(d) in lieu of a hearing, a respondent may present a valid certificate of compliance to the department and the suspension proceedings will cease.

(11) Within 30 days of any hearing, the hearing officer shall make and submit to the department a report setting forth his findings of fact, conclusions of law and recommended decision.



~~(12) The department shall serve copies of the recommended decision to the parties by certified mail with return receipt requested.~~

~~(13) In accordance with the PRA, the commission shall suspend the license, permit, certificate, registration, and associated privileges of any obligor determined not to be in compliance, until such time as the obligor becomes in compliance.~~

C. **Default orders for failure to request a hearing:** In the event an obligor does not request a hearing, or provide proof of compliance within 30 days of the date the notice was mailed, the director may administer the suspensions without further commission consideration.

D. **Notification to the commission:** The department shall notify the commission of the number of individuals suspended pursuant to Subsection C of Section 28 of 19.31.2 NMAC at a properly scheduled commission meeting after the director has taken action to suspend such individuals.

E. **Reinstatement fee:** Any person whose ~~license, permit, certificate, or registration, privileges~~ has ~~have~~ been suspended in accordance with the PRA shall be reinstated after demonstrating proof of compliance from the ~~human services department~~ HSD, and having paid the department of game and fish a reinstatement fee of \$25.00 and all costs associated with his or her ~~revocation~~ hearing. The director has the authority to waive this fee in the case of unusual circumstances or clerical errors.

[19.31.2.28 NMAC - Rp, ~~19.31.2.27 NMAC, 12-19-2017~~ 04-01-2019]

#### 19.31.2.29 **FAILURE TO APPEAR, FAILURE TO PAY PENALTY ASSESSMENT OR CIVIL**

**DAMAGE JUDGEMENT:** In accordance with Section 17-2-10.3 NMSA 1978 the ~~hunting and or fishing license and associated privileges of a person who fails to comply with the terms of a citation including failure to appear in court after proper notice for a hearing as required by law, of a person who fails to pay a penalty assessment levied under pursuant to Section 17-2-10.1 NMSA 1978, shall be suspended until the penalty assessment is paid in full. Any or a person who has had a civil judgment assessed against them pursuant to Section 17-2-26 NMSA 1978, shall have their license, permit, certificate or registration privileges be suspended until in compliance. until these damages have been paid in full.~~

A. **Notice procedures:** ~~Pursuant to Section 17-2-10.3 NMSA 1978, a person who has failed to appear in court for a hearing as required by law, the department determines that a person has failed to pay a penalty assessment pursuant to Section 17-2-10.2 NMSA 1978, or that a person who has failed to pay owes damages pursuant to a civil judgment in accordance with Section 17-2-26 NMSA 1978, the director may serve shall send a NCA/NOI to such persons. The department shall send a NCA by certified mail with return receipt requested. The NCA/NOI shall consist of a written notice advising inform the respondent that the respondent's privileges will be department has grounds to take action, and that on behalf of the commission it shall suspended the license, permit, certificate or registration and any privileges thereof unless the person respondent:~~

(1) files a timely written request for a hearing protesting the proposed suspension within 30 days from the date that the notice is mailed; or

(2) pays the penalty assessment or civil damages judgment in full within 30 days from the date the notice is mailed.

B. **Hearing procedures:** ~~The person may request a hearing by filing a written request for hearing protesting the proposed suspension of the license, permit, or certificate, and the privileges thereof.~~

(1) ~~The request for hearing must be filed within 30 days from the date the notice is mailed. The request shall be mailed to Law Enforcement Division, New Mexico Department of Game and Fish, PO Box 25112, Santa Fe, NM 87504.~~

(2) ~~The commission, through the department, shall appoint a hearing officer.~~

(3) ~~The department, within 20 days of receipt of such request, shall notify the respondent of the time and place of the hearing, the name or names of the person or persons who shall conduct the hearing for the commission, and the statutes and rules authorizing the commission to take the contemplated action. The hearing shall be held not more than 90 or less than 30 days from the date of mailing of such notice.~~

(4) ~~The hearing officer shall make and preserve a record of the proceedings as prescribed in Section 22 of this rule.~~

(5) ~~A person may appear at a hearing on their own behalf or be represented by an attorney.~~

(6) ~~Hearings may be conducted in person or telephonically. Witnesses may appear in person or telephonically.~~

(7) ~~Hearings may be postponed or continued at the discretion of the hearing officer. If a continuance has been requested by the department and granted by the hearing officer the hearing shall be rescheduled within 60 days from the original hearing date. If a continuance has been requested by the violator and~~



granted by the hearing officer all timelines are waived for the hearing. Continuances may only be granted for good cause. The decision to grant or deny a continuance is at the sole discretion of the hearing officer.

~~(8)~~ In proceedings held under this rule, the hearing officer may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The hearing officer may, at his or her discretion, exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Documentary evidence may be received in the form of copies or excerpts. The hearing officer may take notice of judicially cognizable facts. Hearings shall be conducted in accordance with this rule with the following limitations:-

~~(9)~~ The issues to be decided at the hearing are limited to whether the respondent:

~~(a)~~ owes an outstanding penalty assessment or civil damages judgment; or

~~(b)~~ is the person whose name appears on the list presented to the commission by the department, failed to appear for a court hearing as required by law.

~~(10)~~ In any hearing under this section, relevant evidence shall be limited to documentary evidence that refutes the issues listed in this subsection, the following:

~~(a)~~ documentary evidence that the respondent owes an outstanding penalty assessment or civil damages;

~~(b)~~ documentary evidence that the respondent has paid such penalty assessment or civil damages;

~~(c)~~ evidence that the respondent is not the same person as the person whose name appears on the list presented to the commission;

~~(d)~~ in lieu of a hearing, a respondent may pay the outstanding assessment or damages to the department and the suspension proceedings will cease.

~~(11)~~ Within 30 days of any hearing, the hearing officer shall make and submit to the department a report setting forth his findings of fact, conclusions of law, and recommended decision.

~~(12)~~ The department shall serve copies of the recommended decision to the parties by certified mail with return receipt requested.

~~(13)~~ The commission shall consider the recommendation of the hearing officer, and determine if the respondent shall have their license, permit, or certificate, and the privileges thereof suspended until such time as the outstanding assessment or damages are paid.

C. **Default orders for failure to request a hearing:** In the event a respondent does not request a hearing, or pay their outstanding penalty assessment or damages civil judgement in full within 30 days of the date that notice was mailed, the commission grants approval to the department through the director to administer the suspension without further commission consideration or notice.

D. **Notification to the commission:** The department shall notify the commission of the number of individuals suspended pursuant to Subsection C of Section 29 of 19.31.2 NMAC at a properly scheduled commission meeting after the director has taken action to revoke or suspend such individuals.

E. **Reinstatement:** Any person whose license, certificate, or permit, has privileges have been suspended in accordance with this section shall be reinstated after paying their outstanding penalty assessment(s) or damages civil judgement(s) in full.

[19.31.2.29 NMAC - Rp, 19.31.2.28 NMAC, 12-19-201704-01-2019]

#### HISTORY OF 19.31.2 NMAC:

##### NMAC History:

19.31.2 NMAC Hunting and Fishing License Revocation, filed 04/01/1995; amended 10/31/1998, 11/14/1998, 01/29/1999, 12/14/2001, 12/28/2001, 05/15/2002, 09/30/2002, 06/15/2006, 12/14/2006.

##### History of Repealed Material:

19.31.2 NMAC, Hunting and Fishing License Revocation, filed 12-03-2001, repealed effective 09-14-2012.

19.31.2 NMAC, Hunting and Fishing License Revocation, filed 09-14-2012, repealed effective 12-19-2017.

19.31.2 NMAC, Hunting and Fishing License Revocation, filed xx-xx-xxxx, repealed effective 04-01-2019.

## Copy of State Record Corrections

**TITLE 19        NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 31    HUNTING AND FISHING**  
**PART 2         HUNTING AND FISHING LICENSE REVOCATION**

**19.31.2.1        ISSUING AGENCY:** New Mexico department of game and fish.  
[19.31.2.1 NMAC - Rp, 19.31.2.1 NMAC, 04-01-2019]

**19.31.2.2        SCOPE:** Person or persons who violate the provisions of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978, the Interstate Wildlife Violator Compact (Chapter 11 NMSA 1978) and the Parental Responsibility Act (Chapter 40 NMSA 1978).  
[19.31.2.2 NMAC - Rp, 19.31.2.2 NMAC, 04-01-2019]

**19.31.2.3        STATUTORY AUTHORITY:** Sections 11-16-5, 11-16-6, 17-1-14, 17-2-10.3, 17-3-34, 30-14-1, 40-5A-3, and 40-5A-6 NMSA 1978.  
[19.31.2.3 NMAC - Rp, 19.31.2.3 NMAC, 04-01-2019]

**19.31.2.4        DURATION:** Permanent.  
[19.31.2.4 NMAC - Rp, 19.31.2.4 NMAC, 04-01-2019]

**19.31.2.5        EFFECTIVE DATE:** April 1, 2019 unless a later date is cited at the end of a section or paragraph.  
[19.31.2.5 NMAC - Rp, 19.31.2.5 NMAC, 04-01-2019]

**19.31.2.6        OBJECTIVE:** To revoke, suspend or deny the privileges of any person: who persistently, flagrantly or knowingly violates or countenances the violation of any of the provisions of Chapter 17 NMSA 1978, any rule adopted by the state game commission, the conditions of their agreement, license, permit or privileges, or Section 30-14-1 NMSA 1978; whose name appears on a HSD certified list of obligors not in compliance with the Parental Responsibility Act, Section 40-5A-1 NMSA 1978; who fails to pay a penalty assessment levied pursuant to Section 17-2-10.1 NMSA 1978; who fails to appear, after proper notice, for hearings as required by law or regulation pursuant to Section 17-2-10.3 NMSA 1978; who has a civil judgment assessed against them pursuant to Section 17-2-26 NMSA 1978 until those damages have been paid in full; whose privileges have been revoked by a wildlife violator compact member state or of any resident that fails to meet the terms of a citation issued from a compact member state pursuant to the Interstate Wildlife Violator Compact, Section 11-16-1 NMSA 1978; or, who does not comply with a department sponsored private lands agreement.  
[19.31.2.6 NMAC - Rp, 19.31.2.6 NMAC, 04-01-2019]

**19.31.2.7        DEFINITIONS:**

- A.        **"Commission"** means the New Mexico state game commission.
- B.        **"Conviction"** means any adjudication of guilt; plea of guilty or nolo contendere accepted by the court; or payment of a fine, court cost, court order or penalty assessment; or forfeiture of collateral; regardless of whether sentencing or imposition of sentencing has been deferred or suspended.
- C.        **"Certificate of Compliance"** means a certified statement from HSD stating that an obligor is in compliance with a judgement and order for support or in compliance with a subpoena or warrant relating to paternity or child support proceedings.
- D.        **"Department"** means New Mexico department of game and fish.
- E.        **"Director"** means the director of the department of game and fish.
- F.        **"HSD"** means the New Mexico human services department.
- G.        **"Notice of contemplated action" or "NCA"** means a written notice that the commission is considering taking action against a respondent's privileges, the basis for the action and the manner in which they can request a hearing.
- H.        **"Notice of intent" or "NOI"** means a written notice that the department intends to take action against a respondent's privileges, the basis for the action and the manner in which they can request a hearing.
- I.        **"Obligor"** means a person who has been ordered to pay child or spousal support pursuant to a judgment and order for support.



J. "Privilege(s)" means the ability to lawfully obtain or hold any license, permit, certificate, registration, authorization or agreement issued by the department, including but not limited to, hunting, fishing, trapping, guiding and outfitting.

K. "Protected species" shall mean any of the following animals:  
(1) all animals defined as protected wildlife species and game fish under Section 17-2-3 NMSA 1978;  
(2) all animals defined as furbearing animals under Section 17-5-2 NMSA 1978;  
(3) all animals listed as endangered or threatened species or subspecies as stated in 19.33.6 NMAC; and  
(4) all animals listed under Sections 17-2-13, 17-2-14 or 17-2-4.2 NMSA 1978.

L. "Respondent" means any person who is served a notice of contemplated action or a notice of intent.

M. "Revocation" means when a person's privileges are taken away by the commission or department, after notice and opportunity for a hearing.

N. "Suspension" means when a person's privileges are taken away by the commission or department, after notice and opportunity for a hearing, until the person comes into compliance. [19.31.2.7 NMAC - Rp, 19.31.2.7 NMAC, 04-01-2019]

**19.31.2.8 CRIMINAL REVOCATION CATEGORIES AND POINTS:** Each conviction or penalty assessment for a violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule will result in the assessment of points. Any person with 20 or more points accumulated within any consecutive three-year period shall have all of his or her privileges subject to revocation or suspension. The tolling of time for the three consecutive years shall begin from the date of conviction or the date a penalty assessment was accepted.

A. **20-point criminal violations:**  
(1) illegally taking, attempting to take, killing, capturing or possessing any big game species outside of hunting season in violation of Section 17-2-7 or 17-3-33 NMSA 1978;  
(2) hunting big game without a license;  
(3) criminal trespass, in violation of Section 30-14-1 NMSA 1978, when in connection with hunting, fishing or trapping activity; revocation to be for no less than three years;  
(4) hunting with the aid of an artificial light or spotlight, in violation of Section 17-2-31 NMSA 1978;  
(5) waste of game in violation of Section 17-2-8 NMSA 1978;  
(6) selling, offering for sale, offering to purchase or purchasing any protected species or parts thereof in violation of Section 17-2-7 NMSA 1978;  
(7) any violation of Section 17-3-6 NMSA 1978;  
(8) any violation of Section 17-3-48 NMSA 1978, provided that any revocation under this section shall commence consecutively to any current revocation;  
(9) any violation of Section 17-3-45 NMSA 1978 involving any protected species;  
(10) guiding or outfitting without being registered in violation of Section 17-2A-3 NMSA 1978;  
(11) using an outfitter or guide license issued to another;  
(12) outfitter allowing or using an unregistered person to perform outfitting or guiding services;  
(13) applying for or receiving an outfitter or guide registration while revoked;  
(14) any violation of Section 17-2-29 NMSA 1978; revocation for a period of one year as prescribed by Section 17-2-30 NMSA 1978;  
(15) any violation of Section 17-3-49 NMSA 1978;  
(16) any violation of Section 17-2-7.1 NMSA 1978;  
(17) except as otherwise provided by Sections 17-2-37 to 17-2-46, taking, possessing, transporting, exporting, processing, selling or offering for sale, or shipping any species or subspecies of wildlife listed on the state list of endangered or threatened species or the United States' list of endangered native and foreign fish and wildlife;  
(18) any violation of the provisions of any special use of wildlife permit issued by the department pursuant to Chapter 17 NMSA 1978 and its implementing rules;  
(19) any violation of Section 17-2-4.2 NMSA 1978;

- (20) knowingly or willfully introducing an aquatic invasive species, in violation of Section 17-4-35 NMSA 1978;
- (21) any person who obtains any license, permit or stamp by falsely claiming a military discount; or
- (22) accessory to any of the above violations.
- B. 17-point criminal violations:**
- (1) hunting big game outside the ranch boundaries for which a ranch only license is issued or hunting big game in the wrong game management unit, in violation of Section 17-2-7 NMSA 1978;
- (2) hunting on public land (lands owned by the U.S. government, state of New Mexico, state land office or New Mexico game commission) with a license which was valid only on private land;
- (3) hunting, taking or attempting to take any protected game animal, game bird, game fish or furbearer on private land without written permission, in violation of 19.31.10 NMAC; or
- (4) accessory to any of the above violations.
- C. 15-point criminal violations:**
- (1) illegally taking, attempting to take, killing or capturing of any big game species during hunting season;
- (2) illegally taking, attempting to take, killing, capturing or possessing any turkey or small game outside of hunting season in violation of Section 17-2-7 or 17-3-33 NMSA 1978;
- (3) exceeding the bag limit of big game;
- (4) shooting at any protected species from a vehicle;
- (5) shooting at any protected species from a roadway;
- (6) harassing a protected species;
- (7) any violation of Section 17-3-45 NMSA 1978 involving non-protected species;
- (8) illegal use of an aircraft or drone to locate, harass, drive or rally a protected species;
- (9) hunting with a license obtained through the special drawing pool without being accompanied by, and contracted with, a New Mexico outfitter or their guide;
- (10) applying or aiding any person in applying in the special drawing pool with an unregistered or unqualified outfitter number;
- (11) importation or possession of any species listed as group II, III or IV on the director's "species importation list" in violation of Section 17-3-32 NMSA 1978 or 19.31.10 NMAC; or
- (12) accessory to any of the above violations.
- D. 10-point criminal violations:**
- (1) illegal possession of any big game species during hunting season;
- (2) hunting in a closed area;
- (3) illegal possession of any head, horns or antlers of a protected species found in the field;
- (4) procurement, possession or use of any additional big game or turkey license or tag, except as provided by rule;
- (5) fail to properly tag big game species or turkey as prescribed;
- (6) using an invalid or voided tag;
- (7) using a tag of any other person;
- (8) illegally taking, attempting to take, killing, capturing or possessing of any turkey or small game during hunting season;
- (9) hunting turkey without a license;
- (10) exceeding the bag limit of small game or turkey;
- (11) exceeding the bag limit of fish;
- (12) unlawfully using dogs while hunting big game or turkey;
- (13) retention of live protected species;
- (14) refusing or failing to produce an outfitter contract or not having a signed contract prior to hunting;
- (15) applying or allowing someone to apply in the special drawing pool without a contract; or
- (16) accessory to any of the above violations.
- E. seven-point criminal violations:**
- (1) fishing without a license;
- (2) illegal possession of fish;
- (3) hunting small game without a license;
- (4) hunting or collecting non-game without a license or permit; or

- (5) accessory to any of the above violations.
  - F. **five-point criminal violations:**
    - (1) failure to provide sufficient guides; or
    - (2) any provision of Chapter 17 NMSA 1978 and its implementing rules not specifically listed herein.
  - G. **three-point criminal violations:**
    - (1) hunting, fishing or trapping without proper stamp(s); or
    - (2) using any department issued permit without possessing the proper stamp(s).
- [19.31.2.8 NMAC - Rp, 19.31.2.8 NMAC, 04-01-2019]

**19.31.2.9 ADMINISTRATIVE REVOCATION CATEGORIES AND POINTS:** Any person may be assessed administrative revocation points for violations as provided below. Any person with 20 or more points accumulated within any consecutive three-year period shall have all of his or her privileges subject to revocation or suspension. An outfitter, guide or applicant's administrative revocation points shall only be against their outfitting or guiding registration unless they have accumulated 20 or more criminal revocation points. Administrative revocation points for landowners or their authorized ranch contact shall only be for the revocation or suspension of their private land program participation privileges unless they have accumulated 20 or more criminal revocation points.

- A. **20 points:**
    - (1) outfitter or guide failure to comply with registration audit or conditions;
    - (2) outfitter or guide misrepresentation;
    - (3) outfitter or guide failure to disclose;
    - (4) landowner's or authorized ranch contact's misrepresentation or violation of the conditions of a contract, application or agreement with the department;
    - (5) any person submitting, or allowing to be submitted for them, false or fraudulent harvest reporting or pelt tagging information as required by rule; or
    - (6) any person purchasing a license, permit, certificate or registration without sufficient funds to pay or who stops payment for same.
  - B. **10 points:**
    - (1) outfitting on state or federal lands without a proper permit or authorization;
    - (2) outfitter breach of contract; or
    - (3) outfitter, guide, landowner or authorized ranch contact failure to report illegal activity.
  - C. **five points:**
    - (1) outfitter or guide violation of any conditions of a state or federal permit or authorization;
    - (2) outfitter or guide failure to comply with any local, state or federal laws other than outfitting on state or federal lands without a proper permit or authorization;
    - (3) outfitter failure to supervise guides; or
    - (4) any outfitter or guide misconduct not otherwise specifically listed herein.
  - D. outfitters, guides and landowners or their authorized ranch contact shall be notified when points are assessed.
- [19.31.2.9 NMAC - Rp, 19.31.2.9 NMAC, 04-01-2019]

**19.31.2.10 TIMEFRAME:** Paragraph 11 of Subsection B of Section 17-1-14 NMSA 1978 provides that the commission shall establish procedures for the suspension, revocation or withholding of license, permit, certificate and registration privileges for a definite period of time.

- A. Any person found to have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule, after notice and opportunity to be heard by a hearing officer, shall have his or her privileges revoked for a definite period of time, unless otherwise provided for by law.
- B. Any person, who after having had their privileges revoked, is found to have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule, for a second time, after notice and opportunity to be heard by a hearing officer, shall have his or her privileges revoked for up to five years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.
- C. Any person, who after having had their privileges revoked for a second time, is found to have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17 NMSA 1978,

Section 30-14-1 NMSA 1978 or state game commission rule, for a third or subsequent time, shall have his or her privileges revoked for up to seven years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

D. Any person found to have taken or killed a bighorn sheep, ibex, oryx, Barbary sheep, elk, deer or pronghorn, without a valid license or during closed season, which results in the unnecessary or wanton waste of game, shall have his or her privileges revoked for up to seven years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

E. Any person found to have taken or killed a bighorn sheep, ibex, oryx, Barbary sheep, elk, deer or pronghorn, without a valid license or during closed season, which results in the unnecessary or wanton waste of game, for a second or subsequent time, shall have his or her privileges revoked for up to 10 years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

F. Any person that buys, sells, trades or attempts to buy, sell or trade illegal wildlife or the parts thereof, or aids and abets in this activity, shall have his or her privileges revoked for up to five years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

G. Any person that buys, sells, trades or attempts to buy, sell or trade illegal wildlife or the parts thereof, or aids and abets in this activity, for a second or subsequent time, shall have his or her privileges revoked for up to seven years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

H. Any person found to not comply with a department sponsored private lands agreement shall have his or her private lands program privileges revoked for up to three years.

I. Any person not in compliance with the Parental Responsibility Act (Section 40-5A-1 NMSA 1978) or the Interstate Wildlife Violator Compact (Section 11-16-1 NMSA 1978) shall have his or her privileges revoked or suspended for the timeframe designated and allowed by law.

J. The commission may revoke a person's privileges for any definite period of time they deem appropriate if they determine that the person has committed a flagrant or egregious violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule, and provided that any revocation under this section shall commence consecutively to any current revocation.

K. The commission or department may suspend, revoke or deny a person's privileges for any definite period of time they deem appropriate if they determine that the person has violated any provision of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule, or any other license, permit, certificate, registration, authorization or agreement issued by the department that is not otherwise listed in this rule.

L. If the department fails to initiate (initiation shall be calculated based on the post mark on the notice of contemplated action or notice of intent letter) a revocation or suspension action against an individual within one year of the date that the individual is either convicted of an act or accepts a penalty assessment misdemeanor, which results in the accumulation of 20 or more points, the department shall not bring a revocation or suspension action against that individual unless and until that individual is either convicted of an additional violation or accepts an additional penalty assessment misdemeanor of any point value within three years of the most recent point accrual originally equaling or exceeding 20 points.

[19.31.2.10 NMAC - Rp, 19.31.2.10 NMAC, 04-01-2019]

**19.31.2.11 REVOCATION AND SUSPENSION PROCEDURES:** The department shall mail out a notice of contemplated action (NCA) or a notice of intent (NOI) when it determines that there is sufficient evidence that a person has accumulated 20 or more points, or when the commission is contemplating revoking a landowner's or authorized ranch contact's privileges to participate in any department sponsored private land program or when the department determines that there has been a violation of the terms of a permit, license or authorization. The commission grants approval to the department, through the director, to initiate this process without commission consideration. However, the commission retains all authority for final decisions with the exception of decisions made by the director, where no hearing was requested, under the Interstate Wildlife Violator Compact, Parental Responsibility Act or failure to appear, failure to pay a penalty assessment or failure to pay a civil judgement. The NCA or NOI shall clearly describe the proposed action and shall contain a statement that includes the following:

A. **Sufficient evidence:** That the department of game and fish has sufficient evidence which, if not rebutted or explained, will justify taking the proposed action.

B. **Hearing may be requested:** That the respondent may secure a hearing before a hearing officer designated by the commission by depositing in the mail within 20 days after service of the notice, a certified, return

receipt requested letter addressed to the department at PO Box 25112, Santa Fe, NM 87504, and containing a request for a hearing.

**C. Rights of respondent:** Informing the respondent of his or her rights under applicable law. [19.31.2.11 NMAC - Rp, 19.31.2.11 NMAC 04-01-2019]

**19.31.2.12 NO HEARING REQUESTED:** If a respondent does not mail a request for a hearing within the time frame and in the manner required by this rule, or the notice mailed by the department is returned as undeliverable or unclaimed at the address the department has on file, the commission may take the action contemplated in the notice and such action shall be final and not subject to judicial review.

**A.** The commission shall consider the department's submission of names of respondents who have not requested a hearing at a properly scheduled commission meeting and the respondent's privileges shall be automatically revoked or suspended pursuant to this rule.

**B.** Within 20 days after the commission's decision is rendered and signed by the chairman of the commission, the department shall serve upon the respondent a copy of the written decision. [19.31.2.12 NMAC - Rp, 19.31.2.12 NMAC 4-01-2019]

**19.31.2.13 HEARING REQUESTED:** If a respondent requests a hearing as provided by this rule, the department, within 20 days of receipt of such request, shall notify the respondent of the time and place of the hearing, the name or names of the person or persons who shall conduct the hearing for the commission, and the statutes and rules authorizing the commission to take the contemplated action. The hearing shall be held not more than 90 or less than 30 days from the date of service of such notice unless a continuance is granted to either party by the hearing officer. If a continuance has been requested by the department and granted by the hearing officer the hearing shall be rescheduled within 60 days from the original hearing date. If a continuance has been requested by the violator and granted by the hearing officer all timelines are waived for the hearing. Continuances may only be granted for good cause. The decision to grant or deny a continuance is at the sole discretion of the hearing officer. [19.31.2.13 NMAC - Rp, 19.31.2.13 NMAC, 04-01-2019]

**19.31.2.14 RIGHTS OF A PERSON REQUESTING A HEARING:** A person entitled to be heard under this rule shall have the right to be represented by counsel or may appear on his or her own behalf; to present all relevant evidence by means of witnesses, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues. All notices issued pursuant to this rule shall contain a statement of these rights.

**A. Written request:** Upon written request to another party, any party is entitled to:  
(1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and  
(2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

**B. Response time frame:** The party to whom such a request is made shall comply with the request within 20 days after the delivery of the request. No such request shall be made less than 20 days before the hearing.

**C. Stipulated agreements:** At the Department's discretion, a person entitled to be heard under this rule may enter into a written stipulated agreement with the department. Signing such an agreement shall waive the person's right to a hearing and the filing of a written exception. The agreement shall be presented to the commission as the department's recommendation and the commission retains authority for the final decision. [19.31.2.14 NMAC - Rp, 19.31.2.14 NMAC, 04-01-2019]

**19.31.2.15 METHOD OF SERVICE:** Any notice or decision required by this rule shall be served by certified mail, return receipt requested, directed to the respondent, at his or her last known address as shown by the records of the department of game and fish. [19.31.2.15 NMAC - Rp, 19.31.2.15 NMAC, 04-01-2019]

**19.31.2.16 REVOCATION NOTICE OF SERVICE:** Notice by certified mail shall be deemed to have been served on the date born by the return receipt showing delivery or the last attempted delivery of the notice or decision to the respondent or refusal to accept delivery of the notice or decision. [19.31.2.16 NMAC - Rp, 19.31.2.16 NMAC, 04-01-2019]

**19.31.2.17 VENUE:** Hearings held under this rule shall be conducted in Santa Fe county, New Mexico. Under exigent circumstances, and at the discretion of the hearing officer, the hearing may be held in another county in New Mexico. Hearings may be conducted in person or telephonically. Witnesses may appear in person or telephonically.

[19.31.2.17 NMAC - Rp, 19.31.2.17 NMAC, 04-01-2019]

**19.31.2.18 HEARING OFFICER:** All hearings under this rule shall be conducted by a hearing officer who is designated by the commission. The hearing officer may be disqualified as provided for under the rules of civil procedure by filing an affidavit of disqualification with the department.

[19.31.2.18 NMAC - Rp, 19.31.2.18 NMAC, 04-01-2019]

**19.31.2.19 HEARING OPEN TO THE PUBLIC:** All hearings conducted under this rule shall be open to the public.

[19.31.2.19 NMAC - Rp, 19.31.2.19 NMAC, 04-01-2019]

**19.31.2.20 HEARING INTERPRETER PROVIDED:** The commission shall provide technology or an interpreter for individuals requesting a hearing who provide proof of hearing impairment to the extent that he or she cannot understand voice communications. The respondent must give notice of this need to the department at the time they request a hearing or 30 days prior to their hearing.

[19.31.2.20 NMAC - Rp, 19.31.2.20 NMAC, 04-01-2019]

**19.31.2.21 LANGUAGE INTERPRETER PROVIDED:** The commission shall provide an interpreter for individuals requesting a hearing who provide proof of inability to comprehend English well enough to understand the proceedings. The respondent must give notice of this need to the department at the time they request a hearing or 30 days prior to their hearing.

[19.31.2.21 NMAC - Rp, 19.31.2.21 NMAC, 04-01-2019]

**19.31.2.22 RULES OF EVIDENCE:** The hearing officer shall consider a certified copy or a filed copy of a conviction from any court of competent jurisdiction as conclusive evidence of a violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule. In cases where court records associated with a conviction are not available, the official form of the records maintained by either the court or the department of game and fish shall be admissible. These records shall also stand as conclusive evidence of a violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule. In the case of hearings in which a criminal conviction is not germane, the standard of proof shall be a preponderance of the evidence.

**A. Admission of evidence:** In proceedings held under this regulation, the hearing officer may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The hearing officer may, at his or her discretion, exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Documentary evidence may be received in the form of copies or excerpts.

**B. Judicial notice:** The hearing officer may take notice of judicially cognizable facts.

**C. Rules of privilege:** The rules of privilege shall be effective to the extent that they are required to be recognized in civil actions in district courts of the state of New Mexico.

**D. Mitigating circumstances:** The hearing officer may consider mitigating, extenuating and aggravating circumstances surrounding the violations of game and fish laws and rules to determine the recommended period of the revocation or suspension.

[19.31.2.22 NMAC - Rp, 19.31.2.22 NMAC, 04-01-2019]

**19.31.2.23 HEARING AND POST-HEARING PROCEDURES:**

**A. Record of hearing:** In all hearings conducted under this rule, the hearing officer shall cause a complete record to be made by audio recording and shall preserve all evidence received. The hearing officer shall observe any standards pertaining to audio recordings established for the district courts of this state.

**B. Post-hearing briefs:** The hearing officer may require post-hearing briefs, proposed findings of fact and conclusions of law, or both.

**C. Hearing officer's report:** Within 20 days of any hearing, the hearing officer shall make and submit to the department a report setting forth his or her findings of fact, conclusions of law and recommended decision.

**D. Report copies to parties:** The department shall serve a copy of the recommended decision on the parties by certified mail with return receipt requested.

**E. Filing of exceptions to hearing officer's report:** The parties to the proceeding may file exceptions, or supporting briefs, to a hearing officer's recommended decision within a time period set by the hearing officer or within 30 days of the hearing if not otherwise specified by the hearing officer.

**F. Exceptions and briefs served on all parties:** Copies of exceptions to the hearing officer's recommended decision and any briefs shall be served on all parties within the time period set by the hearing officer or no later than 30 days from the hearing if no time period was set.

**G. Exception and brief requirements:** Any exception not specifically made shall be considered waived. Any exception that fails to comply with the foregoing requirements may be disregarded. Any brief or exception shall not contain matters not related to or within the scope of the hearing.

[19.31.2.23 NMAC - Rp, 19.31.2.23 NMAC, 04-01-2019]

**19.31.2.24 FINAL DECISION OF THE COMMISSION:**

**A. Review and consideration of hearing officer's report and filed exceptions and briefs:** After a hearing has been completed, the commission shall review and consider the hearing officer's report and any filed exceptions or briefs to the recommended decision.

**B. No oral arguments; no new evidence:** The commission shall not permit any oral arguments. The commission shall not consider any evidence outside of the hearing officer's report and filed exceptions or briefs.

**C. Final decision:** The commission's final decision shall be made by a quorum of the commission at a properly scheduled commission meeting.

**D. Written decision served:** Within 20 days after the commission's decision is rendered and signed by the chairman of the commission, the department shall serve upon the respondent a copy of the written decision.

[19.31.2.24 NMAC - Rp, 19.31.2.24 NMAC, 04-01-2019]

**19.31.2.25 JUDICIAL REVIEW:** In accordance with Section 17-3-34 NMSA 1978, any person whose privileges have been revoked or suspended by the commission or department, and who has requested and received a hearing, may appeal to the district court for further relief. Upon appeal, the district court shall set aside the decision only if it is found to be:

**A.** arbitrary, capricious or an abuse of discretion;

**B.** not supported by substantial evidence in the record; or

**C.** otherwise not in accordance with law.

[19.31.2.25 NMAC - Rp, 19.31.2.25 NMAC, 04-01-2019]

**19.31.2.26 WILDLIFE VIOLATOR COMPACT SUSPENSION AND REVOCATION:** Any person whose name appears on the wildlife violator compact list or who has been revoked by another wildlife violator compact member state and is in accordance with Subsection B of Section 17-2-10.3 NMSA 1978 shall have his or her privileges revoked or suspended. Any resident who fails to comply with the terms of a citation including failure to appear, from a member state shall have his or her privileges suspended until they have complied with the court appearance or citation requirements in the other state.

**A. Notice procedures:** The information provided by the board of wildlife violator compact administrators or their designee shall be deemed sufficient to allow the department by and through its director to send the same violator a NOI and an opportunity to request a hearing.

**B. Hearing procedures:** If a hearing is requested, it shall be conducted in accordance with this rule with the following limitations:

(1) The issues to be decided at the hearing, if requested, are limited to whether:

(a) the violation(s) leading to a revocation or suspension in another state, if committed in New Mexico, would have accrued 20 or more points;

(b) the respondent is the person whose name appears on the wildlife violator compact list as being revoked by another wildlife violator compact member state;

(c) the revocation or suspension in the other wildlife violator compact member state ended or has been rescinded.

(2) In any hearing under this section, relevant evidence shall be limited to documentary evidence that refutes the issues listed in this subsection.

**C. Default orders for failure to request a hearing:** In the event a respondent does not request a hearing within 20 days of the date that notice was served, the director may administer the suspension or revocation under 19.31.2.26 NMAC without further commission consideration.

**D. Notification to the commission:** The department shall notify the commission of the number of individuals revoked or suspended pursuant to Subsection C of Section 19.31.2.26 NMAC at a properly scheduled commission meeting after the director has taken action to revoke or suspend such individuals.  
[19.31.2.26 NMAC - Rp, 19.31.2.26 NMAC, 04-01-2019]

**19.31.2.27 SUSPENSION:** The Parental Responsibility Act (PRA), Section 40-5A-1 NMSA 1978, provides that the commission shall suspend the privileges of any person not in compliance with the PRA, and allows the reinstatement of such privileges at any time that the obligor comes into compliance and pays the reinstatement fee. Chapter 17 NMSA 1978 provides that the commission shall suspend the privileges of any person who fails to pay a penalty assessment or a civil judgment, until the assessment or judgment is paid in full or who fails to appear, after proper notice, for hearings as required by law or regulation until they have made an appearance in the court.  
[19.31.2.27 NMAC - Rp, 19.31.2.27 NMAC, 04-01-2019]

**19.31.2.28 PARENTAL RESPONSIBILITY ACT:** Any person found to be in violation of the PRA, after notice and an opportunity to request a hearing, shall have his or her privileges suspended until he or she provides a certificate of compliance from the HSD and has paid the reinstatement fee.

**A. Notice procedures:** When the department receives a HSD certified list of obligors not in compliance with the PRA, the director shall send a NOI to any named obligor in the department's database. The NOI shall inform the obligor that the obligor's privileges will be suspended unless the obligor:

(1) files a written request for a hearing within 30 days from the date that the notice is mailed;  
or

(2) provides the department, within 30 days from the date the notice is mailed, a valid certificate of compliance from the HSD.

**B. Hearing procedures:** Hearings shall be in accordance with this rule.

(1) The issues to be decided at the hearing, if requested, are limited to whether the respondent is:

(a) in compliance with a judgment and order for support;  
(b) in compliance with a subpoena or warrant relating to paternity or child support proceedings; and  
(c) the person whose name appears on the certified list sent to the department from the HSD.

(2) In any hearing under this section, relevant evidence shall be limited to documentary evidence that refutes the issues listed in this subsection.

**C. Default orders for failure to request a hearing:** In the event an obligor does not request a hearing, or provide proof of compliance within 30 days of the date the notice was mailed, the director may administer the suspensions without further commission consideration.

**D. Notification to the commission:** The department shall notify the commission of the number of individuals suspended pursuant to Subsection C of 19.31.2.28 NMAC at a properly scheduled commission meeting after the director has taken action to suspend such individuals.

**E. Reinstatement fee:** Any person whose privileges have been suspended in accordance with the PRA shall be reinstated after demonstrating proof of compliance from the HSD, and having paid the department of game and fish a reinstatement fee of \$25.00 and all costs associated with his or her hearing. The director has the authority to waive this fee in the case of unusual circumstances or clerical errors.  
[19.31.2.28 NMAC - Rp, 19.31.2.28 NMAC, 04-01-2019]

**19.31.2.29 FAILURE TO APPEAR, FAILURE TO PAY PENALTY ASSESSMENT OR CIVIL JUDGEMENT:** In accordance with Section 17-2-10.3 NMSA 1978 the privileges of a person who fails to comply with the terms of a citation including failure to appear in court after proper notice for a hearing as required by law, a person who fails to pay a penalty assessment levied pursuant to Section 17-2-10.1 NMSA 1978, or a person who has a civil judgment assessed against them pursuant to Section 17-2-26 NMSA 1978, shall be suspended until in compliance.

**A. Notice procedures:** Pursuant to Section 17-2-10.3 NMSA 1978, a person who has failed to appear in court for a hearing as required by law, has failed to pay a penalty assessment pursuant to Section 17-2-10.2 NMSA



1978, or a person who owes damages pursuant to a civil judgment in accordance with Section 17-2-26 NMSA 1978, the director shall send a NOI. The NOI shall inform the respondent that the respondent's privileges will be suspended unless the respondent:

- (1) files a written request for a hearing within 30 days from the date that the notice is mailed;
- or
- (2) pays the penalty assessment or civil judgement in full within 30 days from the date the notice is mailed.

**B. Hearing procedures:** Hearings shall be conducted in accordance with this rule with the following limitations:

- (1) The issues to be decided at the hearing are limited to whether the respondent:
  - (a) owes an outstanding penalty assessment or civil judgement; or
  - (b) failed to appear for a court hearing as required by law.
- (2) In any hearing under this section, relevant evidence shall be limited to documentary evidence that refutes the issues listed in this subsection.

**C. Default orders for failure to request a hearing:** In the event a respondent does not request a hearing, or pay their outstanding penalty assessment or civil judgement in full within 30 days of the date that notice was mailed, the commission grants approval to the department through the director to administer the suspension without further commission consideration or notice.

**D. Notification to the commission:** The department shall notify the commission of the number of individuals suspended pursuant to Subsection C of 19.31.2.29 NMAC at a properly scheduled commission meeting after the director has taken action to suspend such individuals.

**E. Reinstatement:** Any person whose privileges have been suspended in accordance with this section shall be reinstated after paying their outstanding penalty assessment(s) or civil judgement(s) in full. [19.31.2.29 NMAC - Rp, 19.31.2.29 NMAC, 04-01-2019]

#### **HISTORY OF 19.31.2 NMAC:**

##### **NMAC History:**

19.31.2 NMAC Hunting and Fishing License Revocation, filed 04/01/1995; amended 10/31/1998, 11/14/1998, 01/29/1999, 12/14/2001, 12/28/2001, 05/15/2002, 09/30/2002, 06/15/2006, 12/14/2006.

##### **History of Repealed Material:**

19.31.2 NMAC, Hunting and Fishing License Revocation, filed 12-03-2001, repealed effective 09-14-2012.

19.31.2 NMAC, Hunting and Fishing License Revocation, filed 09-14-2012, repealed effective 12-19-2017.

19.31.2 NMAC, Hunting and Fishing License Revocation, filed 12-19-2017, repealed effective 04-01-2019.

## Final Adopted Rule

**TITLE 19**      **NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 31**   **HUNTING AND FISHING**  
**PART 2**        **HUNTING AND FISHING LICENSE REVOCATION**

**19.31.2.1**      **ISSUING AGENCY:** New Mexico department of game and fish.  
[19.31.2.1 NMAC - Rp, 19.31.2.1 NMAC, 04-01-2019]

**19.31.2.2**      **SCOPE:** Person or persons who violate the provisions of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978, the Interstate Wildlife Violator Compact (Chapter 11 NMSA 1978) and the Parental Responsibility Act (Chapter 40 NMSA 1978).  
[19.31.2.2 NMAC - Rp, 19.31.2.2 NMAC, 04-01-2019]

**19.31.2.3**      **STATUTORY AUTHORITY:** Sections 11-16-5, 11-16-6, 17-1-14, 17-2-10.3, 17-3-34, 30-14-1, 40-5A-3, and 40-5A-6 NMSA 1978.  
[19.31.2.3 NMAC - Rp, 19.31.2.3 NMAC, 04-01-2019]

**19.31.2.4**      **DURATION:** Permanent.  
[19.31.2.4 NMAC - Rp, 19.31.2.4 NMAC, 04-01-2019]

**19.31.2.5**      **EFFECTIVE DATE:** April 1, 2019 unless a later date is cited at the end of a section or paragraph.  
[19.31.2.5 NMAC - Rp, 19.31.2.5 NMAC, 04-01-2019]

**19.31.2.6**      **OBJECTIVE:** To revoke, suspend or deny the privileges of any person: who persistently, flagrantly or knowingly violates or countenances the violation of any of the provisions of Chapter 17 NMSA 1978, any rule adopted by the state game commission, the conditions of their agreement, license, permit or privileges, or Section 30-14-1 NMSA 1978; whose name appears on a HSD certified list of obligors not in compliance with the Parental Responsibility Act, Section 40-5A-1 NMSA 1978; who fails to pay a penalty assessment levied pursuant to Section 17-2-10.1 NMSA 1978; who fails to appear, after proper notice, for hearings as required by law or regulation pursuant to Section 17-2-10.3 NMSA 1978; who has a civil judgment assessed against them pursuant to Section 17-2-26 NMSA 1978 until those damages have been paid in full; whose privileges have been revoked by a wildlife violator compact member state or of any resident that fails to meet the terms of a citation issued from a compact member state pursuant to the Interstate Wildlife Violator Compact, Section 11-16-1 NMSA 1978; or, who does not comply with a department sponsored private lands agreement.  
[19.31.2.6 NMAC - Rp, 19.31.2.6 NMAC, 04-01-2019]

**19.31.2.7**      **DEFINITIONS:**

- A.      **"Commission"** means the New Mexico state game commission.
- B.      **"Conviction"** means any adjudication of guilt; plea of guilty or nolo contendere accepted by the court; or payment of a fine, court cost, court order or penalty assessment; or forfeiture of collateral; regardless of whether sentencing or imposition of sentencing has been deferred or suspended.
- C.      **"Certificate of Compliance"** means a certified statement from HSD stating that an obligor is in compliance with a judgement and order for support or in compliance with a subpoena or warrant relating to paternity or child support proceedings.
- D.      **"Department"** means New Mexico department of game and fish.
- E.      **"Director"** means the director of the department of game and fish.
- F.      **"HSD"** means the New Mexico human services department.
- G.      **"Notice of contemplated action" or "NCA"** means a written notice that the commission is considering taking action against a respondent's privileges, the basis for the action and the manner in which they can request a hearing.
- H.      **"Notice of intent" or "NOI"** means a written notice that the department intends to take action against a respondent's privileges, the basis for the action and the manner in which they can request a hearing.
- I.      **"Obligor"** means a person who has been ordered to pay child or spousal support pursuant to a judgment and order for support.

J. "Privilege(s)" means the ability to lawfully obtain or hold any license, permit, certificate, registration, authorization or agreement issued by the department, including but not limited to, hunting, fishing, trapping, guiding and outfitting.

K. "Protected species" shall mean any of the following animals:  
(1) all animals defined as protected wildlife species and game fish under Section 17-2-3 NMSA 1978;  
(2) all animals defined as furbearing animals under Section 17-5-2 NMSA 1978;  
(3) all animals listed as endangered or threatened species or subspecies as stated in 19.33.6 NMAC; and  
(4) all animals listed under Sections 17-2-13, 17-2-14 or 17-2-4.2 NMSA 1978.

L. "Respondent" means any person who is served a notice of contemplated action or a notice of intent.

M. "Revocation" means when a person's privileges are taken away by the commission or department, after notice and opportunity for a hearing.

N. "Suspension" means when a person's privileges are taken away by the commission or department, after notice and opportunity for a hearing, until the person comes into compliance. [19.31.2.7 NMAC - Rp, 19.31.2.7 NMAC, 04-01-2019]

**19.31.2.8 CRIMINAL REVOCATION CATEGORIES AND POINTS:** Each conviction or penalty assessment for a violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule will result in the assessment of points. Any person with 20 or more points accumulated within any consecutive three-year period shall have all of his or her privileges subject to revocation or suspension. The tolling of time for the three consecutive years shall begin from the date of conviction or the date a penalty assessment was accepted.

A. **20-point criminal violations:**  
(1) illegally taking, attempting to take, killing, capturing or possessing any big game species outside of hunting season in violation of Section 17-2-7 or 17-3-33 NMSA 1978;  
(2) hunting big game without a license;  
(3) criminal trespass, in violation of Section 30-14-1 NMSA 1978, when in connection with hunting, fishing or trapping activity; revocation to be for no less than three years;  
(4) hunting with the aid of an artificial light or spotlight, in violation of Section 17-2-31 NMSA 1978;  
(5) waste of game in violation of Section 17-2-8 NMSA 1978;  
(6) selling, offering for sale, offering to purchase or purchasing any protected species or parts thereof in violation of Section 17-2-7 NMSA 1978;  
(7) any violation of Section 17-3-6 NMSA 1978;  
(8) any violation of Section 17-3-48 NMSA 1978, provided that any revocation under this section shall commence consecutively to any current revocation;  
(9) any violation of Section 17-3-45 NMSA 1978 involving any protected species;  
(10) guiding or outfitting without being registered in violation of Section 17-2A-3 NMSA 1978;  
(11) using an outfitter or guide license issued to another;  
(12) outfitter allowing or using an unregistered person to perform outfitting or guiding services;  
(13) applying for or receiving an outfitter or guide registration while revoked;  
(14) any violation of Section 17-2-29 NMSA 1978; revocation for a period of one year as prescribed by Section 17-2-30 NMSA 1978;  
(15) any violation of Section 17-3-49 NMSA 1978;  
(16) any violation of Section 17-2-7.1 NMSA 1978;  
(17) except as otherwise provided by Sections 17-2-37 to 17-2-46, taking, possessing, transporting, exporting, processing, selling or offering for sale, or shipping any species or subspecies of wildlife listed on the state list of endangered or threatened species or the United States' list of endangered native and foreign fish and wildlife;  
(18) any violation of the provisions of any special use of wildlife permit issued by the department pursuant to Chapter 17 NMSA 1978 and its implementing rules;  
(19) any violation of Section 17-2-4.2 NMSA 1978;

(20) knowingly or willfully introducing an aquatic invasive species, in violation of Section 17-4-35 NMSA 1978;

(21) any person who obtains any license, permit or stamp by falsely claiming a military discount; or

(22) accessory to any of the above violations.

**B. 17-point criminal violations:**

(1) hunting big game outside the ranch boundaries for which a ranch only license is issued or hunting big game in the wrong game management unit, in violation of Section 17-2-7 NMSA 1978;

(2) hunting on public land (lands owned by the U.S. government, state of New Mexico, state land office or New Mexico game commission) with a license which was valid only on private land;

(3) hunting, taking or attempting to take any protected game animal, game bird, game fish or furbearer on private land without written permission, in violation of 19.31.10 NMAC; or

(4) accessory to any of the above violations.

**C. 15-point criminal violations:**

(1) illegally taking, attempting to take, killing or capturing of any big game species during hunting season;

(2) illegally taking, attempting to take, killing, capturing or possessing any turkey or small game outside of hunting season in violation of Section 17-2-7 or 17-3-33 NMSA 1978;

(3) exceeding the bag limit of big game;

(4) shooting at any protected species from a vehicle;

(5) shooting at any protected species from a roadway;

(6) harassing a protected species;

(7) any violation of Section 17-3-45 NMSA 1978 involving non-protected species;

(8) illegal use of an aircraft or drone to locate, harass, drive or rally a protected species;

(9) hunting with a license obtained through the special drawing pool without being accompanied by, and contracted with, a New Mexico outfitter or their guide;

(10) applying or aiding any person in applying in the special drawing pool with an unregistered or unqualified outfitter number;

(11) importation or possession of any species listed as group II, III or IV on the director's "species importation list" in violation of Section 17-3-32 NMSA 1978 or 19.31.10 NMAC; or

(12) accessory to any of the above violations.

**D. 10-point criminal violations:**

(1) illegal possession of any big game species during hunting season;

(2) hunting in a closed area;

(3) illegal possession of any head, horns or antlers of a protected species found in the field;

(4) procurement, possession or use of any additional big game or turkey license or tag, except as provided by rule;

(5) fail to properly tag big game species or turkey as prescribed;

(6) using an invalid or voided tag;

(7) using a tag of any other person;

(8) illegally taking, attempting to take, killing, capturing or possessing of any turkey or small game during hunting season;

(9) hunting turkey without a license;

(10) exceeding the bag limit of small game or turkey;

(11) exceeding the bag limit of fish;

(12) unlawfully using dogs while hunting big game or turkey;

(13) retention of live protected species;

(14) refusing or failing to produce an outfitter contract or not having a signed contract prior to hunting;

(15) applying or allowing someone to apply in the special drawing pool without a contract; or

(16) accessory to any of the above violations.

**E. seven-point criminal violations:**

(1) fishing without a license;

(2) illegal possession of fish;

(3) hunting small game without a license;

(4) hunting or collecting non-game without a license or permit; or

(5) accessory to any of the above violations.  
F. **five-point criminal violations:**  
(1) failure to provide sufficient guides; or  
(2) any provision of Chapter 17 NMSA 1978 and its implementing rules not specifically listed herein.

G. **three-point criminal violations:**  
(1) hunting, fishing or trapping without proper stamp(s); or  
(2) using any department issued permit without possessing the proper stamp(s).  
[19.31.2.8 NMAC - Rp, 19.31.2.8 NMAC, 04-01-2019]

**19.31.2.9 ADMINISTRATIVE REVOCATION CATEGORIES AND POINTS:** Any person may be assessed administrative revocation points for violations as provided below. Any person with 20 or more points accumulated within any consecutive three-year period shall have all of his or her privileges subject to revocation or suspension. An outfitter, guide or applicant's administrative revocation points shall only be against their outfitting or guiding registration unless they have accumulated 20 or more criminal revocation points. Administrative revocation points for landowners or their authorized ranch contact shall only be for the revocation or suspension of their private land program participation privileges unless they have accumulated 20 or more criminal revocation points.

A. **20 points:**  
(1) outfitter or guide failure to comply with registration audit or conditions;  
(2) outfitter or guide misrepresentation;  
(3) outfitter or guide failure to disclose;  
(4) landowner's or authorized ranch contact's misrepresentation or violation of the conditions of a contract, application or agreement with the department;  
(5) any person submitting, or allowing to be submitted for them, false or fraudulent harvest reporting or pelt tagging information as required by rule; or  
(6) any person purchasing a license, permit, certificate or registration without sufficient funds to pay or who stops payment for same.

B. **10 points:**  
(1) outfitting on state or federal lands without a proper permit or authorization;  
(2) outfitter breach of contract; or  
(3) outfitter, guide, landowner or authorized ranch contact failure to report illegal activity.

C. **five points:**  
(1) outfitter or guide violation of any conditions of a state or federal permit or authorization;  
(2) outfitter or guide failure to comply with any local, state or federal laws other than outfitting on state or federal lands without a proper permit or authorization;  
(3) outfitter failure to supervise guides; or  
(4) any outfitter or guide misconduct not otherwise specifically listed herein.

D. outfitters, guides and landowners or their authorized ranch contact shall be notified when points are assessed.

[19.31.2.9 NMAC - Rp, 19.31.2.9 NMAC, 04-01-2019]

**19.31.2.10 TIMEFRAME:** Paragraph 11 of Subsection B of Section 17-1-14 NMSA 1978 provides that the commission shall establish procedures for the suspension, revocation or withholding of license, permit, certificate and registration privileges for a definite period of time.

A. Any person found to have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule, after notice and opportunity to be heard by a hearing officer, shall have his or her privileges revoked for a definite period of time, unless otherwise provided for by law.

B. Any person, who after having had their privileges revoked, is found to have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule, for a second time, after notice and opportunity to be heard by a hearing officer, shall have his or her privileges revoked for up to five years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

C. Any person, who after having had their privileges revoked for a second time, is found to have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17 NMSA 1978,

Section 30-14-1 NMSA 1978 or state game commission rule, for a third or subsequent time, shall have his or her privileges revoked for up to seven years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

D. Any person found to have taken or killed a bighorn sheep, ibex, oryx, Barbary sheep, elk, deer or pronghorn, without a valid license or during closed season, which results in the unnecessary or wanton waste of game, shall have his or her privileges revoked for up to seven years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

E. Any person found to have taken or killed a bighorn sheep, ibex, oryx, Barbary sheep, elk, deer or pronghorn, without a valid license or during closed season, which results in the unnecessary or wanton waste of game, for a second or subsequent time, shall have his or her privileges revoked for up to 10 years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

F. Any person that buys, sells, trades or attempts to buy, sell or trade illegal wildlife or the parts thereof, or aids and abets in this activity, shall have his or her privileges revoked for up to five years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

G. Any person that buys, sells, trades or attempts to buy, sell or trade illegal wildlife or the parts thereof, or aids and abets in this activity, for a second or subsequent time, shall have his or her privileges revoked for up to seven years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

H. Any person found to not comply with a department sponsored private lands agreement shall have his or her private lands program privileges revoked for up to three years.

I. Any person not in compliance with the Parental Responsibility Act (Section 40-5A-1 NMSA 1978) or the Interstate Wildlife Violator Compact (Section 11-16-1 NMSA 1978) shall have his or her privileges revoked or suspended for the timeframe designated and allowed by law.

J. The commission may revoke a person's privileges for any definite period of time they deem appropriate if they determine that the person has committed a flagrant or egregious violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule, and provided that any revocation under this section shall commence consecutively to any current revocation.

K. The commission or department may suspend, revoke or deny a person's privileges for any definite period of time they deem appropriate if they determine that the person has violated any provision of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule, or any other license, permit, certificate, registration, authorization or agreement issued by the department that is not otherwise listed in this rule.

L. If the department fails to initiate (initiation shall be calculated based on the post mark on the notice of contemplated action or notice of intent letter) a revocation or suspension action against an individual within one year of the date that the individual is either convicted of an act or accepts a penalty assessment misdemeanor, which results in the accumulation of 20 or more points, the department shall not bring a revocation or suspension action against that individual unless and until that individual is either convicted of an additional violation or accepts an additional penalty assessment misdemeanor of any point value within three years of the most recent point accrual originally equaling or exceeding 20 points.

[19.31.2.10 NMAC - Rp, 19.31.2.10 NMAC, 04-01-2019]

**19.31.2.11 REVOCATION AND SUSPENSION PROCEDURES:** The department shall mail out a notice of contemplated action (NCA) or a notice of intent (NOI) when it determines that there is sufficient evidence that a person has accumulated 20 or more points, or when the commission is contemplating revoking a landowner's or authorized ranch contact's privileges to participate in any department sponsored private land program or when the department determines that there has been a violation of the terms of a permit, license or authorization. The commission grants approval to the department, through the director, to initiate this process without commission consideration. However, the commission retains all authority for final decisions with the exception of decisions made by the director, where no hearing was requested, under the Interstate Wildlife Violator Compact, Parental Responsibility Act or failure to appear, failure to pay a penalty assessment or failure to pay a civil judgement. The NCA or NOI shall clearly describe the proposed action and shall contain a statement that includes the following:

A. **Sufficient evidence:** That the department of game and fish has sufficient evidence which, if not rebutted or explained, will justify taking the proposed action.

B. **Hearing may be requested:** That the respondent may secure a hearing before a hearing officer designated by the commission by depositing in the mail within 20 days after service of the notice, a certified, return

receipt requested letter addressed to the department at PO Box 25112, Santa Fe, NM 87504, and containing a request for a hearing.

**C. Rights of respondent:** Informing the respondent of his or her rights under applicable law.  
[19.31.2.11 NMAC - Rp, 19.31.2.11 NMAC 04-01-2019]

**19.31.2.12 NO HEARING REQUESTED:** If a respondent does not mail a request for a hearing within the time frame and in the manner required by this rule, or the notice mailed by the department is returned as undeliverable or unclaimed at the address the department has on file, the commission may take the action contemplated in the notice and such action shall be final and not subject to judicial review.

**A.** The commission shall consider the department's submission of names of respondents who have not requested a hearing at a properly scheduled commission meeting and the respondent's privileges shall be automatically revoked or suspended pursuant to this rule.

**B.** Within 20 days after the commission's decision is rendered and signed by the chairman of the commission, the department shall serve upon the respondent a copy of the written decision.  
[19.31.2.12 NMAC - Rp, 19.31.2.12 NMAC 4-01-2019]

**19.31.2.13 HEARING REQUESTED:** If a respondent requests a hearing as provided by this rule, the department, within 20 days of receipt of such request, shall notify the respondent of the time and place of the hearing, the name or names of the person or persons who shall conduct the hearing for the commission, and the statutes and rules authorizing the commission to take the contemplated action. The hearing shall be held not more than 90 or less than 30 days from the date of service of such notice unless a continuance is granted to either party by the hearing officer. If a continuance has been requested by the department and granted by the hearing officer the hearing shall be rescheduled within 60 days from the original hearing date. If a continuance has been requested by the violator and granted by the hearing officer all timelines are waived for the hearing. Continuances may only be granted for good cause. The decision to grant or deny a continuance is at the sole discretion of the hearing officer.  
[19.31.2.13 NMAC - Rp, 19.31.2.13 NMAC, 04-01-2019]

**19.31.2.14 RIGHTS OF A PERSON REQUESTING A HEARING:** A person entitled to be heard under this rule shall have the right to be represented by counsel or may appear on his or her own behalf; to present all relevant evidence by means of witnesses, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues. All notices issued pursuant to this rule shall contain a statement of these rights.

**A. Written request:** Upon written request to another party, any party is entitled to:  
(1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and  
(2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

**B. Response time frame:** The party to whom such a request is made shall comply with the request within 20 days after the delivery of the request. No such request shall be made less than 20 days before the hearing.

**C. Stipulated agreements:** At the Department's discretion, a person entitled to be heard under this rule may enter into a written stipulated agreement with the department. Signing such an agreement shall waive the person's right to a hearing and the filing of a written exception. The agreement shall be presented to the commission as the department's recommendation and the commission retains authority for the final decision.  
[19.31.2.14 NMAC - Rp, 19.31.2.14 NMAC, 04-01-2019]

**19.31.2.15 METHOD OF SERVICE:** Any notice or decision required by this rule shall be served by certified mail, return receipt requested, directed to the respondent, at his or her last known address as shown by the records of the department of game and fish.  
[19.31.2.15 NMAC - Rp, 19.31.2.15 NMAC, 04-01-2019]

**19.31.2.16 REVOCATION NOTICE OF SERVICE:** Notice by certified mail shall be deemed to have been served on the date born by the return receipt showing delivery or the last attempted delivery of the notice or decision to the respondent or refusal to accept delivery of the notice or decision.  
[19.31.2.16 NMAC - Rp, 19.31.2.16 NMAC, 04-01-2019]

**19.31.2.17 VENUE:** Hearings held under this rule shall be conducted in Santa Fe county, New Mexico. Under exigent circumstances, and at the discretion of the hearing officer, the hearing may be held in another county in New Mexico. Hearings may be conducted in person or telephonically. Witnesses may appear in person or telephonically.  
[19.31.2.17 NMAC - Rp. 19.31.2.17 NMAC. 04-01-2019]

**19.31.2.18 HEARING OFFICER:** All hearings under this rule shall be conducted by a hearing officer who is designated by the commission. The hearing officer may be disqualified as provided for under the rules of civil procedure by filing an affidavit of disqualification with the department.  
[19.31.2.18 NMAC - Rp. 19.31.2.18 NMAC. 04-01-2019]

**19.31.2.19 HEARING OPEN TO THE PUBLIC:** All hearings conducted under this rule shall be open to the public.  
[19.31.2.19 NMAC - Rp. 19.31.2.19 NMAC. 04-01-2019]

**19.31.2.20 HEARING INTERPRETER PROVIDED:** The commission shall provide technology or an interpreter for individuals requesting a hearing who provide proof of hearing impairment to the extent that he or she cannot understand voice communications. The respondent must give notice of this need to the department at the time they request a hearing or 30 days prior to their hearing.  
[19.31.2.20 NMAC - Rp. 19.31.2.20 NMAC. 04-01-2019]

**19.31.2.21 LANGUAGE INTERPRETER PROVIDED:** The commission shall provide an interpreter for individuals requesting a hearing who provide proof of inability to comprehend English well enough to understand the proceedings. The respondent must give notice of this need to the department at the time they request a hearing or 30 days prior to their hearing.  
[19.31.2.21 NMAC - Rp. 19.31.2.21 NMAC. 04-01-2019]

**19.31.2.22 RULES OF EVIDENCE:** The hearing officer shall consider a certified copy or a filed copy of a conviction from any court of competent jurisdiction as conclusive evidence of a violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule. In cases where court records associated with a conviction are not available, the official form of the records maintained by either the court or the department of game and fish shall be admissible. These records shall also stand as conclusive evidence of a violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule. In the case of hearings in which a criminal conviction is not germane, the standard of proof shall be a preponderance of the evidence.

**A. Admission of evidence:** In proceedings held under this regulation, the hearing officer may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The hearing officer may, at his or her discretion, exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Documentary evidence may be received in the form of copies or excerpts.

**B. Judicial notice:** The hearing officer may take notice of judicially cognizable facts.

**C. Rules of privilege:** The rules of privilege shall be effective to the extent that they are required to be recognized in civil actions in district courts of the state of New Mexico.

**D. Mitigating circumstances:** The hearing officer may consider mitigating, extenuating and aggravating circumstances surrounding the violations of game and fish laws and rules to determine the recommended period of the revocation or suspension.

[19.31.2.22 NMAC - Rp. 19.31.2.22 NMAC. 04-01-2019]

**19.31.2.23 HEARING AND POST-HEARING PROCEDURES:**

**A. Record of hearing:** In all hearings conducted under this rule, the hearing officer shall cause a complete record to be made by audio recording and shall preserve all evidence received. The hearing officer shall observe any standards pertaining to audio recordings established for the district courts of this state.

**B. Post-hearing briefs:** The hearing officer may require post-hearing briefs, proposed findings of fact and conclusions of law, or both.

**C. Hearing officer's report:** Within 20 days of any hearing, the hearing officer shall make and submit to the department a report setting forth his or her findings of fact, conclusions of law and recommended decision.



**D. Report copies to parties:** The department shall serve a copy of the recommended decision on the parties by certified mail with return receipt requested.

**E. Filing of exceptions to hearing officer's report:** The parties to the proceeding may file exceptions, or supporting briefs, to a hearing officer's recommended decision within a time period set by the hearing officer or within 30 days of the hearing if not otherwise specified by the hearing officer.

**F. Exceptions and briefs served on all parties:** Copies of exceptions to the hearing officer's recommended decision and any briefs shall be served on all parties within the time period set by the hearing officer or no later than 30 days from the hearing if no time period was set.

**G. Exception and brief requirements:** Any exception not specifically made shall be considered waived. Any exception that fails to comply with the foregoing requirements may be disregarded. Any brief or exception shall not contain matters not related to or within the scope of the hearing.

[19.31.2.23 NMAC - Rp, 19.31.2.23 NMAC, 04-01-2019]

#### **19.31.2.24 FINAL DECISION OF THE COMMISSION:**

**A. Review and consideration of hearing officer's report and filed exceptions and briefs:** After a hearing has been completed, the commission shall review and consider the hearing officer's report and any filed exceptions or briefs to the recommended decision.

**B. No oral arguments; no new evidence:** The commission shall not permit any oral arguments. The commission shall not consider any evidence outside of the hearing officer's report and filed exceptions or briefs.

**C. Final decision:** The commission's final decision shall be made by a quorum of the commission at a properly scheduled commission meeting.

**D. Written decision served:** Within 20 days after the commission's decision is rendered and signed by the chairman of the commission, the department shall serve upon the respondent a copy of the written decision.

[19.31.2.24 NMAC - Rp, 19.31.2.24 NMAC, 04-01-2019]

**19.31.2.25 JUDICIAL REVIEW:** In accordance with Section 17-3-34 NMSA 1978, any person whose privileges have been revoked or suspended by the commission or department, and who has requested and received a hearing, may appeal to the district court for further relief. Upon appeal, the district court shall set aside the decision only if it is found to be:

**A.** arbitrary, capricious or an abuse of discretion;

**B.** not supported by substantial evidence in the record; or

**C.** otherwise not in accordance with law.

[19.31.2.25 NMAC - Rp, 19.31.2.25 NMAC, 04-01-2019]

**19.31.2.26 WILDLIFE VIOLATOR COMPACT SUSPENSION AND REVOCATION:** Any person whose name appears on the wildlife violator compact list or who has been revoked by another wildlife violator compact member state and is in accordance with Subsection B of Section 17-2-10.3 NMSA 1978 shall have his or her privileges revoked or suspended. Any resident who fails to comply with the terms of a citation including failure to appear, from a member state shall have his or her privileges suspended until they have complied with the court appearance or citation requirements in the other state.

**A. Notice procedures:** The information provided by the board of wildlife violator compact administrators or their designee shall be deemed sufficient to allow the department by and through its director to send the same violator a NOI and an opportunity to request a hearing.

**B. Hearing procedures:** If a hearing is requested, it shall be conducted in accordance with this rule with the following limitations:

(1) The issues to be decided at the hearing, if requested, are limited to whether:

(a) the violation(s) leading to a revocation or suspension in another state, if committed in New Mexico, would have accrued 20 or more points;

(b) the respondent is the person whose name appears on the wildlife violator compact list as being revoked by another wildlife violator compact member state;

(c) the revocation or suspension in the other wildlife violator compact member state ended or has been rescinded.

(2) In any hearing under this section, relevant evidence shall be limited to documentary evidence that refutes the issues listed in this subsection.

**C. Default orders for failure to request a hearing:** In the event a respondent does not request a hearing within 20 days of the date that notice was served, the director may administer the suspension or revocation under 19.31.2.26 NMAC without further commission consideration.

**D. Notification to the commission:** The department shall notify the commission of the number of individuals revoked or suspended pursuant to Subsection C of Section 19.31.2.26 NMAC at a properly scheduled commission meeting after the director has taken action to revoke or suspend such individuals.  
[19.31.2.26 NMAC - Rp, 19.31.2.26 NMAC, 04-01-2019]

**19.31.2.27 SUSPENSION:** The Parental Responsibility Act (PRA), Section 40-5A-1 NMSA 1978, provides that the commission shall suspend the privileges of any person not in compliance with the PRA, and allows the reinstatement of such privileges at any time that the obligor comes into compliance and pays the reinstatement fee. Chapter 17 NMSA 1978 provides that the commission shall suspend the privileges of any person who fails to pay a penalty assessment or a civil judgment, until the assessment or judgment is paid in full or who fails to appear, after proper notice, for hearings as required by law or regulation until they have made an appearance in the court.  
[19.31.2.27 NMAC - Rp, 19.31.2.27 NMAC, 04-01-2019]

**19.31.2.28 PARENTAL RESPONSIBILITY ACT:** Any person found to be in violation of the PRA, after notice and an opportunity to request a hearing, shall have his or her privileges suspended until he or she provides a certificate of compliance from the HSD and has paid the reinstatement fee.

**A. Notice procedures:** When the department receives a HSD certified list of obligors not in compliance with the PRA, the director shall send a NOI to any named obligor in the department's database. The NOI shall inform the obligor that the obligor's privileges will be suspended unless the obligor:

(1) files a written request for a hearing within 30 days from the date that the notice is mailed;  
or

(2) provides the department, within 30 days from the date the notice is mailed, a valid certificate of compliance from the HSD.

**B. Hearing procedures:** Hearings shall be in accordance with this rule.

(1) The issues to be decided at the hearing, if requested, are limited to whether the respondent is:

(a) in compliance with a judgment and order for support;  
(b) in compliance with a subpoena or warrant relating to paternity or child support proceedings; and  
(c) the person whose name appears on the certified list sent to the department from the HSD.

(2) In any hearing under this section, relevant evidence shall be limited to documentary evidence that refutes the issues listed in this subsection.

**C. Default orders for failure to request a hearing:** In the event an obligor does not request a hearing, or provide proof of compliance within 30 days of the date the notice was mailed, the director may administer the suspensions without further commission consideration.

**D. Notification to the commission:** The department shall notify the commission of the number of individuals suspended pursuant to Subsection C of 19.31.2.28 NMAC at a properly scheduled commission meeting after the director has taken action to suspend such individuals.

**E. Reinstatement fee:** Any person whose privileges have been suspended in accordance with the PRA shall be reinstated after demonstrating proof of compliance from the HSD, and having paid the department of game and fish a reinstatement fee of \$25.00 and all costs associated with his or her hearing. The director has the authority to waive this fee in the case of unusual circumstances or clerical errors.  
[19.31.2.28 NMAC - Rp, 19.31.2.28 NMAC, 04-01-2019]

**19.31.2.29 FAILURE TO APPEAR, FAILURE TO PAY PENALTY ASSESSMENT OR CIVIL**

**JUDGEMENT:** In accordance with Section 17-2-10.3 NMSA 1978 the privileges of a person who fails to comply with the terms of a citation including failure to appear in court after proper notice for a hearing as required by law, a person who fails to pay a penalty assessment levied pursuant to Section 17-2-10.1 NMSA 1978, or a person who has a civil judgment assessed against them pursuant to Section 17-2-26 NMSA 1978, shall be suspended until in compliance.

**A. Notice procedures:** Pursuant to Section 17-2-10.3 NMSA 1978, a person who has failed to appear in court for a hearing as required by law, has failed to pay a penalty assessment pursuant to Section 17-2-10.2 NMSA

1978, or a person who owes damages pursuant to a civil judgment in accordance with Section 17-2-26 NMSA 1978, the director shall send a NOI. The NOI shall inform the respondent that the respondent's privileges will be suspended unless the respondent:

- (1) files a written request for a hearing within 30 days from the date that the notice is mailed;
- or
- (2) pays the penalty assessment or civil judgement in full within 30 days from the date the notice is mailed.

**B. Hearing procedures:** Hearings shall be conducted in accordance with this rule with the following limitations:

- (1) The issues to be decided at the hearing are limited to whether the respondent:
  - (a) owes an outstanding penalty assessment or civil judgement; or
  - (b) failed to appear for a court hearing as required by law.
- (2) In any hearing under this section, relevant evidence shall be limited to documentary evidence that refutes the issues listed in this subsection.

**C. Default orders for failure to request a hearing:** In the event a respondent does not request a hearing, or pay their outstanding penalty assessment or civil judgement in full within 30 days of the date that notice was mailed, the commission grants approval to the department through the director to administer the suspension without further commission consideration or notice.

**D. Notification to the commission:** The department shall notify the commission of the number of individuals suspended pursuant to Subsection C of 19.31.2.29 NMAC at a properly scheduled commission meeting after the director has taken action to suspend such individuals.

**E. Reinstatement:** Any person whose privileges have been suspended in accordance with this section shall be reinstated after paying their outstanding penalty assessment(s) or civil judgement(s) in full. [19.31.2.29 NMAC - Rp, 19.31.2.29 NMAC, 04-01-2019]

#### **HISTORY OF 19.31.2 NMAC:**

##### **NMAC History:**

19.31.2 NMAC Hunting and Fishing License Revocation, filed 04/01/1995; amended 10/31/1998, 11/14/1998, 01/29/1999, 12/14/2001, 12/28/2001, 05/15/2002, 09/30/2002, 06/15/2006, 12/14/2006.

##### **History of Repealed Material:**

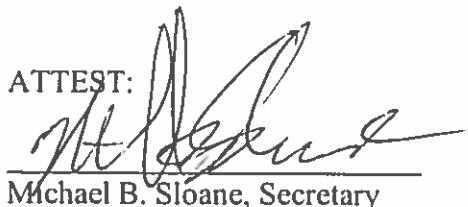
19.31.2 NMAC, Hunting and Fishing License Revocation, filed 12-03-2001, repealed effective 09-14-2012.  
19.31.2 NMAC, Hunting and Fishing License Revocation, filed 09-14-2012, repealed effective 12-19-2017.  
19.31.2 NMAC, Hunting and Fishing License Revocation, filed 12-19-2017, repealed effective 04-01-2019.

Dated at Roswell, New Mexico, this 30th day of November, 2018.

State Game Commission

  
Paul Kienzle, Chairman

ATTEST:

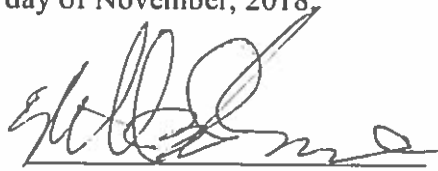
  
Michael B. Sloane, Secretary

CERTIFICATION OF AUTHENTICATION

State of New Mexico           )  
                                              ) ss  
County of Chaves               )

I, Michael B. Sloane, Director of the Department of Game and Fish of the State of New Mexico, do hereby certify that the foregoing amendment of rule **Title 19 Natural Resources and Wildlife, Chapter 31 Hunting and Fishing, Part 2 Hunting and Fishing License Revocation**, is a true copy of said amendment by the State Game Commission of the State of New Mexico; that said rule has been adopted, signed, and filed in the office of the Director in accordance with Section 17-2-5, New Mexico Statutes Annotated, 1978 Compilation, and in the office of the State Records Center of the State of New Mexico in accordance with Section 14-4-1, New Mexico Statutes Annotated, 1978 Compilation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Director at Roswell, New Mexico, this 30th day of November, 2018.

  
Michael B. Sloane, Director



# NMAC Transmittal Form

NEW MEXICO  
Commission of Public Records

Volume:  Issue:  Publication date:  Number of pages:  (ALD Use Only) Sequence No.

Issuing agency name and address:  Agency DFA code:

Contact person's name:  Phone number:  E-mail address:

Type of rule action:  New  Amendment  Repeal  Emergency  Renumber  (ALD Use Only) Most recent filing date:

Title number:  Title name:

Chapter number:  Chapter name:

Part number:  Part name:

Amendment description (If filing an amendment):  Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes  No  Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes  No  Public domain

## Concise Explanatory Statement For Rulemaking Adoption:

### Specific statutory or other authority authorizing rulemaking:

Authority for this rulemaking process is found in: 17-1-14, 17-1-26, 17-2-1, 17-2-2, 17-2-2.1, 17-2-4.2, 17-2-6, 17-2-10.1, 17-2-13, 17-2-14, 17-2-20, 17-2-32, 17-2-43, 17-3-2, 17-3-29, 17-2A-3, 17-3-32, 17-3-33, 17-3-42, 17-4-33, 17-5-4 and 17-6-3 NMSA 1978

Notice date(s):  Hearing date(s):  Rule adoption date:  Rule effective date:

### Findings required for rulemaking adoption:

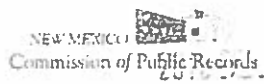
#### Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

The rule making was undertaken to repeal rule 19.31.2 NMAC - Hunting and Fishing License Revocation. There have been no changes between the published proposed rule and the final rule. This repeal is occurring in conjunction with the filing of a new rule for Hunting and Fishing License Revocation 19.31.2 NMAC and the new language supersedes this rule. On October 30th, 2018 the New Mexico State Game Commission (Department of Game and Fish) provided notice of rule making by publishing the proposed

Continued on next page

**Findings required for rulemaking adoption:**  
continued



rule in the state register. The New Mexico State Game Commission approved, at its November 30th, 2018 hearing, the repeal of its rule 19.31.2 NMAC, Hunting and Fishing License Revocation, filed November 30, 2017, effective April 1, 2019. A wide array of public comments were submitted. To view these comments please visit [www.wildlife.state.nm.us/commission/meeting-agendas/](http://www.wildlife.state.nm.us/commission/meeting-agendas/) and click on the Hearing Archive tab. The resulting rule was based on what was best for the resource, citizens of NM and overall hunter, angler or trapper satisfaction.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Michael Sloane

Check if authority has been delegated

Title:

Director, NMDGF

Signature: (BLACK ink only)

Date signed:

12/6/18

# NMAC Transmittal Form

NEW MEXICO  
Commission of Public Records

2018 DEC - 11 PM

Volume:  Issue:  Publication date:  Number of pages:  (ALD Use Only) Sequence No.

Issuing agency name and address:  Agency DFA code:

Contact person's name:  Phone number:  E-mail address:

Type of rule action: (ALD Use Only) Most recent filing date:

New  Amendment  Repeal  Emergency  Renumber

Title number:  Title name:

Chapter number:  Chapter name:

Part number:  Part name:

Amendment description (If filing an amendment):  Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Please list attachments or Internet sites if applicable.  
Yes  No

If materials are attached, has copyright permission been received? Yes  No  Public domain

## Concise Explanatory Statement For Rulemaking Adoption:

### Specific statutory or other authority authorizing rulemaking:

Authority for this rulemaking process is found in: Sections 17-1-14, 17-1-26, 17-2-1, 17-2-2, 17-2-2.1, 17-2-4.2, 17-2-6, 17-2-10.1, 17-2-13, 17-2-14, 17-2-20, 17-2-32, 17-2-43, 17-3-2, 17-3-29, 17-2A-3, 17-3-32, 17-3-33, 17-3-42, 17-4-33, 17-5-4 and 17-6-3 NMSA 1978

Notice date(s):  Hearing date(s):  Rule adoption date:  Rule effective date:

### Findings required for rulemaking adoption:

#### Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

The rule making was undertaken to repeal rule 19.31.2 NMAC - Hunting and Fishing License Revocation. There have been no changes between the published proposed rule and the final rule. This repeal is occurring in conjunction with the filing of a new rule for Hunting and Fishing License Revocation 19.31.2 NMAC and the new language supersedes this rule. On October 30th, 2018 the New Mexico State Game Commission (Department of Game and Fish) provided notice of rule making by publishing the proposed

Continued on next page

7/1/2018

**Findings required for rulemaking adoption:**  
continued



rule in the state register. The New Mexico State Game Commission approved, at its November 30th, 2018 hearing, the repeal of its rule 19.31.2 NMAC, Hunting and Fishing License Revocation, filed November 30, 2017, effective April 1, 2019. A wide array of public comments were submitted. To view these comments please visit [www.wildlife.state.nm.us/commission/meeting-agendas/](http://www.wildlife.state.nm.us/commission/meeting-agendas/) and click on the Hearing Archive tab. The resulting rule was based on what was best for the resource, citizens of NM and overall hunter, angler or trapper satisfaction.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Michael Sloane

Check if authority has been delegated

Title:

Director, NMDGF

Signature: (BLACK ink only)

A handwritten signature in black ink, appearing to read "Michael Sloane", written over a white rectangular background.

Date signed:

12/6/18



2019 DEC -7 P1

The New Mexico State Game Commission (Department of Game and Fish) approved, at its 11/30/2018 hearing, to repeal its rule 19.31.2 NMAC, Hunting and Fishing License Revocation, filed 11/30/2017, and to replace it with a new rule 19.31.2 NMAC, Hunting and Fishing License Revocation of the same name. On November 30, 2018, the Secretary of the Game and Fish Department adopted the new 19.31.2 NMAC, effective April 1, 2019.

# Agenda Item

## #5a

19.31.2 NMAC

Revocation Rule



New Mexico Department of Game and Fish



EXHIBIT  
3

tabbles

# Summary of Proposed Changes to 19.31.2

The proposed amendments would:

- Increase points for hunting on private property without written permission from 10 pts to 17 pts
- Increase points for falsely claiming military discount from 5 pts to 20 pts
- Reinstate failure to have sufficient funds or stopping payment when purchasing a license to a 20 pt administrative violation
- Clarifying language and standardizing time frames in the rule
- Clarify language on wildlife violators compact suspensions



New Mexico Department of Game and Fish

# Summary of

## Proposed Changes to 19.31.2

The proposed amendments would:

- Remove “certified conviction”
- Remove “magistrate”
- Clarify that any person who fails to appear on a citation can be suspended until in compliance with the court
- Remove duplicate language regarding hearing procedures



New Mexico Department of Game and Fish



# Public Comments

- The amended rule was posted to the Department's website and published in the register on October 30<sup>th</sup> .
- Public meetings were held in:
  - Las Cruces August 30
  - Albuquerque September 4
  - Roswell September 5
  - Raton September 11



# Public Comments

- As part of the public involvement process, four public meetings were held throughout the state. Two verbal comments were received. All comments received were concerned the fact that someone could possibly be revoked for hunting on private property without written permission even though the property is not required to be posted.
- One written comment has been received through the web site.



# Rule Making Timeline

- Final action - November 30<sup>th</sup> meeting



New Mexico Department of Game and Fish







## 2018 Revocation Rule – Summary of proposed changes

The Revocation Rule 19.31.2 NMAC is the rule that regulates the revocation, suspension, and/or denial of privileges related to licenses, permits, certificates, registrations, authorizations, and agreements issued by the department.

### What's changed (at a glance):

- Several definitions have been added or amended. Clarified and simplified language throughout the rule. Numerous redundancies and repetitious language were removed to help simplify the rule.

### Summary of changes:

- **Objective** – Remove repetitious language. Add language for failure to appear in court.
- **Definitions** – Add Certificate of Compliance, HSD (human services department), Notice of Intent, and Privileges. Amend Respondent, Revocation, and Suspension.
- **Criminal Revocation Categories and Points** – Remove repetitious language. Add 20 point violation (apply for military discount when not eligible). Move “hunt/fish/trap on private land without written permission” from 10 point violation to 17 point violation. Add “turkey” to “exceed bag limit”.
- **Administrative Revocation Categories and Points** – Remove repetitious language. Add 20 point violation (insufficient funds/stop payment).
- **Timeframe** – Remove repetitious language. Add language to allow commission to set a timeframe for violations not listed.
- **Revocation and Suspension Procedures** – Add Notice of Intent. Add language regarding exceptions to those categories the commission votes on. Clarify language.
- **No Hearing Requested** – Clarify language. Remove repetitious language.
- **Rights of a person Requesting a Hearing** – Lengthen timeframe to be consistent with other timeframes.
- **Rules of Evidence** – Remove “magistrate” and add “court of competent jurisdiction” because adjudications can come from different courts.
- **Final Decision of the Commission** – Lengthen timeframe to be consistent with other timeframes.
- **Judicial Review** – Simplified language.
- **Wildlife Violator Compact Suspension and Revocation** – Add “Notice Procedures” and “Hearing Procedures” as they were not previously in this sub-section.
- **Suspension** – Add language for “Failure to Appear in court”.
- **Parental Responsibility Act** – Simplify language. Add Notice of Intent. Remove most portions of “Hearing Procedures” as they are the same as under “Revocation and Suspension Procedures” in 19.31.2.11.
- **Failure to Appear and Failure to Pay Penalty Assessment or Civil Damage** – Simplify language. Add “Failure to Appear” language. Remove most portions of “Hearing Procedures” as they are the same as under “Revocation and Suspension Procedures” in 19.31.2.11.



**Jackson, Ty J., DGF**

---

**From:** Brad Norman  
**Sent:** Wednesday, October 03, 2018 5:19 PM  
**To:** DGF-FieldOpsComments  
**Cc:** ISPA, DGF  
**Subject:** [EXT] NMDGF: Methods and Manner and Penalty Feedback - Norman  
**Attachments:** NMDGF\_Methods\_And\_Manner\_Feedback\_Norman.docx; ATT00001.htm

NMDGF Commission,

Please find attached a letter that I wrote regarding the “Methods and Manners” and “Penalty” proposals under consideration. I would really like to see a rule and penalty added for landowners who post public land as private!

I sincerely appreciate NMDGF tackling the toughest issues!

Sincerely,

Brad Norman



October 3, 2018

### Comments to "Methods & Manner" and Penalties

NMDGF Commission,

I wanted to provide feedback on the great job your team is doing in updating the Methods of Manner and Take. I especially wanted to thank the three officers that hosted in the information session in Albuquerque in September! I found their insight particularly helpful. I believe that I was the only person in the audience who is a regular hunter (not representing Guides/Outfitters, Backcountry Hunters & Anglers, or one of 10 pilots in the room)

#### Flying Ban- In Full Support

1. Until the Sept. NMDGF Meeting in Albuquerque, I was never against pilots flying "low & slow" until I heard their lack of willingness to accept responsibility for their actions and unwillingness to self-police. The meeting has turned me against pilots flying low and slow over the forest looking for animals, patrolling fence lines, or any other reason! I would be in full support of a flying ban! In addition, I had a single bad encounter with an aircraft flying 100ft above the ground on the border of a giant ranch in 16C on MonsterMuleys.com website. I received feedback that the ranch hired multiple airplanes to fly the border of the ranch to look for "trespassers."
  - a. Enforceability: The rule will not be any more enforceable than the current rule. A simple example will be a pilot says he is checking on cows, or looking for trespassers from the sky.
  - b. New Technology: Perhaps requiring all planes regardless of size to enable GPS transponders that are ADS-B compliance. (Note: I found out about this ADS-B GPS standard during the meeting in Albuquerque. The pilots were saying that all planes regardless of size are required to have the transponder installed. However, the pilots said that FAA does not require them to have it enabled when flying "low & slow" over the forest. One pilot even showed off an app on his phone that showed the ADS-B GPS Tracks. You might be at least able to correlate complaints from the ground to specific aircraft in the air or look for suspicious flying patterns.
  - c. Partnering with Other Agencies: The pilots also said that ICE/Border Patrol has significant radar coverage of NM because of the proximity to the border. It seems like this data could be used for a couple of good prosecutions & looking for people circling to find animals.
  - d. Penalty: I would add up confiscation of aircraft is found guilty of spotting animals in the air. The crime amounts to poaching and rifles/vehicles can be confiscated. Based on what I saw in Albuquerque, a points penalty is insufficient because many pilots are not hunters.

#### 2. (Not in Support)

##### Trespassing Points

A 17-point penalty for trespassing seems excessive! It seems like other laws would be broken in extreme cases of trespassing that would amount to this level of punishment. The punishment is much too severe for honest mistakes!



# SPEAKER'S CARD

New Mexico State Game Commission Meeting

(Please Place Form In Appropriate Agenda Slot)

AGENDA ITEM 11 PLEASE PRINT

Name: <u>John Croucher</u>		
Address:		
City:	State:	Zip:
Phone:		
Email: @		
Officially Representing: <u>NMWFed.</u> <small>(Organizer(s))</small>		
Your Title: <u>President</u>		
Do you wish to be heard? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
<b>WRITTEN COMMENT (Below or Attached)</b>		

Revocations

# Manner & Method Public Meeting

8/30/18

Please Print Your Name + Where You are From

Josinda Knight  
Lynne Knight  
Ines Baker  
Jill Batts  
Catherine Baker  
R. Lynn Baker  
Charles Dennison  
Lurtis Davidson

# Sign-In

9-4-18

Name	City
1. Joyce Wood's	
2. Lisa Sanders	
3. Ron Keller	
4. STEPHEN FLEMING	
5. Craig Miller	
6. Lisa FLEENER	
7. C. Call Call	
8. Leon Kestman	
9. Clayton Stansell	
10. Katie DeLorenzo	
11. Kieran Kimmel	
12. Brad Norman	
13. Chris GROTSBECK	

September 11, 2018

Manner & Method Public Meeting

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# New Mexico State Game Commission

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**EXHIBIT**

6

NEW MEXICO STATE GAME COMMISSION MEETING  
ROSWELL CONVENTION AND CIVIC CENTER  
EXHIBIT HALL  
912 N. MAIN ST., ROSWELL, NM 88201

PUBLIC RULE HEARING  
NOVEMBER 30, 2018

\*\* This is an expedited portion of New Mexico State Game Commission Meeting.

Public Rule Hearing 5a and 5b. Audio [4:06:58 to 4:17:19] \*\*

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1 APPEARANCES

2 Chairman Paul Kienzle

3 Vice Chairman William Montoya

4 Game Commissioner Thomas Salopek

5 Game Commissioner Robert Ricklefs

6 Game Commissioner Ralph Ramos

7 Game Commissioner Craig Peterson

8 Game Commissioner Chance Chase

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11 ABSENT

None

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1 CHAIRMAN KIENZLE: Hearing Item No. 5. Informational Rule Making Hearing on  
2 the New Revocation Rule 19.31.2 NMAC. This hearing is now open. Are there any  
3 exhibits on the new rule 19.3.2 for the record?

4 TY JACKSON: Mr. Chairman, there are. We have five exhibits. Exhibit No. 1 will be  
5 the rule making notice. Exhibit No. 2 will be a copy of the proposed rule as well as  
6 the strikethrough. Exhibit No. 3 will be a copy of today's presentation. Exhibit No. 4  
7 is a summary of the proposed changes to the rule. And Exhibit No. 5 will be all of the  
8 public comments received on this rule.

9 CHAIRMAN KIENZLE: I will admit Exhibits 1 through 5 as identified. You can go  
10 ahead and introduce the rule.

11 TY JACKSON: Okay. So Mr. Chairman and Members of the Commission, this is  
12 probably the third or fourth time we've been in front of you with this. Nothing  
13 significant has changed since the last time we discussed this, but I will go over it  
14 quickly. The summary of the changes, really, a couple of the biggest ones are  
15 changing the number of points assessed to someone who is convicted of a violation  
16 of hunting on private property without written permission from 10 points to 17 points.  
17 Now, just bear in mind that this is separate from criminal trespass, this is a different  
18 violation; therefore, different points. As you are aware, it takes 20 points for any  
19 person to be presented before you for a potential revocation. Another one would be  
20 the increase from 5 points to 20 points for falsely claiming military discount. We're  
21 beginning to do some investigations on that as a new statutory, I guess, ability for  
22 folks to get that discount and we are finding some violations and we feel that that  
23 would be appropriate for that person to receive 20 points. Another one would be --  
24 this was really an oversight. The last time we removed -- the last time this rule was  
25 open, I believe last year in 2017, we removed a 20-point administrative violation for



1 someone who either stops payment or their check bounces or something like that.

2 We want to reinstate that back in. We didn't think that that was actually possible, and  
3 it turns out it is.

4 CHAIRMAN KIENZLE: Let me ask you a quick question on that one. Let's say that I  
5 believe I have sufficient funds in my checking account but someone else in my family  
6 has my checkbook too. They write a check; my check comes back insufficient funds.  
7 Is there an element of what's going on upstairs in this or is it strict liability as we  
8 would call it?

9 TY JACKSON: Mr. Chairman, I mean, the practical application of this is that we try to  
10 give them the opportunity to rectify the situation because things do happen, accounts  
11 get shut down or whatever. There's all sorts of stuff that happens so they are  
12 contacted, and an attempt is made for them to get that payment in, to get it fixed. In  
13 particular in the draw. And if that doesn't happen then we proceed from there.

14 CHAIRMAN KIENZLE: Understood. Thank you.

15 TY JACKSON: Really, the rest of this, and it does look like substantial changes  
16 when you look at the rule, but really, it's a lot of clarification and standardizing time  
17 frames. The revocation rule, as you are aware, is a very complex rule and we're  
18 pretty strictly bound on what we can or can't do. But we wanted to try to standardize  
19 some of our time frames after working with this rule for approximately a year. We  
20 found some things that we think need to be addressed. In every case where we  
21 changed time frames that a respondent has to reply, we give them more time, not  
22 less, so it's more generous on their end. And then we also clarified some language  
23 on exactly how wildlife violator compact suspensions are performed. There was a  
24 little bit conflicting language in the rule and we weren't sure what we could or could  
25 not do. We wanted to clarify that and in talking with General Counsel I think we came

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1 up with a good solution for that. We did change a few words or removed a few  
2 words. We removed words like certified conviction, we removed words like  
3 magistrate. And the reason for that is because of changes -- well, first of all, the  
4 certified conviction we still require that it is an actual conviction but not all of the  
5 courts are providing "certified" copies of those and so we will still be required to have  
6 a copy of the conviction, either certified or as provided on the court's online system.  
7 And then removing magistrate in there just because some of our cases are  
8 adjudicated at a higher level than magistrate. District Court, Court of Appeals, places  
9 like that. We didn't want there to be any confusion there. We also clarified that any  
10 person who fails to appear on a citation can be suspended and until in compliance  
11 with the court. That was -- it's not a significant change, really. Again, it's just  
12 clarification. And we removed duplicate language throughout the rule regarding the  
13 hearing procedures. There was a number of places where it repeated itself and we  
14 just wanted to have one place where it said what the hearing procedures are so that  
15 in the future, if this rule is amended again, that we don't end up in a place where the  
16 rule conflicts itself. The public comments. We actually didn't receive very many  
17 public comments. The amended rule was posted on the register on October 30<sup>th</sup>. We  
18 did have four public meetings, these were held in conjunction with the manner and  
19 method meetings. By in large the majority of people were there for manner and  
20 method, but we did discuss the revocation changes. As you can see, we held those  
21 four in our four area offices around the state. Four -- or I'm sorry, two verbal  
22 comments in those meetings were received and one written comment was received  
23 through the website and the written comment has been provided to you. I believe  
24 there is also a comment card from the last Commission meeting in there. And I -- just  
25 briefly, the only comments, really, all three of those comments dealt with the points

1 on hunting on private property without written permission, there were some concern  
2 that that may be too high of a point value. And with that, I'll stand for any questions.

3 CHAIRMAN KIENZLE: See the enthusiasm for 5a, there's no one on this sheet so I  
4 will enter this as Exhibit 6, the sign in sheet, which is blank, and there are no  
5 comment cards that I can find on this. Any questions or comments from  
6 commissioners on this one? Satisfied with this?

7 TY JACKSON: Mr. Chairman, I believe we are. This is our second go at this one  
8 and I think that we've got it good now.

9 CHAIRMAN KIENZLE: Yeah, a long and winding road. And how is the revocation  
10 process going? Smoothly?

11 TY JACKSON: Very well. Mr. Chairman and Members of the Commission, we are  
12 fully caught up with what's revocation. As you know, several years ago when I first  
13 came in front of you that we were years and years behind. That is no longer the  
14 case. In some cases where Lieutenant Cole is sending out a notice of contemplated  
15 action within, literally within days, of receiving a conviction. We are on top of it at this  
16 point and it seems to be working smoothly. The changes to the rule that we made  
17 last year seem to be working really well. It's nice to be able to get in after having  
18 worked in the rule for a year, get back in, and again, just tweak the little things and  
19 that's what you have in front of you today.

20 COMMISSIONER SALOPEK: Question.

21 CHAIRMAN KIENZLE: It's all good news. Yes, sir?

22 COMMISSIONER SALOPEK: Is it still to the discretion of the officer for that -- what's  
23 it called so you don't get a ticket -- I forget the name of it.

24 TY JACKSON: Mr. Chairman, Commissioner Salopek. It's a stipulated agreement.

25 COMMISSIONER SALOPEK: Right, stipulated agreement.

1 TY JACKSON: Yes, sir. We are utilizing that wherever it is appropriate. We all  
2 recognize that there are cases where someone pleads guilty maybe to several  
3 charges when a plea agreement may have been worked out had they gone to court,  
4 and that's one of the things that you saw in front of you today during the revocation  
5 presentation. There was one individual who the hearing office recommended no  
6 revocation. We didn't go through a stipulated agreement in that particular case, but  
7 that was one where we recognize that the punishment was not necessarily  
8 commensurate with the crime committed.

9 COMMISSIONER SALOPEK: I appreciate that. Because sometimes they make  
10 mistakes or, you know, so thank you.

11 TY JACKSON: Yes, sir.

12 CHAIRMAN KIENZLE: Any further exhibits?

13 TY JACKSON: No, Mr. Chairman.

14 CHAIRMAN KIENZLE: Any other questions or comments? Sticking to the script. I  
15 have admitted Exhibits 1 through 6. The comments submitted, and testimony heard  
16 during this rule hearing will be reviewed by the Commission and discussed during the  
17 open session of today's meeting. The Commission will vote on the proposed rule.  
18 Nobody really participated, except us, so I'm not going to thank you this time, but I  
19 will let the record show this hearing was adjourned at 1:21 p.m. Thank you. Can I  
20 get a motion on Hearing Item No. 5?

21 COMMISSIONER PETERSON: Mr. Chairman, I move to adopt the proposed  
22 changes to 19.31.2 NMAC as presented by the Department and allow the  
23 Department to make minor corrections filing this rule with state records and archives.

24 COMMISSIONER SALOPEK: Second.

25 CHAIRMAN KIENZLE: Any questions, further discussion? All in favor?

1 COMMISSIONERS: Aye.

2 CHAIRMAN KIENZLE: Any opposed? None opposed. Carries.

3 TY JACKSON: Thank you, Mr. Chairman and Members of the Commission.

4 CHAIRMAN KIENZLE: Thank you.

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