

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission (“Commission”) has scheduled a regular meeting and rule hearing for Thursday, November 16, 2017, beginning at 9:00 a.m., at Elephant Butte Inn Banquet Facility, 401 NM-195, Elephant Butte, New Mexico, to hear and consider action as appropriate on the following: Presentation of proposed changes to the Hunting and Fishing License Revocation rule;

Notice of Rule Making

Repeal

19.31.2 NMAC Hunting and Fishing License Revocation

Replace

19.31.2 NMAC Hunting and Fishing License Revocation

Synopsis:

The purpose is to repeal and replace the Hunting and Fishing License Revocation rule to generally update and propose specific timelines for the revocation process, add additional categories of point violations as well as increase and decrease certain point values of violations.

The proposed new rule (19.31.2 NMAC) will include some general formatting to clarify rule language, adding and removing different violations in point categories, creating new point categories to better fit violation types, adding and clarifying language in notice of contemplated action, Parental Responsibility Act, penalty assessment and civil damages.

The proposed changes of 19.31.2 NMAC include adding and removing violation/convictions, adding and removing violations from 20 point violations, creating a 17 point violation category, adding and removing violations from 15 point violations, adding and removing violations from the 10 point violations, adding and removing violations from 7 point violations, clarifying violations from the 5 point violations, creating a 3 point violations category, adding language to notice of contemplated action, adding language to wildlife violator compact suspension and revocations, adding and removing language to notice procedures and default orders for failure to request a hearing under Parental Responsibility Act, deleting language to notice procedures and default orders under failure to pay penalty assessment or civil damage, and adding some language to clarify revocation processes and time frames. A full copy of proposed changes will be available on the Department’s website (below).

Interested persons may submit comments on the proposed changes to the Hunting and Fishing License Revocation rule at dgf-fieldopscomments@state.nm.us ; or individuals may submit written comments to the physical address below. Comments are due by 9:00 a.m. on November 16, 2017 when the final rule amendments will be voted on by the Commission during a public meeting on November 16, 2017. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on November 16, 2017. 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, P.O. Box 25112, Santa Fe, New Mexico 87507, or from the Department’s website at www.wildlife.state.nm.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 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.

**MEETING MINUTES
NEW MEXICO STATE GAME COMMISSION
November 16, 2017
Elephant Butte Inn
401 NM 195
Elephant Butte, NM 87935
9:00 a.m. –5:00 p.m.**

A P P E A R A N C E S

Game Commissioner Thomas Salopek

Chairman Paul Kienzle

Vice Chairman Bill Montoya

Game Commissioner Robert Espinoza

Game Commissioner Ralph Ramos

Game Commissioner Bob Ricklefs

Game Commissioner Elizabeth Ryan

A B S E N T None

CHAIRMAN KIENZLE: Roll call.

DIRECTOR SANDOVAL: Commissioner Espinoza.

COMMISSIONER ESPINOZA: Present.

DIRECTOR SANDOVAL: Commissioner Ramos.

COMMISSIONER RAMOS: Thanks for having me here today. I am present. Here.

DIRECTOR SANDOVAL: Commissioner Ryan.

COMMISSIONER RYAN: I'm present.

DIRECTOR SANDOVAL: Commissioner Ricklefs.

COMMISSIONER RICKLEFS: Here.

DIRECTOR SANDOVAL: Commissioner Salopek.

COMMISSIONER SALOPEK: Present.

DIRECTOR SANDOVAL: Vice Chairman Montoya.

VICE CHAIRMAN MONTOYA: I think I'm here.

DIRECTOR SANDOVAL: Chairman Kienzle.

CHAIRMAN KIENZLE: Present.

DIRECTOR SANDOVAL: Chairman Kienzle, I believe we have a quorum.

CHAIRMAN KIENZLE: Okay. We have the series of Rule Hearings coming up and so let me, let me read a statement here. Bear with me. This is for the record. This hearing will please come to order. My name is Commissioner Paul Kienzle. I'll be serving as the Hearing Officer and be advised by the Commission's Council from the office of the Attorney General, Marylou Poli. The purpose of these hearings, one for the Commission to receive public comment and proposed amendments to the Commission's current rules in Title 19, Chapter 30, Part 9 and Title 19, Chapter 31, Parts 10, 12, 13, 14, 15, 16, 17, 21 of the New Mexico Administrative Code regarding rules on Game and Fish Licenses/Permits and Hunting and Fishing Manner and Method of take for carcass tagging. The Commission welcomes those who provided written

comment and everyone here today and two, for the Commission to receive public comment on proposed amendments to the Commission's current rules in Title 19, Chapter 30, Part 9. Is everyone awake? Okay--of the New Mexico Administrative Code regarding the Guide and Outfitting Registration. The Commission welcomes those who provided written comment and everyone here today. Three, for the Commission to receive public comment on proposed amendments to the Commission's current rules in Title 19, Chapter 31, Part 2 of the New Mexico Administrative Code regarding the Hunting and Fishing Licensed Revocation. The Commission welcomes those who provided written comment and everyone here today. Number Four, for the Commission to receive public comment on proposed amendments to the Commission's current rules in Title 19, Chapter 31, Parts 4 and 10 of the New Mexico Administrative Code regarding Fisheries and Hunting and Fishing Manner and Method. The Commission welcomes those who provided written comment and everyone here today and Number five, the Commission has terminated the current Rulemaking Process and will postpone until a later date the commission's Rule title 19, Chapter 31, Part 10 of the New Mexico Administrative Code regarding Trespass Certification. This hearing is being conducted in accordance with the provisions of the Game and Fish Act and the State Rules Act. The hearing is being audio taped, recorded and it may also be video recorded if I recall correctly. Anyone interested in a copy of the audio tape should contact Sandra with the Game and Fish Department to get a copy. Public matters of this hearing was advertised in the New Mexico Register, The Albuquerque Journal and the T or C Herald, The New Mexico Sunshine Portal and on the department's website. Copies of the proposed changes have been available on the department's website and at the department office. Those here today should sign in with comment cards and also there should be a sheet somewhere to sign-in as well and then those sheets and I believe

these comments cards, I know the sheets will but probably the comment cards as well will be entered into the record as an exhibit for these particular hearings. Okay. Let's see. Do you need me to do the Hearing Procedures now or do you want to--

MARYLOU POLI: Mr. Chair, yes. Please proceed with the Hearing Procedures.

CHAIRMAN KIENZLE: Got it. This Rule hearing will be conducted in the following manner. Staff will present pre-filed exhibits. Exhibits admitted into evidence are available for review by the public. The exhibits may not be removed from this room. After all exhibits are entered we'll proceed to the department and staff presentation of the proposed rule. Afterwards, testimony will be taken from the audience. It's not strictly testimony. We typically call it public comment and if you're going to speak again, you need to fill out that sheet that the Director is holding up and then also a comment card. In order to ensure the hearing is accurately recorded, only one person at a time shall be allowed to speak. Any person recognized to speak is asked to identify yourself by name and you are affiliated with for the record. Generally, if you're coming up time and time again, you need to identify yourself every time. Speak loud and clearly so the record is clear. After a person has offered comment, you may very well be asked questions. The department though the presenter, is not asked questions by the public. The Commission can ask questions of the department but it's not typically a situation where the public asks questions of the department presenter. This hearing is not subject to judicial rules of evidence, power of the interest of efficiency; I reserve the right to limit any testimony being irrelevant, redundant or unduly repetitious. The Commission will discuss the proposed rules during a subsequent Commission meeting which typically means we take, we will be discussing it at this meeting and also as an action item on the agenda. Final Commission action, including any adoption of the rules will not take place as part of the Rulemaking Hearing. So as I mentioned, we split this kind of into two

parts. One part is informational. Getting the record together of the second part is the actual action item when we take a vote on the proposal that's under discussion. I'm getting there. Bear with me.

CHAIRMAN KIENZLE: All right. Okay, next in line, 15, rule hearing on proposed amendments to hunting and fishing revocation rule 19.31.2 NMAC. I will proceed with hearing on proposed amendments to the Commission's current rules in Title 19, Chapter 31, Part 2 of the New Mexico Administrative Code regarding the hunting and fishing license revocation rule. Do we have any exhibits, pre-filed exhibits, on this one?

COLONEL GRIEGO: Mr. Chairman, we do. I have the presentation, the rule and public comment.

CHAIRMAN KIENZLE: Okay.

COLONEL GRIEGO: Hard copy and electronic.

CHAIRMAN KIENZLE: Thank you.

DIRECTOR SANDOVAL: So, Mr. Chairman, I have in front of me Exhibit 1 and 2, and Exhibit 3 as public comments.

CHAIRMAN KIENZLE: We will go ahead and admit Exhibits 1, 2 and 3 into the record. Colonel Griego, you can proceed.

COLONEL GRIEGO: Mr. Chairman, Commissioners, before you today is agenda number 15 to repeal and replace the hunting and fishing revocation rule. As you all know, the revocation rule 19.31.2 establishes criteria to revoke or suspend the hunting, fishing, trapping, guiding or/and outfitting privileges and/or licenses of those individuals who flagrantly and knowingly violate

statue of rules. An overview of the rule replacement we've come up with, we've added a few definitions, addressed the point values to fit severity of the violation, set a time frame for the revocation due process to occur, addressed some continuances and time frames, and also addressed some allowing the Department to move forward with the process of notice of contemplated actions in various scenarios. Again, one of the definitions that was missing from this rule that we felt was important was conviction so we added that, and protected species because protected species is mentioned in the rule. As far as point values go, the Department has recommended reducing the point values of 10 specific violations, increasing the point values of 4 violations, adding 3 specific violations and adding 5 criminal violations that were once administrative violations under the outfitter and guide rule. These are the specific rules that we are recommending a value decrease. There are the 10 of them. Some of the big ones are hunting big game outside the range boundaries or in the wrong unit. We are recommending moving that from a 20 to a 17-point category, creating that 17-point category basically if there's those scenarios where the individual inadvertently ends up in the wrong unit because they did not recognize a boundary whether it be a canyon [phonetic], road, fence, whatever the case may be. If caught it really just puts them on notice that 17 points is not enough to revoke them but if they were to kill something in the wrong unit that would put them over that threshold. As you can see, there's those 9 others that were recommended point value decreases. Some of the point value increases we're recommending, for example, waste of game from 15 to 20 points. As you know we were in the legislature this past year and we got where wasted game is now a felony so that is significant enough that we should move that to a revocable offense if committed. Additional violations, what that means is we've got the catch-all if a rule is not specifically noted. It falls into that 5-point category so what we're doing is specifically noting these violations as we're

starting to see occur more over the last several years and believe that they hold significance more than a 5-point violation and one of those being harassing of protected species by the use of motor vehicle. We've seen that across the west now with these new lasers, low side-by-sides where those machines are capable of hitting 70, 80, even close to 100 miles an hour. We're seeing a trend across the state where cases where individuals were literally able to run a wildlife down. So we'll be able to make those cases like we recently did in Roswell. We would like to address it with more than 5 points as it currently would stand. And then again, the addition of 5 criminal violations that used to be misconduct guide and outfitter rule.

CHAIRMAN KIENZLE: What's retention of wild animals? What . . .

COLONEL GRIEGO: Retention of wild animals is just that, having one of our protected species in their possession and we are seeing that in various instances and again believe that should be more than 5 points. Under, specifically under the rule 19.31.2.10.K, is the language we put for the timeframe for revocations basically giving the Department 1 year from the time a person accumulates 20 or more points; we have 1 year to institute the revocation process and get the sending of that notice of contemplated action or remove that revocation until they accumulate another violation and if that's within that 3-year period where they have points we could continue the revocation process. But it does give us that 1 year from the date of conviction for that threshold, that 20-point threshold is exceeded, we have 1 year to initiate the revocation process. Notice of contemplated action, what we're recommending is that you all would give the Director the authority to move forward with the sending of notice of contemplated action for individuals who are in the Parental Responsibility Act, wildlife violators compact or failure to pay penalty assessments that, as soon as they show up on those lists we would send them a notice of contemplated action immediately. If they choose not to have a hearing we would

automatically suspend them and at the next available Commission meeting we would provide you with a list of those individuals that were suspended for those 3 scenarios. All other criminal would continue with the same process. We would go before you before we sent any notice of contemplated actions. With that, I will take any questions.

COMMISSIONER MONTOYA: (Indiscernible/poor mike pick up).

COLONEL GRIEGO: Commissioner Montoya, (indiscernible/poor mike pick up). [Laughter]

COMMISSIONER MONTOYA: No, no I was behind the bid [phonetic].

CHAIRMAN KIENZLE: Any questions or comments? Let me get some public comment here. Kerrie Romero.

KERRIE ROMERO: Thank you, Mr. Chairman, Commissioners. Kerrie Romero with the New Mexico Council of Outfitters and Guides. I'd like to re-iterate what I said during the last agenda item. Thank you to the Colonel and the Department for all the hard work that went into revising this revocation rule. We are in favor of the changes being made and we feel that the revisions will both strengthen the Department's enforcement division and more fairly identify violations within the outfitter industry. We appreciate the fact that anything that is criminal is going to be required to be heard by a magistrate judge rather than a Department hearing officer. And we appreciate the Commission's support. Thank you.

CHAIRMAN KIENZLE: Any further public comment? Any exhibits from the public? All right. And we've got an attendance sheet?

DIRECTOR SANDOVAL: Mr. Chairman, we do. Exhibit 4 is the attendance sheet, excuse me, the sign-in sheet, and the comments is Exhibit 5.

CHAIRMAN KIENZLE: All right. I will admit Exhibits 4 and 5. I'll close the floor. And, any further questions or comments?

COMMISSIONER SALOPEK: So what Kerrie just said, what happens if somebody gets a ticket? It goes to the magistrate and then goes to our hearing or, I'm a little bit confused.

COLONEL GRIEGO: Mr. Chairman, Commissioner Salopek, what would occur is if an individual is cited they'll be sent to magistrate court. If they are convicted in magistrate court and we have that judgement and sentence in hand showing that they were convicted in a court of competent jurisdiction, at that point we will assess them the points for that violation. Once that gets in excess of 20 points, they would be sent a notice of contemplated action and the revocation process would begin. If they requested a hearing, they would still go in front of a hearing officer. But we will not assess points [phonetic] unless there was a conviction in the court.

COMMISSIONER RYAN: Or a plea of guilty or nolo contendere.

[Crosstalk]

CHAIRMAN KIENZLE: No further questions or comments? Can I get a motion?

COMMISSIONER RYAN: Mr. Chairman, I have a motion. I move that the Commission approve the proposed changes to the revocation rule 19.31.2 NMAC and provide that such approval is in recognition of the policy change initiative made by the Commission today regarding the 1-year limitations periods. Consistent with this policy shift [phonetic], my motion includes the Commission rescinding all current revocations acted upon by this Commission after August 1st, 2015 except for those revocations resulting only from violation of the Parental Responsibility Act, the Wildlife Violator Interstate Compact, and that criminal trespass statute 30-14-1 of the New Mexico Statutes Annotated and require the Department to make any

necessary updates to all administrative point values for all potential future violations. If so approved I would instruct the Department to bring forward to the Commission those potential revoke's as required by the new rule that may have reached the 20-point revocation threshold.

CHAIRMAN KIENZLE: Any questions or comments?

SPEAKER: I have one.

VICE CHAIRMAN MONTOYA: Second.

COMMISSIONER ESPINOZA: Commissioner Ryan, in your motion you said rescind all existing?

COMMISSIONER RYAN: Yes. It would include rescinding all current revocations acted on by the Commission from August 1st, 2015 forward.

[Crosstalk, indiscernible]

CHAIRMAN KIENZLE: And we've got a motion, a motion and a second. Any further questions or comments?

COMMISSIONERS: Aye.

CHAIRMAN KIENZLE: Any opposed?

COMMISSIONER ESPINOZA: Nay. Let me explain that. I'm opposed to the rescinding back to that further date.

NEW MEXICO STATE GAME COMMISSION

November 16, 2017
Elephant Butte Inn
401 NM 195
Elephant Butte, NM 87935
9:00 a.m. –5:00 p.m.

CERTIFICATE

I, Rose Leonard and I, Cheryl Melgarejo
DO HEREBY CERTIFY that the
above captioned transcription was prepared by me;
that the RECORDING was reduced to typewritten
transcript by me; that I listened to the entire
RECORDING; that the foregoing transcript is a
complete record of all material included thereon,
and that the foregoing pages are a true and correct
transcription of the recorded proceedings, to the
best of my knowledge and hearing ability. The
recording was good.

I FURTHER CERTIFY that I am neither employed
by nor related to nor contracted with (unless
excepted by the rules) any of the parties or
attorneys in this matter, and that I have no
interest whatsoever in the final disposition of this
matter.

Rose Leonard Cheryl Melgarejo
(Name of Transcriptionists)

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SPEAKER'S CARD

New Mexico State Game Commission Meeting

(Please Place Form in Appropriate Agenda Slot)

HEARING 15a

PLEASE PRINT

Name: Kenzie Romero

Address: [REDACTED]

[REDACTED]

City: [REDACTED] State: [REDACTED] Zip: [REDACTED]

Phone: [REDACTED]

Email: [REDACTED]

Officially Representing: NMCOG

(Organization(s))

Your Title: ED

Do you wish to be heard? Yes No

WRITTEN COMMENT (Below or Attached)

we are in favor
of the changes
to the Revocations
Rule.

Exhibit 5

Agenda 15

Nov 14, 2017



MEETING SIGN-IN SHEET

15A - Revocations

HEARING 3

New Mexico State Game Commission

(Sign-in to be in the official record as having attended this meeting. Mark the box if you wish to be added to the meeting notifications mailing list.)

PLEASE PRINT

NAME	ADDRESS CITY, STATE, ZIP	E-MAIL ADDRESS	PHONE	ADD TO MAILING LIST
✓ Bernie Romero	[Redacted]	[Redacted]	[Redacted]	<input type="checkbox"/>
Alden Cowan	[Redacted]	[Redacted]	Not speaking	<input checked="" type="checkbox"/>
	-----	@	() -	<input type="checkbox"/>
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Exhibit 4
Agenda 15 Nov 16, 2017

From: [REDACTED]
To: [DGF-FieldOpsComments](#)
Subject: Revocations Process
Date: Monday, November 06, 2017 7:29:43 PM

Hello First off all I'm in favor of revocation but yes it's far from perfect I believe people make mistakes First time offense should always be probation unless it a flagrant violation a person with no past violations should always be looked at and taken into account. Secondly if you get revoked do it on the area the violation happened not in all areas off licencing. Third the process off going through revocation due process it just to long people want to get on with their lives not even felonies take so long to know an outcome MVD does hundreds off revocations seems smooth to them. NMGF knows when a person has acquired enough points to revoke after the courts hand out judgement due process shouldn't take years after that. please take into consideration on this memo. Thank you

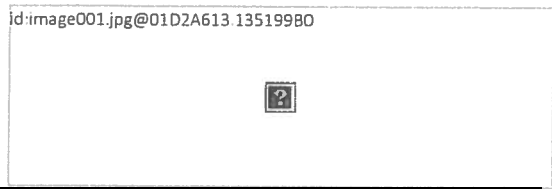
Exhibit 3
Agenda 15
Nov 16, 2017

From: [REDACTED]
To: [DGF-FieldOpsComments](#)
Subject: Hunting and Fishing License Revocation changes proposed.
Date: Wednesday, October 18, 2017 3:03:52 PM
Attachments: [image001.jpg](#)

I have only one comment to make regarding the changes and it is with the portion K, under 19.31.2.10 and refers to the due process time frame. It reads: K. For any conviction after January 1, 2018, if the department fails to initiate (initiation shall be calculated based on the post mark on the notice of contemplated action 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 exceed 20 points.

I believe that the time from conviction to initiation of the revocation procedure, should be reduced from one year to six months. Most Game and Fish citations are misdemeanors or petty misdemeanors and as such rules of criminal procedures state that if the state fails to initiate action for trial or no action has been taken the case is automatically dismissed by the court. Why should the Department be allowed to have one year to bring revocation, when in a criminal court, if they did nothing, it would be six months and dismissed. I know personally of a person who was revoked, and rightfully so, that the Department sat on the revocation procedure for 14 months from date of conviction to revocation procedure was finished. I feel that revocation is important and as such it should be brought about in a timely manner. The Department should be held accountable for doing it in a timely manner. Could it be, that this is a method that the Department consciously uses to make for a longer revocation time frame, if someone extends the time frame between guilty plea and the start of revocation. It appears that way in several cases, especially when the Department will refuse to issue a guide card or outfitter card to a person, if they are going to go to a revocation hearing eventually, but a person can buy a hunting or fishing license up until the notice of contemplated action occurs and revocation happens. Discriminatory toward

guides and outfitters..... interesting question.



Agenda Item #15a

Repeal/Replace Hunting and Fishing Revocation Rule 19.31.2 NMAC



Field Operations Division

Revocation Rule 19.31.2 NMAC

Establishes criteria to revoke or suspend hunting, fishing, trapping, guiding and outfitting privileges/licenses.

- Flagrantly or knowingly violates statute or rules;
- Violation of the Parental Responsibility Act (PRA);
- Wildlife Violator Compact;
- Failure to pay Penalty Assessment;
- Civil Assessments



Field Operations Division

Overview of Rule Replacement

- Added definitions
- Addressed point values to fit severity of violation
- Set a timeframe for revocation process to occur
- Added authorized ranch contacts as having some culpability
- Addressed continuances and timeframes
- Allows the Department to move forward with NCA's for PA's, IWVC and PRA



Field Operations Division


*Exhibit 1
Agenda 15
Nov 16 2017*

Definitions

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

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 species or subspecies as stated in regulation(s) set by the state game commission




Field Operations Division

Point Values

The Department recommends:


- reducing the point values of 10 violations
- increasing the point values of 4 violations
- adding 3 specific violations
- adding 5 criminal violations that were administrative violations under the O&G rule.



Field Operations Division

Point Value Decreases


- Hunting BG outside ranch boundaries or in the wrong GMU (20→17)
- Hunting public with private only license (20→17)
- Unlawful use of dogs while hunting BG or Turkey (15→10)
- Illegal possession of fish (10→7)
- Hunting small game w/o license (10→7)
- Hunting, fishing, trapping w/o stamps (5→3)
- Using Dept. issued permit w/o stamps (5→3)
- O&G violation of conditions of state or fed permit (10→5)
- O&G failure to comply with local, state, or fed law (10→5)
- Outfitter failure to supervise guides (10→5)



Field Operations Division

Point Value Increases


- Waste of Game (15→20) now a felony
- Shooting at protected sp. from an aircraft (15→20)
- Unlawful killing of BG during season (10→15)
- Exceeding bag limit of BG (10→15)



Field Operations Division

Additional violations

- Harassing a protected species by use of motor vehicle (15)
- Illegal use of aircraft or drone to locate or harass protected species (15)
- Retention of live animals (10)
- Addition of 5 criminal violations that used to be misconduct in G&O rule
 - Hiring unlicensed guide, contract violations, invalid O #, sufficient number of guides




Field Operations Division

Timeframe for Revocations

19.31.2.10.K

If the department fails to initiate (initiation shall be calculated based on the post mark on the notice of contemplated action 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 exceed 20 points.



Field Operations Division

Notice of Contemplated Action NCA's

- The commission will grant the Director the authority to immediately send NCA's for all individuals who fail to pay their Penalty Assessment (PA's) after 30 days, who appear on a certified list from Human Services as being out of compliance with the Parental Responsibilities Act (PRA) or those individuals who's name appears on the Interstate Wildlife Violators Compact Act list.
- Those individuals that do not request a hearing, will automatically have their license privileges suspended by the Department. The Department will submit a list of those suspended to the Commission at the next meeting



Field Operations Division

Questions?



Field Operations Division

2 comments – Both in favor of
revocations, just want to see them
initiated quicker



Field Operations Division

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, [09-14-2012] 12-19-2017]

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 [~~(40-5A-1 40-5A-13)~~](Chapter 40 NMSA 1978).
[19.31.2.2 NMAC - Rp, 19.31.2.2 NMAC, [09-14-2012] 12-19-2017]

19.31.2.3 STATUTORY AUTHORITY: [~~NMSA 1978~~] Sections 11-16-5 and 11-16-6 NMSA 1978; [~~sections~~] Sections 17-1-14 [~~(B)(10) and (11)~~], [~~Sections~~] and 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, [09-14-2012] 12-19-2017]

19.31.2.4 DURATION: Permanent.
[19.31.2.4 NMAC - Rp, 19.31.2.4 NMAC, [09-14-2012] 12-19-2017]

19.31.2.5 EFFECTIVE DATE: [~~September 14, 2012,~~] December 19, 2017 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, [09-14-2012] 12-19-2017]

19.31.2.6 OBJECTIVE: To revoke [~~or suspend~~] 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, or Section 30-14-1 NMSA 1978; to [~~revoke or~~] 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 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 Section 17-2-10.1 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; [~~or~~] 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 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 state; [~~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, [09-14-2012] 12-19-2017]

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.
- [~~B~~]C. "Department" means New Mexico department of game and fish.
- [~~C~~]D. "Director" means the director of the department of game and fish.
- [~~D~~]E. "Obligor" means a person who has been ordered to pay child or spousal support pursuant to a judgment and order for support.
- [~~E~~] F. "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 species or subspecies as stated in regulation(s) set by the state game commission

[F]G. “Respondent” means any person holding a license, permit, certificate, registration, landowner agreement, or applicant thereof, who is served a notice of contemplated action.

[G]H. “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 [of game and fish], are taken away by the [state game] commission after notice and opportunity for a hearing.

I. “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, 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, [09-14-2012] 12-19-2017]

19.31.2.8 CRIMINAL REVOCATION CATEGORIES AND [TIMEFRAME] POINTS:

[—A.— 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 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 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 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) accessory to any of the above.

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) accessory to any of the above.

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 of any species in violation of Section 17-3-32 NMSA 1978 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;
(4) illegal possession of any heads, horns or antlers of a protected species found in the field;
(5) procurement or possession of any additional big game license or carcass tag, except as provided by rule;
(6) fail to properly tag big game species or turkey with a carcass or antler tag as prescribed;
(7) using an invalid or voided carcass or antler tag;
(8) using a carcass or antler tag issued to another person;
(9) illegally taking, attempting to take, killing, capturing or possessing of any turkey or small game during hunting season;
(10) hunting turkey without a license;
(11) exceeding the bag limit of small game;
(12) exceeding the bag limit of fish;
(13) unlawfully using dogs while hunting big game or turkey;
(14) retention of live animals;
(15) refusing or failing to produce an outfitter contract or not having a signed contract prior to hunting;
(16) applying or allowing someone to apply in the special drawing pool without a contract; or
(17) 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.

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 stamps; or
(2) using any department issued permit without possessing the proper stamps.

~~[B. — Guide and outfitter: A registered outfitter or guide who violates any provision of Section 17-2A-3, or 17-3-16 and their implementing rules not already addressed in this section shall be assessed points towards the revocation or suspension of their guide and/or outfitting registration as follows:~~

- ~~(1) 20 points:
 - ~~(a) violation of conditions of registration;~~
 - ~~(b) misrepresentation or failure to disclose;~~
 - ~~(c) aiding, concealing or willfully allowing violations of applicable laws by a hunter-client.~~~~
- ~~(2) 10 points:
 - ~~(a) failure to provide sufficient guides or guiding services;~~
 - ~~(b) failure to properly supervise guides;~~
 - ~~(c) unregistered services;~~
 - ~~(d) failure to comply with any local, state, or federal laws;~~
 - ~~(e) breach of contract;~~
 - ~~(f) failure to provide a signed contract;~~
 - ~~(g) failure to report illegal activity.~~~~
- ~~(3) 5 points: Any outfitter and guide misconduct not otherwise specifically listed herein.~~
- ~~(4) Guides and outfitters shall be notified when points are assessed.~~

~~C. — Landowner contracts and agreements: A landowner's privilege to participate in a department-sponsored private land program may be revoked for breach or violation of the conditions of a contract or agreement with the department. The landowner shall be afforded with notice and opportunity for a hearing in accordance with the process for revocation as set forth in this rule.~~

~~D. — Timeframe: 17-1-14 B. (11) NMSA 1978 provides that the commission shall establish procedures for the suspension, revocation, or withholding of license privileges for a definite period of time.~~

~~(1) Any person found to have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17, its implementing rules, or Section 30-14-1 NMSA 1978, after notice and opportunity to be heard by a hearing officer, shall have his or her license, permit, certificate, and privilege to hold such, revoked for up to three years, unless otherwise provided for by law.~~

~~(2) 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 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, and privilege 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.~~

~~(3) 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 or its implementing rules, for a third or subsequent time, shall have his or her license, permit, certificate and privilege 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.~~

~~(4) Any person found to have taken or killed a bighorn sheep, ibex, oryx, barbary 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, and privilege to hold such, revoked for up to seven years, unless otherwise provided for by law.~~

~~(5) Any person found to have taken or killed a bighorn sheep, ibex, oryx, barbary 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, and privilege to hold such, revoked for up to ten years, unless otherwise provided for by law.~~

~~(6) 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, and privilege to hold such, revoked for up to five years, unless otherwise provided for by law.~~

~~(7) 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, and privilege to hold such, revoked for up to seven years, unless otherwise provided for by law.~~

~~(8) 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.~~

~~(9) Any person not in compliance with the Parental Responsibility Act (Section 40-5A-1 NMSA 1978) or the Wildlife Violator Compact (Section 11-16-1 NMSA 1978) shall have his or her license, permit, certificate, and privilege to hold such, revoked or suspended for the timeframe designated and allowed by law.~~

~~(10) The commission may revoke a person's license, permit, certificate, and privilege 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 or its implementing rules.]~~

~~[19.31.2.8 NMAC - Rp, 19.31.2.9 NMAC, [09-14-2012; A, 10-31-2013] 12-19-2017]~~

~~**[19.31.2.9 POINT CATEGORIES:** The violations listed below are each assigned specific point values which count toward the revocation of a license, permit or certificate and the suspension of associated privileges when 20 or more points are accrued in a period of three consecutive years.~~

~~**A. 20-point violations:** Any person violating any of the following provisions shall be assessed 20 points:~~

~~(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;~~

~~(2) 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 species or the United States' list of endangered native and foreign fish and wildlife;~~

~~(3) any violation of Section 17-3-6;~~

~~(4) selling, offering for sale, offering to purchase or purchasing any game animal, game bird or protected species, in violation of Section 17-2-7;~~

~~(5) hunting with the aid of an artificial light or spotlight, in violation of Section 17-2-31;~~

~~(6) hunting big game outside the ranch boundaries for which a ranch-only license is issued or otherwise hunting big game in the wrong area, in violation of Section 17-2-7;~~

~~(7) criminal trespass, in violation of Section 30-14-1, when in connection with hunting, fishing or trapping activity; revocation to be for three years;~~

~~(8) for violations of Section 17-2-29, involving hunting or boating while intoxicated (revocation for a period of one year, as prescribed by Section 17-2-30);~~

~~(9) buying of licenses, permits certificates or registration without sufficient funds to pay for same;~~

~~(10) any violation of Section 17-3-48, provided that any revocation under this section shall commence consecutively to any current revocation;~~

~~(11) guiding or outfitting without being registered in violation of Section 17-2A-3;~~

~~(12) using an outfitter or guide license issued to another;~~

~~(13) hunting big game without a license;~~

~~(14) any violation of Section 17-3-49;~~

~~(15) any violation of Section 17-2-7.1;~~

~~(16) any person submitting, or allowing to be submitted for them, false or fraudulent harvest reporting information as required by rule;~~

~~(17) flagrant 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;~~

~~(18) unlawfully taking amphibians and reptiles for commercial purposes, without a permit, in violation of Section 17-2-4.2;~~

~~(19) knowingly or willfully introducing an aquatic invasive species, in violation of Section 17-4-35;~~

~~(20) accessory to any of the above.~~

~~**B. 15-point violations:** Any person violating any of the following provisions shall be assessed 15 points:~~

~~(1) shooting at any protected species from a vehicle;~~

~~(2) shooting at any protected species from a roadway, as provided in rule;~~

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

~~(4) any violation of Section 17-2-8, except as otherwise provided for in Subsection D of 19.31.2.8 NMAC;~~

~~(5) unlawfully using dogs while hunting big game or turkey;~~

- ~~(6) importation of any species in violation of Section 17-3-32 without a permit;~~
- ~~(7) any violation of Section 17-3-45;~~
- ~~(8) accessory to any of the above violations.~~
- ~~C. 10 point violations: Any person violating any of the following provisions shall be assessed 10 points:~~
 - ~~(1) hunting in a closed area;~~
 - ~~(2) exceeding the bag limit of game;~~
 - ~~(3) illegal possession of fish;~~
 - ~~(4) exceeding the bag limit on fish;~~
 - ~~(5) fishing by an illegal method;~~
 - ~~(6) procurement or possession of additional deer license, except as provided by rule;~~
 - ~~(7) illegally taking, attempting to take, killing, or capturing of any big game species or turkey during hunting season;~~
 - ~~(8) illegal possession of any big game species or turkey during hunting season;~~
 - ~~(9) hunting turkey or small game without a license;~~
 - ~~(10) 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;~~
 - ~~(11) accessory to any of the above violations.~~
- ~~D. 7 point violations: Any person fishing without a license shall be assessed seven points.~~
- ~~E. 5 point violations: Any person violating any provision of Chapter 17 NMSA 1978 and its implementing rules not specifically listed herein, except for violations of Section 17-2A-3 and its implementing rules shall be assessed five points.]~~

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 person who submits a false harvest report may be assessed administrative revocation points for violations provided below. Any person with 20 or more points accumulated within any consecutive three-year period shall have 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 information as required by rule.
- 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 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, [09-14-2012; A, 10-31-2013] 12-19-2017]

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, its implementing rules, or Section 30-14-1 NMSA 1978, after notice and opportunity to be heard by a hearing officer, shall have his or her license, permit, certificate, registration, and privilege to hold such, revoked for ~~up to three years,~~ 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 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 privilege 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 or its implementing rules, for a third or subsequent time, shall have his or her license, permit, certificate, registration and privilege 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, barbary 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 privilege 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, barbary 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 privilege 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 privilege 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 privilege 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 Wildlife Violator Compact (Section 11-16-1 NMSA 1978) shall have his or her license, permit, certificate, and privilege 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 privilege 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 or its implementing rules, and provided that any revocation under this section shall commence consecutively to any current revocation.

K. If the department fails to initiate (initiation shall be calculated based on the post mark on the notice of contemplated action 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 exceed 20 points.

~~[19.31.2.9 NMAC – Rp, 19.31.2.9 NMAC, 09-14-2012; A, 10-31-2013]~~ [19.31.2.10 NMAC – Rp, 19.31.2.8 NMAC, 12-19-2017]

~~[19.31.2.10]~~ 19.31.2.11 [NOTICE OF CONTEMPLATED ACTION] REVOCATION AND SUSPENSION

PROCEDURES: The department shall mail out a notice of contemplated action (“NCA”) [as required by this section] 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. 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. The NCA shall clearly describe the 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 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 the respondent to his or her rights under Section 17-3-34 NMSA 1978 and this rule.

~~[19.31.2.10 NMAC - Rp, 19.31.2.10 NMAC, 09-14-2012]~~ [19.31.2.11 NMAC - N, 12-19-2017]

~~[19.31.2.11]~~ **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 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 those license(s), permit(s), certificate(s), registration(s), landowner agreement(s), or application(s) shall be automatically revoked and associated privileges suspended pursuant to this rule.

B. Within 15 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.

~~[19.31.2.11 NMAC - Rp, 19.31.2.11 NMAC, 09-14-2012]~~ [19.31.2.12 NMAC - Rp, 19.31.2.11 NMAC, 12-19-2017]

~~[19.31.2.12]~~ **19.31.2.13 HEARING REQUESTED:** If a respondent ~~[does request]~~ 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 ~~[not]~~ 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.

~~[19.31.2.12 NMAC - Rp, 19.31.2.12 NMAC, 09-14-2012]~~ [19.31.2.13 NMAC - Rp, 19.31.2.12 NMAC, 12-19-2017]

~~[19.31.2.13]~~ **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 10 days after the mailing or delivery of the request. No such request shall be made less than 15 days before the hearing.

C. **Stipulated agreements:** 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.

~~[19.31.2.13 NMAC - Rp, 19.31.2.13 NMAC, 09-14-2012]~~ [19.31.2.14 NMAC - Rp, 19.31.2.13 NMAC, 12-19-2017]

~~[19.31.2.14]~~**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, at his or her last known address as shown by the records of the department of game and fish.
~~[19.31.2.14 NMAC - Rp, 19.31.2.14 NMAC, 09-14-2012]~~~~[19.31.2.15 NMAC - Rp, 19.31.2.14 NMAC, 12-19-2017]~~

~~[19.31.2.15]~~**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 or refusal of the addressee to accept delivery of the notice or decision.
~~[19.31.2.15 NMAC - Rp, 19.31.2.15 NMAC, 09-14-2012]~~~~[19.31.2.16 NMAC - Rp, 19.31.2.15 NMAC, 12-19-2017]~~

~~[19.31.2.16]~~**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.

~~[19.31.2.16 NMAC - Rp, 19.31.2.16 NMAC, 09-14-2012]~~~~[19.31.2.17 NMAC - Rp, 19.31.2.16 NMAC, 12-19-2017]~~

~~[19.31.2.17]~~**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.

~~[19.31.2.17 NMAC - Rp, 19.31.2.17 NMAC, 09-14-2012]~~~~[19.31.2.18 NMAC - Rp, 19.31.2.17 NMAC, 12-19-2017]~~

~~[19.31.2.18]~~**19.31.2.19** **HEARING OPEN TO THE PUBLIC:** All hearings conducted under this rule shall be open to the public.

~~[19.31.2.18 NMAC - Rp, 19.31.2.18 NMAC, 09-14-2012]~~~~[19.31.2.19 NMAC - Rp, 19.31.2.18 NMAC, 12-19-2017]~~

~~[19.31.2.19]~~**19.31.2.20** **HEARING INTERPRETER PROVIDED:** The commission shall provide an interpreter for individuals requesting a hearing who provide proof of hearing impairment to the extent that he/she cannot understand voice communications.

~~[19.31.2.19 NMAC - Rp, 19.31.2.19 NMAC, 09-14-2012]~~~~[19.31.2.20 NMAC - Rp, 19.31.2.19 NMAC, 12-19-2017]~~

~~[19.31.2.20]~~**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.

~~[19.31.2.20 NMAC - Rp, 19.31.2.20 NMAC, 09-14-2012]~~~~[19.31.2.21 NMAC - Rp, 19.31.2.20 NMAC, 12-19-2017]~~

~~[19.31.2.21]~~**19.31.2.22** **RULES OF EVIDENCE:** The hearing officer shall consider a copy of a conviction, 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. 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. 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 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.

~~[19.31.2.21 NMAC - Rp, 19.31.2.21 NMAC, 09-14-2012]~~ [19.31.2.22 NMAC - Rp, 19.31.2.21 NMAC, 12-19-2017]

~~[19.31.2.22]~~ **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.

C. Hearing officer's report: 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.

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 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 matter not related to and within the scope of the exceptions.

~~[19.31.2.22 NMAC - Rp, 19.31.2.22 NMAC, 09-14-2012]~~ [19.31.2.23 NMAC - Rp, 19.31.2.22 NMAC 12-19-2017]

~~[19.31.2.23]~~ **19.31.2.24 FINAL DECISION OF THE COMMISSION:**

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

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

D. Written decision served: Within 15 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.

~~[E. — Default orders for failure to request a hearing: The commission shall consider the department's submission of names of respondents who have not requested a hearing and whose license(s), permit(s), certificate(s), landowner agreement(s), or application(s) shall be automatically revoked and associated privileges suspended pursuant to Section 8 of this rule.]~~

~~[19.31.2.23 NMAC - Rp, 19.31.2.23 NMAC, 09-14-2012]~~ [19.31.2.24 NMAC - Rp, 19.31.2.23 NMAC 12-19-2017]

~~[19.31.2.24]~~ **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 has been revoked by the commission 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.

~~[19.31.2.24 NMAC - Rp, 19.31.2.24 NMAC, 09-14-2012]~~ [19.31.2.25 NMAC - Rp, 19.31.2.24 NMAC, 12-19-2017]

~~[19.31.2.25]~~ **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 ~~[Section 17-2-10.3.B]~~ 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. ~~[and temporarily withheld or suspended, if any such license, permit, certificate or registration has been issued by the department.]~~ 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 immediately ~~[and temporarily]~~ withheld or suspended ~~[if any such license, permit, certificate or registration has been issued by the department]~~ until they have complied with the court appearance or citation requirements in the other state. 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. Revocation proceedings and hearings shall be in accordance with this rule.

A. 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, the director may administer the suspension or revocation under 19.31.2.26 NMAC without further commission consideration.

B. The department shall notify the commission of the number of individuals revoked or suspended pursuant to Subsection A 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.

~~[19.31.2.25 NMAC - Rp, 19.31.2.25 NMAC, 09-14-2012]~~ ~~[19.31.2.26 NMAC - Rp, 19.31.2.25 NMAC, 12-19-2017]~~

~~[19.31.2.26]~~ **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. Chapter 17 NMSA 1978 provides that the commission shall suspend the license, permit, or certificate, and the associated privileges of any person who fails to pay a penalty assessment or a civil judgment, until the assessment or judgment is paid in full.

~~[19.31.2.26 NMAC - N, 09-14-2012]~~ ~~[19.31.2.27 NMAC - Rp, 19.31.2.26 NMAC, 12-19-2017]~~

~~[19.31.2.27]~~ **19.31.2.28** **PARENTAL RESPONSIBILITY ACT:** Any person found to be in violation of the PRA, after notice and an opportunity for review 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 and has paid the reinstatement fee.

A. **Notice procedures:** When the department receives a human services department certified list of obligors not in compliance with the PRA, ~~[the department will present the list to the commission for the approval of the issuance and service of]~~ the director may send a NCA to the listed obligors. The department shall send a NCA as required by this section to any named obligor who holds a license, permit, certificate, or registration. The NCA, sent by certified mail with return receipt requested, shall consist of a written notice advising the obligor that the department has grounds to take action, and that on behalf of the commission, it shall suspend the obligors license(s), permit(s), certificate(s) or registration(s), and the privileges 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.

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 ~~[no]~~ 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.

(9) The issues to be decided at the hearing 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.

(10) In any hearing under this section, relevant evidence shall be limited to the following:
(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, ~~or~~ 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 commission grants approval to the department through~~ the director ~~to~~ may administer ~~these~~ the suspensions without further commission consideration ~~or additional notice~~.

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.

[D]E. Reinstatement fee: Any person whose license, permit, certificate, or registration, has been suspended in accordance with the PRA shall be reinstated after demonstrating proof of compliance from the human services department, 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.

~~[19.31.2.27 NMAC - N, 09-14-2012]~~ [19.31.2.28 NMAC - Rp. 19.31.2.27 NMAC, 12-19-2017]

[19.31.2.28] 19.31.2.29 FAILURE TO PAY PENALTY ASSESSMENT OR CIVIL DAMAGE: 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 pay a penalty assessment levied under Section 17-2-10.1 NMSA 1978 shall be suspended ~~for three years, or~~ until the penalty assessment is paid in full. Any person ~~that~~ who has had a civil judgment assessed against them pursuant to Section 17-2-26 NMSA 1978 shall have their license, permit, ~~or~~ certificate ~~or registration~~ ~~and the associated~~ privileges suspended until those damages have been paid in full.

A. Notice procedures: When 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 has failed to pay damages pursuant to a civil judgment in accordance with Section 17-2-26 NMSA 1978, the ~~department will present to the commission, at a regularly scheduled commission meeting, a list of such persons for the commission to approve the serving~~ director

may serve [of] a NCA to [the listed]such persons. The department shall send a NCA [as required by this section to any named person who holds a license, permit, or certificate. The NCA, sent] by certified mail with return receipt requested. The NCA shall consist of a written notice advising the respondent that the department has grounds to take action, and that on behalf of the commission it shall suspend the license, permit, certificate or registration and any privileges thereof unless the person:

- (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 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 [nor]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 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.

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

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

(b) is the person whose name appears on the list presented to the commission by the

department.

(10) In any hearing under this section, relevant evidence shall be limited to 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 assessment or damages within 30 days of the date that notice was mailed, the

commission grants approval to the department through the director to administer ~~[these suspensions]~~ a 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.

~~[D.]E.~~ **Reinstatement:** Any person whose license, certificate, or permit, has been suspended in accordance with this section shall be reinstated after paying their outstanding assessments or damages. ~~[19.31.2.28 NMAC—N, 09-14-2012]~~[19.31.2.29 NMAC - Rp. 19.31.2.28 NMAC. 12-19-2017]

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.

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, 12-19-2017]

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, 12-19-2017]

19.31.2.3 STATUTORY AUTHORITY: Sections 11-16-5 and 11-16-6 NMSA 1978; Sections 17-1-14, and 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]

19.31.2.4 DURATION: Permanent.
[19.31.2.4 NMAC - Rp, 19.31.2.4 NMAC, 12-19-2017]

19.31.2.5 EFFECTIVE DATE: December 19, 2017 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, 12-19-2017]

19.31.2.6 OBJECTIVE: To revoke 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, 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 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 Section 17-2-10.1 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 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 state; 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, 12-19-2017]

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. **“Department”** means New Mexico department of game and fish.
- D. **“Director”** means the director of the department of game and fish.
- E. **“Obligor”** means a person who has been ordered to pay child or spousal support pursuant to a judgment and order for support.
- F. **“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 species or subspecies as stated in regulation(s) set by the state game commission
- G. **“Respondent”** means any person holding a license, permit, certificate, registration, landowner agreement, or applicant thereof, who is served a notice of contemplated action.

H. "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 after notice and opportunity for a hearing.

I. "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, 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, 12-19-2017]

19.31.2.8 CRIMINAL REVOCATION CATEGORIES AND 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 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 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 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) accessory to any of the above.

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) accessory to any of the above.

- 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 of any species in violation of Section 17-3-32 NMSA 1978 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;
 - (4) illegal possession of any heads, horns or antlers of a protected species found in the field;
 - (5) procurement or possession of any additional big game license or carcass tag, except as provided by rule;
 - (6) fail to properly tag big game species or turkey with a carcass or antler tag as prescribed;
 - (7) using an invalid or voided carcass or antler tag;
 - (8) Using a carcass or antler tag of any other person;
 - (9) illegally taking, attempting to take, killing, capturing or possessing of any turkey or small game during hunting season;
 - (10) hunting turkey without a license;
 - (11) exceeding the bag limit of small game;
 - (12) exceeding the bag limit of fish;
 - (13) unlawfully using dogs while hunting big game or turkey;
 - (14) retention of live animals;
 - (15) refusing or failing to produce an outfitter contract or not having a signed contract prior to hunting;
 - (16) applying or allowing someone to apply in the special drawing pool without a contract; or
 - (17) 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.
- 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 stamps; or
 - (2) using any department issued permit without possessing the proper stamps.
- [19.31.2.8 NMAC - Rp, 19.31.2.9 NMAC, 12-19-2017]

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 person who

submits a false harvest report may be assessed administrative revocation points for violations provided below. Any person with 20 or more points accumulated within any consecutive three-year period shall have 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 information as required by rule.

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 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, 12-19-2017]

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, its implementing rules, or Section 30-14-1 NMSA 1978, after notice and opportunity to be heard by a hearing officer, shall have his or her license, permit, certificate, registration, and privilege 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 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 privilege 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 or its implementing rules, for a third or subsequent time, shall have his or her license, permit, certificate, registration and privilege 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, barbary 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 privilege 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, barbary 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 privilege 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 privilege 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 privilege 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 Wildlife Violator Compact (Section 11-16-1 NMSA 1978) shall have his or her license, permit, certificate, and privilege 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 privilege 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 or its implementing rules, and provided that any revocation under this section shall commence consecutively to any current revocation.

K. If the department fails to initiate (initiation shall be calculated based on the post mark on the notice of contemplated action 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 exceed 20 points.

[19.31.2.10 NMAC – Rp, 19.31.2.8 NMAC, 12-19-2017]

19.31.2.11 REVOCATION AND SUSPENSION PROCEDURES: The department shall mail out a notice of contemplated action (“NCA”) 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. 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. The NCA shall clearly describe the 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 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 the respondent to his or her rights under Section 17-3-34 NMSA 1978 and this rule.

[19.31.2.11 NMAC - N, 12-19-2017]

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 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 those license(s), permit(s), certificate(s), registration(s), landowner agreement(s), or application(s) shall be automatically revoked and associated privileges suspended pursuant to this rule.

B. Within 15 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, 12-19-2017]

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, 12-19-2017]

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 10 days after the mailing or delivery of the request. No such request shall be made less than 15 days before the hearing.

C. Stipulated agreements: 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, 19.31.2.13 NMAC, 12-19-2017]

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, 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, 12-19-2017]

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 or refusal of the addressee to accept delivery of the notice or decision. [19.31.2.16 NMAC - Rp, 19.31.2.15 NMAC, 12-19-2017]

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, 12-19-2017]

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. [19.31.2.18 NMAC - Rp, 19.31.2.17 NMAC, 12-19-2017]

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 12-19-2017]

19.31.2.20 HEARING INTERPRETER PROVIDED: The commission shall provide an interpreter for individuals requesting a hearing who provide proof of hearing impairment to the extent that he/she cannot understand voice communications.

[19.31.2.20 NMAC - Rp, 19.31.2.19 NMAC 12-19-2017]

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.

[19.31.2.21 NMAC - Rp, 19.31.2.20 NMAC, 12-19-2017]

19.31.2.22 RULES OF EVIDENCE: The hearing officer shall consider a copy of a conviction, 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. 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. 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 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, 12-19-2017]

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.

C. Hearing officer's report: 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.

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 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 matter not related to and within the scope of the exceptions.

[19.31.2.23 NMAC - Rp, 19.31.2.22 NMAC 12-19-2017]

19.31.2.24 FINAL DECISION OF THE COMMISSION:

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

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 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 12-19-2017]

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 has been revoked by the commission 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]

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 immediately withheld or suspended until they have complied with the court appearance or citation requirements in the other state. 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. Revocation proceedings and hearings shall be in accordance with this rule.

A. 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, the director may administer the suspension or revocation under 19.31.2.26 NMAC without further commission consideration.

B. The department shall notify the commission of the number of individuals revoked or suspended pursuant to Subsection A 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]

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. Chapter 17 NMSA 1978 provides that the commission shall suspend the license, permit, or certificate, and the associated privileges of any person who fails to pay a penalty assessment or a civil judgment, until the assessment or judgment is paid in full.

[19.31.2.27 NMAC - Rp, 19.31.2.26 NMAC, 12-19-2017]

19.31.2.28 PARENTAL RESPONSIBILITY ACT: Any person found to be in violation of the PRA, after notice and an opportunity for review 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 and has paid the reinstatement fee.

A. Notice procedures: When the department receives a human services department 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 NCA as required by this section to any named obligor who holds a license, permit, certificate, or registration. The NCA, sent by certified mail with return receipt requested, shall consist of a written notice advising the obligor that the department has grounds to take action, and that on behalf of the commission, it shall suspend the obligors license(s), permit(s), certificate(s) or registration(s), and the privileges 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.

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.

(9) The issues to be decided at the hearing 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.

(10) In any hearing under this section, relevant evidence shall be limited to the following:

(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, has been suspended in accordance with the PRA shall be reinstated after demonstrating proof of compliance from the human services department, 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]

19.31.2.29 FAILURE TO PAY PENALTY ASSESSMENT OR CIVIL DAMAGE: 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 pay a penalty assessment levied under Section 17-2-10.1 NMSA 1978 shall be suspended until the penalty assessment is paid in full. Any 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 suspended until those damages have been paid in full.

A. Notice procedures: When 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 has failed to pay damages pursuant to a civil judgment in accordance with Section 17-2-26 NMSA 1978, the director may serve a NCA to such persons. The department shall send a NCA by certified mail with return receipt requested. The NCA shall consist of a written notice advising the respondent that the department has grounds to take action, and that on behalf of the commission it shall suspend the license, permit, certificate or registration and any privileges thereof unless the person:

(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 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 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.

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

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

(b) is the person whose name appears on the list presented to the commission by the department.

(10) In any hearing under this section, relevant evidence shall be limited to 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 assessment or damages within 30 days of the date that notice was mailed, the commission grants approval to the department through the director to administer a 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 been suspended in accordance with this section shall be reinstated after paying their outstanding assessments or damages. [19.31.2.29 NMAC - Rp, 19.31.2.28 NMAC, 12-19-2017]

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 Repealed effective 12-19-2017.

NMAC

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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 Repeal/Replace Renumber Emergency

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

Concise Explanatory Statement for rulemaking adoption:

Notice date(s): Hearing date(s): Rule Adoption date: Rule Effective date:

Specific statutory or other authority authorizing rulemaking:

Findings required for rulemaking adoption. Please attach and sign additional page(s) if necessary.

Issuing authority (If delegated, authority letter must be on file with ALD):
Name: Check if authority has been delegated
Title:

Signature: (BLACK ink only) Date signed:

NMAC Transmittal Form

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

Issuing agency name and address: Agency DFA code:

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Specific statutory or other authority authorizing rulemaking:

Findings required for rulemaking adoption. Please attach and sign additional page(s) if necessary.

The purpose is to repeal and replace the Hunting and Fishing License Revocation rule to generally update and propose specific time lines for the revocation process and add additional categories of point violations as well as increase and decrease certain point values of violations.

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

Name: Check if authority has been delegated

Title:

Signature: (BLACK ink only) Date signed:

The State Game Commission, approved at its 11/16/2017 hearing, to repeal its rule 19.31.2 NMAC - Hunting and Fishing License Revocation (filed 09/14/2012) and replace it with 19.31.2 NMAC - Hunting and Fishing License Revocation, adopted on 11/16/2017 and effective 12/19/2017.