

New Mexico Register / Volume XXVIII, Issue 23 / December 12, 2017

STATE GAME COMMISSION MEETING AND RULEMAKING HEARING

The New Mexico State Game Commission ("Commission") has scheduled a regular meeting and rule hearing for Thursday January 11, 2018, beginning at 9:00 a.m., at Santa Fe Community College Boardroom, 6401 Richards Ave, Santa Fe,, New Mexico, to hear and consider action as appropriate on the following: informational presentation and final action of proposed process for Procedural Rule for Public Rule Hearings.

Notice of Rulemaking

Proposed New Part in Rule

19.30.17 NMAC Procedural Rule for Public Rule Hearings

Synopsis:

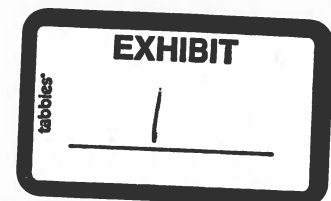
The proposed rule is intended to comport with House Bill 58 (Laws 2017, Chapter 137), to add a Part 17 in Chapter 30, of Title 19 NMAC to establish procedural rules for public rule hearings for use by the Commission and the Department of Game and Fish consistent with the State Rules Act, and to facilitate public engagement with the administrative rulemaking process in a transparent, organized, and fair manner. This is a result from new language in statute Section 14-4-5.8 NMSA 1978 which was passed in the 2017 legislative session and became effective in July 2017.

Summary of the proposed new part in rule (19.30.17 NMAC) will include all required headings to include: Issuing Agency, Scope, Statutory Authority, Duration, Effective Date, Objective, Definitions, Initiation of the Rule Making Process, Rulemaking Notice, Written Comment Period, Public Hearing, Rulemaking Record and Adoption of Rule, Filing and Publication; Effective Date, Emergency Rules. Full text of the new rule will be available on the Department's website (see below).

Interested persons may submit comments on the new rule to dgf-AdminPublicComment@state.nm.us; or individuals may submit written comments to the physical address below. Comments are due by 9:00 a.m. on January 11, 2018 when the final rule will be voted on by the Commission during a public meeting on January 11, 2018. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on January 11, 2018. Full copies of text of the proposed new rule part, related technical information, 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.us/commission/proposals-under-consideration/. The agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or visit 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.

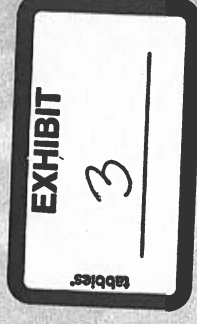
Legal authority for this rulemaking can be found in the General Powers and Duties of State Game Commission Section 17-1-14, et seq. NMSA 1978; Commission's Power to establish rules and regulations Section 17-1-26, et seq. NMSA 1978; Procedural Rules Section 14-4-5.8 NMSA 1978.



Agenda Item 15a

Presentation of proposed new rule
19.30.17 NMAC - Procedural Rule
for Public Rule Hearings per State
Rules Act.

January 11, 2018



Background

- During the 2017 Regular Legislative Session, House Bill 58, Relating to Rules; creating requirements for posting, adopting, amending or repealing rules was passed.
- Bill was signed into law by Governor and became effective July 2017.
- Section of the law allows for each agency/commission to adopt procedure rules for public rule hearings consistent with the State Rules Act.

Objective

- The Department is requesting the adoption of a new Part in rule to establish Procedural rules for public rule hearings for use by the Commission.
- The new rule would:
 - Describe the initiation process of rulemaking
 - Prescribe what is required in the Rulemaking Notice
 - Provide for a public comment period of at least 30 days
 - Describe the procedures for conducting the public hearing
 - Requirements of the rulemaking record and adoption
 - Filing deadlines and effective dates of newly adopted or repealed rules
 - Emergency Rules

Questions



MEETING MINUTES
NEW MEXICO STATE GAME COMMISSION
Santa Fe Community College
Board Room
6401 Richards Avenue
Santa Fe, NM 87508
Thursday January 11, 2018 9:00 a.m. – 5:00 p.m.

APPEARANCES

Game Commissioner Thomas Salopek

Chairman Paul Kienzle

Vice Chairman Bill Montoya

Game Commissioner Craig Peterson

Game Commissioner Ralph Ramos

Game Commissioner Bob Ricklefs

Game Commissioner Elizabeth Ryan

ABSENT

None

[Audio begins here]

CHAIRMAN KIENZLE: Roll call.

DIRECTOR SANDOVAL: Good morning, Mr. Chairman, members of the Commission.
Commissioner Peterson.

COMMISSIONER PETERSON: Here.

DIRECTOR SANDOVAL: Commissioner Ramos.

COMMISSIONER RAMOS: Here.

DIRECTOR SANDOVAL: Commissioner Ryan.

COMMISSIONER RYAN: Here.

DIRECTOR SANDOVAL: Commissioner Ricklefs.

COMMISSIONER RICKLEFS: Present.

DIRECTOR SANDOVAL: Commissioner Salopek.

COMMISSIONER SALOPEK: Present.

DIRECTOR SANDOVAL: Vice Chairman Montoya.

VICE CHAIRMAN MONTOYA: Here.

DIRECTOR SANDOVAL: Chairman Kienzle.

CHAIRMAN KIENZLE: Present.

DIRECTOR SANDOVAL: (Indiscernible) I believe we have a quorum.

CHAIRMAN KIENZLE: Ralph, you want to lead us in the Pledge of Allegiance?

COMMISSIONER RAMOS: It would be an honor.

COMMISSION AND ATTENDEES: I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

CHAIRMAN KIENZLE: I need a motion to approve the agenda.

COMMISSIONER SALOPEK: So moved.

COMMISSIONER RAMOS: Second.

CHAIRMAN KIENZLE: All in favor?

COMMISSIONERS: Aye.

[Return from break]

CHAIRMAN KIENZLE: Okay. We're back on the record and now we've got a couple of rule hearings. Agenda Item Number 15a: Informational Rule Hearing on Proposed New Rule on Rulemaking 19.30.17 NMAC per the State Rules Act Section 14-4-1 NMSA 1978. Okay. On this script portion of this opening the hearing. Is that only for the rulemaking portion or for the informational portion?

MARYLOU POLI: Mr. Chair, this would be for the Rulemaking Process. So at this point you will actually begin with that opening statement. Thank you.

CHAIRMAN KIENZLE: This Hearing will please come to order. My name is Paul Kienzle. I'm the Chairman of the State Game Commission. I will be serving as a Hearing Officer and be advised by the Commission's Council for office of the Attorney General, Marylou Poli. The purpose of this Hearing is to address a new part in Rule and Amendments to an existing rule.

Draft Copy

First Agenda Item 15a of the Hearing is for the Commission to receive public comment and propose new part in Title 19, Chapter 30, Part 17 of the New Mexico Administrative Code regarding establishing procedural rules for public rule hearings for use by the Commission and the Department of Game and Fish consistent with the State Rules Act and to facilitate public engagement with the administrative rulemaking process in a transparent organized and fair manner. This is a result from new language and Statute Section 14-4-5.8 NMSA 1978 which was passed in the 2017 Legislative Session and became effective in July, 2017. I will pick up the second one. Second Agenda Item 16a of the Hearing is for the Commission to receive public comment on an amendment in Title 19, Chapter 31, Part 4 of the New Mexico Administrative Code regarding amending a, change language in Item 2, sub-paragraph a, paragraph 4, subsection a, Dear God, of 19.31.4.11 NMAC to add a 2.5 mile portion of the Rio de los Pinos from the USSF Boundary 24 at the junction of the Forest Road 284 and 87a upstream to the private property boundary. Stretch of rivers being added to the Special Trout Water List with a two trout limit and tackle restrictions. Registrations on this stretch are unchanged from previous years. And b, change in language in Item 2, subparagraph a, paragraph 4, Subsection a of 19.31.4.11 NMAC to add a portion of the Rio Grande from the New Mexico/Colorado Border to the Taos Junction Bridge. A stretch of river is being added to the Special Trout Water List with a two-trout limit and no tackle restrictions. This change represents reduction in bag limit from three trout to two trout to protect the fishery resource and improve consistency of regulations. 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 audiotape recorded. Anyone interested in a copy of the audiotape record should contact Sandra DuCharme with the Game and Fish Department. Public notice of this hearing was advertised in the New Mexico Register, the Albuquerque Journal and

the Santa Fe New Mexican, Mexico Sunshine Portal and on the Department's Website. Copies of the proposed new rule have been available on the Department's Website and at the Department Office. Those here today, please sign the Attendance Sheet at the back of the room which will later be entered into the record as an exhibit. So I think that concludes the informational or the prelude into the informational part. I believe we hear from you on that and then we'll go on to the formal Rulemaking Hearing portion. Correct?

MARYLOU POLI: Mr. Chair, there's one more section that for the record. The instructions, it starts with- this Rule Hearing will be conducted in the following manner.

CHAIRMAN KIENZLE: Oh, so you want me to explain that now rather than in the next section?

MARYLOU POLI: Correct. Thank you.

CHAIRMAN KIENZLE: Okay. No problem. I'm easy. 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 but exhibits may not be removed from this room. Colonel Griego will enforce that rule strenuously. After all exhibits are entered we will proceed to the presentation of the proposed rule. Afterwards, testimony will be taken from the audience. Typically, there will be a limit on the amount of time for testimony but we'll handle that on the fly. Usually it's a two to three minute time limit. In order to ensure that the Hearing is accurately recorded, only one person at a time shall be allowed to speak. Any person recognized to speak is asked to number one, identify yourself by name and who you are affiliated with for the record each time that you are recognized to speak and two, speak loudly and clearly so the recorder can accurately record your comments. After a person has offered comment, you will stand for

questions from the Hearing Officer or other Commission Members. The audience may also ask questions of anyone offering comments after being recognized by me. This Hearing is not subject to Judicial Rules of Evidence. However, in the interest of efficiency, I reserve the right to limit any testimony deemed irrelevant, redundant or unduly repetitious. Commission may discuss the proposed rules after public comment. A portion of the Hearing, final Commission action including adoption of the rules may occur after the conclusion of the presentation and public comment period of the hearing. With that, I think you can now do your informational portion of this.

DONALD JARAMILLO: Mr. Chair, so I would have some exhibits to enter.

MARYLOU POLI: Mr. Chair, there's one more line that starts with-This Hearing is now open.

CHAIRMAN KIENZLE: More preliminary matters. Okay. Sooner or later we're going to get this right. New Rule Procedure for Public Hearings. This Hearing is now open. Are there any exhibits for Proposed New Rule, Proposed New Part in Rule to 19.30.17 for the record?

DONALD JARAMILLO: Mr. Chairman, there is. I would like to produce three exhibits. The first exhibit is a Notice of the Rulemaking Hearing that was published on December 12th on the New Mexico Resister. The second exhibit will be the actual Initial Proposed Rule which you should have in front of you in your books as well in regards to rulemaking and then a copy of the slide show, that presentations that you're going to see today.

CHAIRMAN KIENZLE: Okay. Is there three?

DONALD JARAMILLO: Yes and just as a note. The comment period was 30 days. We have received no email comments or written note comments through the Department at this time which usually is part of the record.

CHAIRMAN KIENZLE: So Exhibits 1, 2 and 3 are admitted into the record. Thank you. Now you can tell me about the Proposed New Rule for 19.30.17.

DONALD JARAMILLO: All right. So a Rule on Rulemaking. I think we talked about this back in November. So what the Department has proposed to do is when House Bill 58 passed the Legislative Session last year, it was signed into governor by law. During that bill there was new amendments and new sections added to the rule. One section in particular, which brings us here today, is that it allows each agency that adopts, each agency to adopt a Procedural Rule which you have in here for conducting the Rule Hearings. So for those agencies that chose not to adopt a rule, it allows or it requires that they follow a default but a Standard Rule that's going to be proposed by the Attorney General's Office or a Default Rule, excuse me, is what I'm looking for. So we're here today to present to you a rule, initial proposed rule for final adoption that is specific to our agency which follows the State Rules Act. So the objective, the Department is requesting the adoption of the rule for public hearings. Much like the one we're having today and the ones that we had in the last three meetings. So we have a, what we did was we petitioned the Mexico Records Act for a new part in rules. So will be under our administration and since it's a new rule there is no strikethrough. We're not changing anything. It's a complete new rule into NMAC basically. So what the rule does and it follows basically the additions, the amendments to the House Bill 58. It's going to describe the initiation process of the rule. What the requirements for initiating a rule and basically what that involves is when the Department actually provides notice and notice is going to be required to publish it on the register and provide to the public. That is when we are starting the initiation process of the rule. So I know we heard earlier when we started talking about meeting dates and Stewart and how we're planning these things out. So the register only publishes twice a month. Then it has another 14 day delay, 14 day requirement that

we get them proposed rules in front of them before it's actually published. Hence, setting the meeting dates and the occurrences in time because there has to be at least a 30 day window for the public which we would publish on the website. We send it to the Sunshine Portal notifying them that we're amending the rule or making a new rule and stuff, such like that but that notice itself is the initial proposed of rulemaking process. The second part of that is describe what is actually in the notice. So as we go through the rule down here I know we've referenced a lot of the statute here but basically what the notice, the requirement in the notice is that one, we're saying we're going to have a public hearing. We're going to describe the date and time. We're going to describe what the purpose of the hearing is, of the rule changes that are going to be entered. We could also provide the whole rule or we can give a synopsis. Which typically we're doing just a synopsis on that and the third part of the Rulemaking Notice as it is a requirement is how the public can comment to that rule. So within those 30 days we put up a website. We put it on our website. We send it to our district, our field offices. We also send it to the Sunshine Portal. We send it to the Legislative Finance Council and any other interested persons that have requested to see the rule. That's part of the Senate Bill 50 or House Bill 58 requirements for us to do that preloading before we have a hearing. For the written comment period which is the next section in part of that rule. It just pretty much describes you know, how individuals can submit comments. Obviously through the email. It's a requirement that we provide an email method to for people to comment. They could also write letters through snail mail and send them to us but it also describes that they're at the hearing itself. Much like today there would be a potential to hear oral comments at the hearing. Obviously, you hear that 30 days. So prior to any kind of Rule Hearing we do have to let the 30 days elapse to receive those public comments and again, on this particular Agenda Item we have received no email comments through their website unless

you have a stack of cards up there. I'm not sure how many we're going to have today if any at all.

CHAIRMAN KIENZLE: There's a ton of them.

DONALD JARAMILLO: There's a ton of them. So the next section of that rule is the procedure for conducting a public hearing. So much like the script that you're reading today. We're going to describe how the hearing goes. We're going to set a venue. We're going to advertise to the public and let them know when it's going to occur. How to submit exhibits into the record and we have followed it-like I said, we followed it the last three or four. I think we're getting a little better at it as we go along and maybe it's something that we can do but a lot of it is giving the opportunity for the public to have a chance at the hearing to provide comment and concerns. Then we have the actual records. If the Commission so chooses to adopt the record or adopt the rule that sets in a sequence of events of what is contained in the record. We provide the record. We are required by these rule processes to keep that record at the Department. We are required again, send it out to provide to the public which is meaning sending it to the Sunshine Portal. Sending it to the Legislative Finance Council and anybody that has requested to receive that record. Then the filing and publication dates. After the adoption of rule, unless a written order is made by this Commission or during the hearing, the adoption date is typically the date that you guys vote on it. Unless a written order is, we have 15 days to adopt that rule which means 15 days we've got to go to the New Mexico Register and get the rule filed on the register. Along with the rule itself, we also have to supply to them a concise explanatory statement which is none more than the date that the Commission adopted the rule. It's our legal authority for adopting the rule. Then any findings of fact or findings per that rule. And the last section of this is rules, Emergency Rules. So I guess the only thing that I would say in significant aspect is the statute

requires is there's three items that allow for an Emergency Rule. One is for public safety and health. If the rule has any kind of affect that would affect t the public you're allowed to do an Emergency Rule. The second is if you run out of funding for a particular program of the agency. That would be considered an emergency and allowable to do an Emergency Rule by that. The third would be any kind of a conflict with any kind of Federal Law. I guess the biggest thing I would make about Emergency Rules is they are temporary. The way they're stated, as soon as they become effective. So as they either filed with the New Mexico State Register with whatever that effective date is, they're only valid for 180 days. So if that was something that the Commission let's say passed an Emergency Rule and they want it to be permanent. The Emergency Rule could take effect pretty immediately but if it was something they wanted to be prolonged or after 180 days, we would have to start the whole regular process for rulemaking allowing the whole comment period and stuff like that. I think with that, I'll try to answer any questions.

CHAIRMAN KIENZLE: So who wrote this set of rules?

DONALD JARAMILLO: Mr. Chairman, that was collaboration between myself, the Director, Marylou Poli, our Attorney General and Jacob.

CHAIRMAN KIENZLE: So the Department and the Attorney General's Office have weighed in on this set of rules?

DONALD JARAMILLO: Mr. Chairman, that is correct.

CHAIRMAN KIENZLE: And without absolutely binding the Attorney General's Office, this passes muster at least today under the Attorney Generals standards?

MARYLOU POLI: Mr. Chair, that is correct.

CHAIRMAN KIENZLE: Let me say from a Chairman's perspective and Hearing Officers perspective, I've read the rule. It's not perfect but nothings ever perfect. I think it does provide for some flexibility in dealing with issues that do come up during hearings. Of most concern to me is on issues that do draw a lot of public comment and maybe have a meeting where there's a lot of people that wish to comment. I think it does allow the flexibility to limit how much time people speak. Basically, to have the hearing conducted in a simple and efficient manner. So it's never necessarily my intention to cut people off midsentence but I do think this set of rules does give the flexibility to handle those types of situations where but for some limit on testimony we may be here for a week. So that's of concern to me as a Hearing Officer. As for the timing of when you post and all the other things, that's largely out of our hands and so I think that the rules basically track with what's required by statute. I will tell the public as I've told them before. The best way to have meaningful input into decisions of the Commission and proposals that are generated by the Department is submit written comments. It gives both, the Department and the Commission the opportunity to fully and calmly reflect on what people are concerned about. A public meeting, while very valuable for transparency purposes and the ability to say what you wish to say is not always the best place to make policies so I would encourage the public to do both. Submit written comments prior to a meeting during the written comment period and then show up at a meeting if you chose to do so but I firmly believe that written comments are the best way to get your initial point across. Certainly public comment at a meeting can drive home a few important points but it's not always the best place to make policy. I'll also say from a federal standpoint which I think House Bill 58 sort of tracks the federal model on this. People routinely submit written comments. Sometimes in the tens of thousands on particular rule changes and that's a pretty good model because it allows the professionals that deal with these issues every

day to digest those and under the heading of you know, more heads are better than one. When the public does win on these issues the professionals that deal with this can say, oh, you know. I hadn't thought of that or that's a good idea and it's at that point in time when a proposal is under development that it can be easily changed before it gets to us for final rulemaking. So I would encourage the public to get involved in the rulemaking process early rather than later in the process. It's much easier to get things changed and get things on the right track early rather than later. So anyway, that's my two-cents.

COMMISSIONER RYAN: I have a couple of questions for the Department. I'm not sure who the best to answer is. So generally speaking, is it clear from the way this is worded on who can show up? You know who is an interested person and are they a party to the rulemaking or are they only there for public comment? I've run into this issue sitting on other administrative boards. You know there's a big difference between the public showing up and giving public comment and their information that they want to give through public comment and then there is somebody showing up wanting to present evidentiary exhibits or information that may or may not be authenticated or I mean, maybe we just decide what's relevant and where it's coming from but you know I have been involved in instances where people just show without ever entering appearance and expect to start to not be in the public comment side of things and be you know, attorneys' are present and really to have an additional level of participation over and above public comment. So my question is, is that clear in the way this is written now? That they can't do that or if someone wants to participate in the rulemaking process like as a party and present evidence or something. How is that handled?

MARYLOU POLI: I'll give it a shot first and then Donald. So Mr. Chair and Commissioner, interested person I think that's what you're asking. Is there, is it been defined, if it hasn't. The

AG's Office views it very, very broadly and that an interested person would be anybody for example, today who showed up for this Rulemaking Hearing and put their name down and if they provided an email address than the results of what happened here today would then be emailed to them. Anybody that, even during the 30 day comment period makes an email, you know makes a comment during that 30 day period they're considered an interested party. Literally, if you're interested, you're an interested person. I think I said party but it's --

COMMISSIONER RYAN: That's really public comments. Right?

MARYLOU POLI: Yes--

CHAIRMAN KIENZLE: So what I would further add to that and I'm not with the Attorney General's Office but if you're an interested person you're going to be treated like anyone else and so I see interested person the same way you do. It's whoever shows up and wants to speak but you don't get a special privilege just because you think you've got more of a dog in the hunt than somebody else.

COMMISSIONER RYAN: Right.

CHAIRMAN KIENZLE: I think everyone is treated the same. So there's no hey, I'm a lawyer for this person. I'm going to speak for 30 minutes on this issue. It doesn't work that way. I think if you want to get your 30 minutes out there, you submit that as a written comment long before it ever gets here. You don't get the floor in a manner that's different than the rest of the public.

COMMISSIONER RYAN: And there's no opportunity for anyone really to like enter an appearances in the proceeding, present evidence in a rulemaking, nothing like that. If you're an interested person you can show up and give public written or oral public comment and that's the extent of anyone else's participation.

CHAIRMAN KIENZLE: I think if you're an interested person and you show up with a stack of paper as I took five minutes before earlier, I say, you know this is a really poor time to provide this much information which is not to say we'll ignore it or won't consider it but I think it's very hard to digest that kind of information on the fly.

COMMISSIONER RYAN: Right.

CHAIRMAN KIENZLE: So I think, let's get it out there--

COMMISSIONER RYAN: But this limits people's ability to be able to show up and expect some kind of ability to present things for the record and argue for or against.

CHAIRMAN KIENZLE: Let me just jump in one more time and say on rulemaking its things that are generally a broad explicability to everybody. So to take the example of the—what was the name of the dam we dealt with just recently?

MARYLOU POLI: La something.

DIRECTOR SANDOVAL: Mr. Chairman, Laguna de Campo.

CHAIRMAN KIENZLE: That's it. So on that one, which isn't strictly rulemaking, I would expect people to get up and speak kind of at length on that. More so then on a general, a rule of general applicability and so yeah. I just don't think anyone gets a special privilege no matter what the issue is.

COMMISSIONER RYAN: And then when these interested persons show up, from what this says here that the Commission may if we so desire, ask them a question. But I want to confirm that they don't have the ability to start interrogating the Department or the Commission on anything.

MARYLOU POLI: Mr. Chair, Commissioner, that's correct. If I may take a moment just to back up on the discussion between yourself and Mr. Chair and for example, Mr. Chair gave you an example of somebody showing up with a stack of papers. Whatever somebody shows up with it will be entered. It is required by law to be entered as an exhibit but logically speaking of course, could somebody digest that during the hearing? No. So it would be extremely unfortunate if somebody has valuable information for them to show up with it the day of the hearing. To clarify, it is required to be a part of the record.

COMMISSIONER RYAN: It would be admitted part of the record.

MARYLOU POLI: That's correct. That's correct. Everybody gets equal treatment.

COMMISSIONER RYAN: Okay. My only note and I don't think that this hurts the notice issue but you can advise on that. That in subsection 14, right after NMSA it needs to be inserted 1978. It's just a typographical fix.

MARYLOU POLI: Mr. Chair, Commissioner --

COMMISSIONER RYAN: I think that's just a --

MARYLOU POLI: Yes, it is and we'll make that correction. I don't believe that's a substantive change and we can make that today and move it forward.

COMMISSIONER RYAN: Yeah, okay. Thank you.

CHAIRMAN KIENZLE: And as I said at the outset, this is not perfect from my perspective and if it's not working out for us we'll change it down the road or we'll tweak it here and there but I think it's a reasonable start for a process where we're still finding our feet on how it shakes out. And I share your concerns certainly as a lawyer or somebody hires me and says go do this. To be

limited to a certain amount of time isn't necessarily appealing. It might make my job easier but it's not appealing if I have a lot to say but I think there is the opportunity during this written comment period to really get out everything that you want to say and get it out much more effectively than if you were to speak at a public meeting. I think it may show a, up the feeling or interest in the issue to hire council and have them show up because I does drive home perhaps the point to the Department and the Commission that somebody really cares about this. But again, the better way to do it is probably handle it through written comments. Any questions or comments from the public or anything else from Commissioners? So if there's no more public comment or comment questions from the Department I'll close that part of it. Are there any other exhibits anyone wants to enter into the record? We have Exhibits 1, 2 and 3 that were entered.

DIRECTOR SANDOVAL: I have those.

CHAIRMAN KIENZLE: You do have those? Okay. So no additional exhibits. So we just got 1, 2 and 3. So I think that then closes the informational portion of this?

MARYLOU POLI: Mr. Chair, except for public comment if there is any.

CHAIRMAN KIENZLE: And I asked. I don't think there is. Nobody. You got? Changed your mind. Here to speak. Okay.

MICHAEL DAX: It's based on something you said. Michael Dax with Defenders of Wildlife. Chairman, Commissioners, Chairman you had mentioned and you have mentioned this to me before that the best way is written comment prior to when we get in this room. I don't believe your email addresses are currently on the Departments Website. I believe there is a P.O. Box which I think makes it more difficult for the public if they do have a comment to be able to contact you or any of you ahead of time. So I don't know if that is something that you've

considered or if that's something that could be remedied. I think it's all the same P.O. Box so I assume that's handled by the Department and for you guys down south, I imagine your obviously not personally checking it and I don't know how that system might work but I think email would make it more accessible for the public if they want to comment on something. Thank you.

CHAIRMAN KIENZLE: Thank you.

DIRECTOR SANDOVAL: Mr. Chairman, Michael, don't walk away. Per the rules, we need to have you fill out that form and that will be Exhibit Number 4 Mr. Chairman if that's okay with you?

CHAIRMAN KIENZLE: Works for me. You know an email address, there is a written email address for comments to go to that eventually gets submitted.

DONALD JARAMILLO: Mr. Chairman, that is correct.

CHAIRMAN KIENZLE: I've really enjoyed having email comments in the past that included death threats. So that's not necessarily appealing to me. Now to the extent death threats come in to a common email address, somebody else can read them first and be alarmed rather than me by myself but there is a means for getting those written comments to Commissioners in advance of a Rulemaking Hearing.

DONALD JARAMILLO: Mr. Chairman, we'll be sure to do that.

COMMISSIONER RICKLEFS: I would ask if we do get comments on a particular issue. Is that part of the public record?

DONALD JARAMILLO: Mr. Chairman, Commissioner Ricklefs yes it is. Any comments that were received through the email we collect and we disseminate that and then it does become part of the public hearing.

COMMISSIONER RICKLEFS: If it's identified as a particular issue that is before the Commission then that's part of the public record.

DONALD JARAMILLO: Mr. Chairman, Commissioner Ricklefs that is correct. It is part of the record.

CHAIRMAN KIENZLE: Well I think, was your question if you get an email?

COMMISSIONER RICKLEFS: Personally, yes. Yes, a personal email. Public interested party.

MARYLOU POLI: Mr. Chair, Commissioner it's a good question and it's one that hasn't been presented through the AG's Office that I'm aware of. However, I whole heartedly would opine that it would not be a part of the record. That it would need to go to whatever designated email address the Department has provided.

CHAIRMAN KIENZLE: I would add along those lines that we're a Citizen Commission and you know, I'm not strictly set up to handle, at least from in House Bill 58 perspective, you know the written comments that may come in on a particular issue. So I think that's why during the written comment period they need to come to a central email address so there's organization to the cast. So you get one comment. No big deal. You end up with 500 comments, I don't want to be wading through those as a Citizen Commissioner wondering you know, do I need to preserve this? Do I need to send this to somebody? So I think in order to have I guess what I would call a valid written comment, it needs to go to that common identified email address to make it legitimate. Okay. So I think I can close Item 15a and move on to--

DIRECTOR SANDOVAL: Mr. Chairman, we do have Exhibit Number 4 which is Mr. Dax's --

CHAIRMAN KIENZLE: It's admitted. Yeah, it's admitted. Okay. I'm going to do the rule. I'm going to vote on 15. Do the actual rulemaking on 15b and then move on to 16 after that.

MARYLOU POLI: Of course Mr. Chair.

CHAIRMAN KIENZLE: Okay. So you signed the sign-in sheet. Is that also part of? Would that be Exhibit 5?

DIRECTOR SANDOVAL: Mr. Chairman, I believe it goes with Exhibit 4.

CHAIRMAN KIENZLE: 4? Okay. And you took care of that? All right. I've admitted that then as Exhibit 4. The comments submitted and testimony heard during this Rule Hearing will be reviewed by the Commission and discussed during the open session of today's meeting. The Commission will vote on the proposed rule in 15a and b at this time. Thank you for your participation. Let the record show that this particular portion of the Rulemaking Hearing was adjourned at-what time is it?

COMMISSIONER: 11:00.

DIRECTOR SANDOVAL: 11:00 Mr. Chairman.

CHAIRMAN KIENZLE: 11 am. Thank you. Okay, so that concludes 15a, the informational portion. 15b is the actual action item on this and let's see- I don't think I have anything else that I need to read in particular definite to this. Correct?

MARYLOU POLI: So I would like to clarify please, Mr. Chair. You had said that it closed the Rule Hearing and just for the record, everything that you gave in the preliminary statement will apply to the next amendment that's to the rule that's proposed. So the Rule Hearing is technically

still open and we've closed the record on that one particular rule regarding the Rulemaking Procedure and we'll move on to the next rule and vote after both have been heard.

CHAIRMAN KIENZLE: Okay. 15a and so I'm going to vote on 15b at this point in time.

MARYLOU POLI: If you wish.

CHAIRMAN KIENZLE: I would prefer to do a vote on that now at the close. So let's do a motion, yes.

COMMISSIONER SALOPEK: I move to adopt New Rule 19.30.17 NMAC Procedural Rule for Public Rule and Hearings as presented and allow the Department to make minor corrections to comply with filing this rule with State Records and Archives.

COMMISSIONER RICKLEFS: Second.

CHAIRMAN KIENZLE: Questions, comments, discussion from Commissioners? All for a vote? All in favor?

COMMISSIONERS: Aye.

CHAIRMAN KIENZLE: Ayes have it. All right. Great new world under House Bill 58. Okay. So what pre-file exhibits do you have? The Hearing is now open. Are there any exhibits that you've got that you wish to pre-file?

NEW MEXICO STATE GAME COMMISSION

January 11, 2018
Santa Fe Community College
Board Room

6401 Richards Avenue
Santa Fe, NM 87508
9:00 a.m. –5:00 p.m.

CERTIFICATE

I, Cheryl Melgarejo and I, Rose Leonard
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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APPROVAL OF MEETING MINUTES

NEW MEXICO STATE GAME COMMISSION

Alexandra Sandoval, Director and Secretary

Date

Paul M. Kienzle III, Chairman

Date

New Mexico State Game Commission

AS/scd



MEETING SIGN-IN SHEET

Hearing 15A

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

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TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 30 WILDLIFE ADMINISTRATION
PART 17 PROCEDURAL RULE FOR PUBLIC RULE HEARINGS

19.30.17.1 ISSUING DEPARTMENT: New Mexico Department of Game and Fish.
[19.30.17.1 NMAC - N, 01/30/2018]

19.30.17.2 SCOPE: The state game commission and the department of game and fish.
[19.30.17.2 NMAC - N, 01/30/2018]

19.30.17.3 STATUTORY AUTHORITY: Section 14-4-5.8 NMSA 1978, Sections 17-1-14 and 17-1-26 NMSA 1978.
[19.30.17.3 NMAC - N, 01/30/2018]

19.30.17.4 DURATION: Permanent.
[19.30.17.4 NMAC - N, 01/30/2018]

19.30.17.5 EFFECTIVE DATE: January 30, 2018, unless a later date is cited in the history note at the end of a section.
[19.30.17.5 NMAC - N, 01/30/2018]

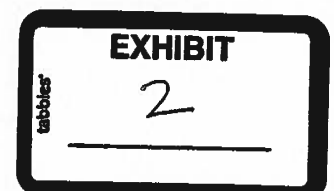
19.30.17.6 OBJECTIVE: To provide procedural rules for public rule hearings for use by the state game commission and the department of game and fish consistent with the State Rules Act, and to facilitate public engagement with the administrative rulemaking process in a transparent, organized, and fair manner.
[19.30.17.6 NMAC - N, 01/30/2018]

19.30.17.7 DEFINITIONS: This rule adopts the definitions found in Section 14-4-2 NMSA 1978 and the listing in this section.
A. "Commission" shall mean the New Mexico state game commission.
B. "Department" shall mean the New Mexico department of game and fish.
[19.30.17.7 NMAC - N, 01/30/2018]

19.30.17.8 INITIATION OF THE RULEMAKING PROCESS: The rulemaking process for purposes of this rule is initiated when the department publicly posts a notice for a rule hearing pursuant to Section 14-4-5.2 NMSA 1978.
[19.30.17.8 NMAC - N, 01/30/2018]

19.30.17.9 RULEMAKING NOTICE:
A. The department shall provide to the public notice of the proposed rulemaking as required by Section 14-4-5.2 NMSA 1978:
B. If the commission changes the date of the public rule hearing or shortens the deadline for submitting comments as stated in the notice, the department shall provide notice to the public of the change as provided above.
[19.30.17.9 NMAC - N, 01/30/2018]

19.30.17.10 WRITTEN COMMENT PERIOD:
A. The commission shall allow for public comment on the proposed rule as defined by Section 14-4-5.3 NMSA 1978.
B. The commission may decide before, during, or after the public rule hearing to extend the comment period by providing public notice, to include:
(1) posting on the department website;
(2) making it available by posting notice in a publicly visible location in department's headquarters and regional offices;
(3) sending notice by electronic mail to persons who have participated in the rulemaking proceeding or made a written request for notice of rulemaking proceedings and provided an electronic mail address to the department; and



(4) sending notice by regular mail to persons who have participated in the rulemaking proceeding or made a written request for notice of rulemaking proceeding and provided a postal address and specifically requested notice by regular mail;
[19.30.17.10 NMAC - N, 01/30/2018]

19.30.17.11 PUBLIC HEARING:

A. Prior to adopting a proposed rule, the commission must hold a public rule hearing. The purpose of the public rule hearing is to provide all interested persons a reasonable opportunity to submit data, views or arguments orally or in writing on the proposed rule. The commission, at its sole discretion, may determine whether more than one hearing is necessary.

B. The chair of the commission may act as the hearing officer or designate a representative or hearing officer to preside over its public rule hearing. The hearing officer may ask questions and provide comments for clarification purposes only.

C. At the start of the hearing, any pre-filed exhibits should be introduced and admitted into the rulemaking record. Pre-filed exhibits should include: copies of the public notices of the rulemaking, including any lists of individuals to whom notice was mailed or sent electronically; copies of the proposed rule in underline and strikethrough format; and copies of any written comment submitted during the comment period prior to the rule hearing. Any written comments or other documents introduced during the hearing should be admitted into the record after being marked as an exhibit.

D. Individuals from the public wishing to provide comment or submit information at the rule hearing must state their name and any relevant affiliation for the record and be recognized before presenting by the individual presiding over the hearing. Any individual who provides information or public comment at the hearing may be questioned by the hearing officer, or other members of the commission.

E. The rule hearing shall be conducted in a fair and equitable manner. The hearing officer may determine the manner in which the hearing is conducted, but the hearing should be conducted in a simple and organized manner that facilitates public comment and a clear rulemaking record. The rules of evidence do not apply to public rule hearings and the hearing officer may, in the interest of efficiency, exclude or limit comment that is deemed irrelevant, redundant, or unduly repetitious.

F. The commission must hold the hearing in a venue that reasonably accommodates all interested person who wish to participate or observe, and appropriate audio equipment should be secured to ensure all persons in attendance can hear the proceeding and be heard when presenting comment. Reasonable efforts shall be made to accommodate the use of audio and video recording devices.

[19.30.17.11 NMAC - N, 01/30/2018]

19.30.17.12 RULEMAKING RECORD AND ADOPTION OF RULE

A. Once the rulemaking process has been initiated, the department shall maintain a record of the rulemaking proceeding as required in Section 14-4-5.4 NMSA 1978, and any written comment, document, or other exhibit entered into the record during the rule hearing shall be labeled clearly.

B. The adoption of the proposed rule shall occur during a public meeting. The adoption date of the proposed rule shall be the date of the public meeting at which the vote occurred, unless the commission directs that a written order be issued, in which case the adoption date shall be the date the written order is signed. The commission may provide reasoning for the adopted rule through comments or discussion during its meeting, or by providing a statement of reasons in a written order.

C. The commission, through the department, shall provide a concise explanatory statement per Section 14-4-5.5 within 15 days after the date of adoption.

[19.30.17.12 NMAC - N, 01/30/2018]

19.30.17.13 FILING AND PUBLICATION; EFFECTIVE DATE:

A. Once the commission has adopted a rule(s), the department shall follow the procedures for final adoption as defined in Section 14-4-5 NMSA.

[19.30.17.13 NMAC - N, 01/30/2018]

19.30.17.14 EMERGENCY RULES: The commission and department shall comply with the rulemaking procedures herein and the State Rules Act unless the commission or department finds that an emergency situation exists. The commission and the department shall adhere to Section 14-4-5.6 NMSA if the need for an emergency rule is determined.

[19.30.17.14 NMAC - N, 01/30/2018]

HISTORY OF 19.30.17 NMAC: [RESERVED]

Final adopted rule

FILED WITH
STATE RECORDS CENTER

2018 JAN 16 PM 12:16

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[19.30.17.14 NMAC - N, 01/30/2018]

HISTORY OF 19.30.17 NMAC: [RESERVED]

Transmittal Form

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

Issuing agency name and address:

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Type of rule action:

New Amendment Repeal Repeal/Replace Renumber Emergency (ALD Use Only) Most Recent Filing Date:

Title number:

Title name:

Chapter number:

Chapter name:

Part number:

Part name:

Amendment Description (If filing an Amendment):

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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: