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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: 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): Amendment's NMAC Citation (If filing an Amendment):

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

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

Concise Explanatory Statement for rulemaking adoption:

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:

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The State Game Commission, approved at its 11/16/2017 hearing, to repeal its rule 19.30.8 NMAC - Guide and Outfitter Registration (filed 11/30/2011) and replace it with 19.30.8 NMAC - Guide and Outfitter Registration, adopted on 11/16/2017 and effective 01/01/2018.

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 30 WILDLIFE ADMINISTRATION
PART 8 GUIDE AND OUTFITTER REGISTRATION

19.30.8.1 ISSUING AGENCY: New Mexico Department of Game and Fish.
[19.30.8.1 NMAC - Rp, 19.30.8.1 NMAC, 01/01/2018]

19.30.8.2 SCOPE: Hunting outfitters, guides, and hunters for New Mexico.
[19.30.8.2 NMAC - Rp, 19.30.8.2 NMAC, 01/01/2018]

19.30.8.3 STATUTORY AUTHORITY: Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species. Additional authority may be found in Sections 17-2A and 17-3-16 NMSA 1978.
[19.30.8.3 NMAC - Rp, 19.30.8.3 NMAC, 01/01/2018]

19.30.8.4 DURATION: Permanent.
[19.30.8.4 NMAC - Rp, 19.30.8.4 NMAC, 01/01/2018]

19.30.8.5 EFFECTIVE DATE: January 01, 2018, unless a later date is cited at the end of a section.
[19.30.8.5 NMAC - Rp, 19.30.8.5 NMAC, 01/01/2018]

19.30.8.6 OBJECTIVE: To register, regulate and set professional standards for guides, outfitters and their operations within New Mexico.
[19.30.8.6 NMAC - Rp, 19.30.8.6 NMAC, 01/01/2018]

19.30.8.7 DEFINITIONS:

A. "Accompanied" shall mean that the outfitter or their registered guide physically escorts the hunter-client in the field during the hunter-client's license hunt dates.

B. "Agent" shall mean a person who is legally authorized by employment or written contract to act on behalf of a private landowner to oversee the landowner's hunting operation on their deeded property.

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

D. "Department" shall mean the New Mexico department of game and fish.

E. "Director" shall mean the director of the department of game and fish.

F. "Guide" shall mean any person contracted, employed or accepting compensation for providing, within the unit where a hunt occurs, equipment or services for hunting activities; provided, however, that "guide" does not include a person who only cooks, cuts wood or performs other comparable or incidental duties not directly related to hunting activities.

G. "History of violation" shall mean any one conviction or multiple convictions from any law enforcement agency for violation(s) of hunting, fishing, trapping, outfitting or guiding rules or land-use regulations, including any conviction as an accessory, during the three-year period immediately preceding the application for registration, provided that the violation committed, if committed in New Mexico, would equal or exceed the 20-point equivalent.

H. "Hunter-client" shall mean an individual who contracts or utilizes the hunting services of a registered outfitter or is taken into the field by a person acting as an outfitter or guide regardless of their registration status.

I. "Landowner permit" shall be a license issued pursuant to a landowner authorization.

J. "License year" shall mean that period beginning April 1 and ending March 31 each year for the purposes of hunting or outfitter and guide registration.

K. "New Mexico outfitter" shall mean an outfitter that is qualified by the department in accordance with 19.30.8.9 NMAC to participate in the special drawing pool by utilizing their outfitter number as established by Section 17-3-16 NMSA 1978 and McReynolds v. Lane.

L. "Outfitter" shall mean any person who advertises or holds themselves out to the public for hire or is employed or accepts compensation for providing, within the unit where a hunt occurs, facilities, equipment or

services for hunting activities; provided, however, that "outfitter" does not include a person who only cooks, cuts wood or performs other comparable or incidental duties not directly related to hunting activities. Any person who purchases landowner permits or private land licenses for a hunter-client or pays for access to a landowner's deeded property for a hunter-client in any way, shall be considered an outfitter.

M. "Registered outfitter" shall be an outfitter who has met all the requirements described herein and has been issued a current registration by the department.

N. "Special drawing pool" shall refer to the ten percent allocation of special draw licenses available to the public who have contracted with a qualified New Mexico outfitter to provide professional guide services.

O. "Supervision" shall mean that outfitters are required to ensure all guides employed or contracted by them are informed of all pertinent geographic hunt boundaries, any special restrictions which apply to their hunter-clients license and statutes and rules regarding lawful hunting, guiding and outfitting. Supervision also means that outfitters have provided all the guidance and oversight that a reasonable business person would provide to their employees.

[19.30.8.7 NMAC - Rp, 19.30.8.7 NMAC, 01/01/2018]

19.30.8.8 GENERAL REGISTRATION PROCEDURES AND REQUIREMENTS: In addition to the requirements set in Sections 17-2A and 17-3-16 NMSA 1978 the following requirements apply;

A. Application form: Applications to guide and outfit as defined in Section 17-2A-3 NMSA 1978 and 19.30.8 NMAC shall be made on forms provided by the department as prescribed by the director.

B. Application deadlines: An outfitter or guide may register at any time by completing and submitting the proper application form and fee. No one shall be a registered outfitter or guide until they successfully complete all requirements and are issued a valid registration by the department. Exception:

(1) **Deadline date to qualify as a New Mexico outfitter for special drawing pool:** All New Mexico outfitter applicants must apply by February 15 to be eligible to participate in the special drawing pool of resident/nonresident hunter applicants for the next hunting season.

(2) **New Mexico outfitter late fee:** All New Mexico outfitter applications received after February 15 but before the close of business on March 15 will be subject to an administrative fee of one hundred dollars (\$100) in addition to the normal application fees.

(3) **New Mexico outfitter ineligibility:** An applicant for a New Mexico outfitter that fails to successfully complete the department's process by close of business on March 15 will be ineligible to have a hunter-client use their registration number for the special drawing pool established in Section 17-3-16 NMSA 1978.

C. All outfitter and guide applicants shall have successfully completed a certified hunter education course from the state of New Mexico or other similar qualifying hunter education course acceptable to the department prior to making application.

D. Outfitter and guide applicants cannot have a history of violation.

E. No person shall be allowed to register or work as a registered hunting guide or outfitter in New Mexico:

(1) if the person has had a guide or outfitter license, registration, permit or certificate revoked in another state;

(2) if the person has had a guide or outfitter license, registration, permit or certificate suspended in another state and it has not been reinstated;

(3) if the person has been convicted of a felony, no matter when the felony was committed;

(4) An outfitter or guide's registration shall be immediately invalid when any of subsections 19.30.8.8.E.1 thru 3 NMAC apply. The outfitter or guide registration may be reinstated if the conviction, revocation or suspension is reversed during the year in which they were originally registered.

F. Outfitter and guide applicants, including renewing applicants, shall not have had their guide or outfitter's license, permit authorization or registration revoked or denied for cause by any controlling government land management agency. The applicant shall not be registered by the state during the term of the revocation or pendency of the denial.

G. Examinations for guiding and outfitting:

(1) Exams will be conducted during posted testing periods at department offices or by appointment, at any location approved by the guide and outfitter registrar.

(2) An applicant shall only be allowed to take the examination once per day.

(3) Applicant must successfully pass a department approved examination with a minimum passing grade of seventy percent.

(4) If an applicant fails to renew their registration for two or more years, all registration requirements must be completed, including successfully passing a department approved exam prior to being registered.

H. Applicants for a guide's registration shall be at least 18 years of age and meet all the qualifications for guides set forth in 19.30.8 NMAC and in Section 17-2A NMSA 1978.

I. Additional outfitter registration requirements:

(1) Applicants for an outfitter registration shall be at least 21 years of age and meet all the qualifications for outfitters set forth in 19.30.8 NMAC, Sections 17-2A and 17-3-16 NMSA 1978.

(2) Applicants for an outfitter registration must have operated as a New Mexico registered guide for three years. Applicant must submit evidence, as approved by and to the satisfaction of the department, of three years of actual guiding experience and substantial knowledge of guiding in New Mexico for a registered outfitter. The evidence must be submitted with the application and may consist of federal land use permits, business or employment records from the registered outfitter and a letter from said registered outfitter attesting to the applicant's guiding experience.

(3) Applicant shall register with the taxation and revenue department and provide proof of registration and compliance to the department.

J. Each guide or outfitter shall carry proof of registration in the field and provide such proof upon request.

K. Registration exemption: A landowner or their agent who is guiding or outfitting on the landowner's deeded property or pursuant to a landowner permit is exempt from the department's registration process. Nothing in this exemption shall prevent a landowner or their agent from registering, if they choose. Agents may not act independently from the landowner. A landowner or their agent must be in compliance with the registration requirements of any pertinent government land management agency when involved with commercial activities on lands controlled or administered by a government land management agency.

L. All outfitter and guide applicants, including renewing applicants, shall submit to the department any additional documentation requested by the department.
[19.30.8.8 NMAC - Rp, 19.30.8.8 NMAC, 01/01/2018]

19.30.8.9 ADDITIONAL REQUIREMENTS TO BECOME A NEW MEXICO OUTFITTER:

A. To qualify as a New Mexico outfitter as a corporation, LLC or similar status: a New Mexico outfitter is a person who has a business:

(1) with a valid New Mexico state, county or municipal business registration and a valid outfitter license issued by the department of game and fish;

(2) that is authorized to do and is doing outfitting business under the laws of this state;

(3) that has paid property taxes or rent on real property in New Mexico, paid gross receipts taxes and paid at least one other tax administered by the taxation and revenue department in each of the three years immediately preceding the submission of an affidavit to the department of game and fish;

(4) the majority of which is owned by the person who has resided in New Mexico during the three-year period immediately preceding the submission of an affidavit to the department of game and fish;

(5) that employs at least eighty percent of the total personnel of the business who are New Mexico residents;

(6) that has either leased property for ten years or purchased property greater than fifty thousand dollars (\$50,000) in value in New Mexico;

(7) that, if it has changed its name from that of a previously certified business, the business is identical in every way to the previously certified business that meets all criteria;

(8) that possesses all required federal or state land use permits for the hunt; and

(9) that operates as a hunting guide service during which at least two days are accompanied with the client in the area where the license is valid.

B. To qualify as a New Mexico outfitter as a sole proprietor business: a New Mexico outfitter is a person who has a business:

(1) with a valid New Mexico state, county or municipal business registration and a valid outfitter license issued by the department of game and fish;

(2) that is authorized to do and is doing outfitting business under the laws of this state;

(3) that, if it has changed its name from that of a previously certified business, the business is identical in every way to the previously certified business that meets all criteria;

(4) that possesses all required federal or state land use permits for the hunt; and

(5) that operates as a hunting guide service during which at least two days are accompanied with the client in the area where the license is valid.
[19.30.8.9 NMAC - Rp, 19.30.8.9 NMAC, 01/01/2018]

19.30.8.10 OUTFITTER INSURANCE REQUIREMENTS:

A. An outfitter applicant shall submit with their application a certificate of commercial liability insurance of at least five hundred thousand dollars (\$500,000) from an insurance company stating they will insure the applicant for the current license year.

B. A copy of the insurance certificate that indicates who is insured, effective dates, policy number and amounts of coverage, must be provided to the department upon issuance by the insurer and prior to engaging in any outfitting activity.

C. Failure to provide proof of coverage during the registration period shall result in suspension of the registration for the period in which such insurance is required to be maintained.

(1) If an outfitter applicant or a registered outfitter fails to submit a copy of a valid insurance certificate before the insurance certificate on file with the department expires, the non-compliance notice will be sent to the outfitter by the department. The outfitter shall be required to submit a copy of a valid insurance certificate and a fifty dollar (\$50) administrative fee. No outfitter will be registered until the administrative fee has been paid in full.

(2) If the outfitter fails to comply with the non-compliance notice; the department shall issue the outfitter a notice of contemplated commission action. The outfitter shall then be required to submit a copy of a valid insurance certificate and a two hundred and fifty dollar (\$250) administrative fee. No outfitter will be registered until the administrative fee has been paid in full.

(3) If the insurance is not in effect, at any time while conducting any outfitting activity as defined herein, the outfitter's registration will be declared void and the outfitter's registration shall be suspended until a valid insurance certificate and administrative fees are satisfied.

[19.30.8.10 NMAC - Rp, 19.30.8.9 NMAC, 01/01/2018]

19.30.8.11 REGISTRATION FEES:

A. The payment of the annual registration fee for an outfitter or guide is required prior to registration, including any reinstatement or administrative fees.

(1) The annual registration fee for a registered guide in New Mexico is fifty dollars (\$50) for a resident and one hundred dollars (\$100) for a nonresident.

(2) The annual registration fee to be a registered outfitter in New Mexico is five hundred dollars (\$500) for either a resident or a nonresident.

B. All registration fees, except a fifty dollar (\$50) administrative fee, may be refunded if an applicant is rejected or fails to complete the registration process. No other refunds shall be permitted.

C. Emergency fee and criteria: In an emergency situation, a temporary guide registration may be issued by the department.

(1) The fee shall be ten dollars (\$10).

(2) A guide registered pursuant to the emergency situation may only be used once in a license year by the registered outfitter requesting the replacement of a registered guide who has become ill, injured or has a bona fide emergency.

(3) The temporary registration is only valid for seven days and may be renewed only once per emergency situation.

(4) The temporary guide registration may not be used to accommodate additional hunter-clients.

[19.30.8.11 NMAC - N, 01/01/2018]

19.30.8.12 CONTRACTS:

A. A New Mexico outfitter shall execute a written contract with each special drawing pool applicant. The contract must be signed and dated by all parties prior to application for any special drawing pool license. New Mexico outfitters who execute a multi-year application contract shall be required to sign an updated contract with the hunter-client every three years from the initial signature date.

B. All outfitters shall execute a written contract with each hunter-client. The contract must be signed and dated by all parties before the hunt begins and shall designate the terms, guide to hunter-client ratio, hunt dates, compensation charged and services to be provided.

C. All outfitters shall have a copy of the contract available for inspection by the department in the field during the hunt or they must submit an electronic copy of the contract to the department's guide and outfitter registrar at least 48 hours prior to the scheduled hunt. A hunter-client who obtains a license through the special drawing pool, and chooses to hunt beyond their contracted hunt dates must carry a copy of the contract while hunting if it had not been submitted electronically to the registrar at least 48 hours prior to the scheduled hunt.

D. All contracts shall be retained by the outfitter for three years from the latest date signed by each party.

E. All outfitters shall provide any contract to the department upon request.

F. A New Mexico outfitter shall ensure that each hunter-client who obtains a license through the special drawing pool is accompanied by the outfitter or their registered guide for at least two days during the contracted dates of the hunt in the area where the hunter-client's license is valid. An outfitter or guide cannot contract with themselves to apply in the special drawing pool. An outfitter or guide who obtains a license through the special drawing pool is not allowed to guide themselves during their hunt.

G. A New Mexico outfitter may release a contracted hunter-client to another New Mexico outfitter provided that the original contract was valid, in place prior to the application deadline and only if it is mutually agreed upon by all parties. The release shall be in writing and shall be signed by all parties. A hunter-client must enter into a new contract with a New Mexico outfitter prior to hunting. Hunter-client licenses obtained through the special drawing pool are not valid unless the hunter-client is accompanied by a New Mexico outfitter or their registered guide.

H. All outfitters shall provide at least one registered guide or outfitter in the field for every four or fewer hunter-clients who are contracted for guided hunting services with the outfitter.
[19.30.8.12 NMAC - Rp, 19.30.8.11 NMAC, 01/01/2018]

19.30.8.13 OUTFITTER OR GUIDE MISCONDUCT:

A. **Misrepresentation:** An outfitter or guide shall not engage in fraud, deceit, misrepresentation or concealment of any material fact in advertising, soliciting or providing professional services to the hunter-client or the public, as determined by a court of competent jurisdiction.

B. **Failure to report illegal activity:** An outfitter or guide shall report illegal hunting activities or any violation of local, state or federal law relating to hunting, fishing, trapping, outfitting, guiding or land management that they have witnessed or have been made aware of to any commissioned conservation officer or to the appropriate law enforcement agency as soon as it is feasible to do so.

C. **Failure to comply:** An outfitter or guide shall comply with all local, state and federal laws and regulations pertaining to hunting, fishing, trapping, outfitting, guiding or land management. Conviction of any local, state and federal laws and regulations pertaining to hunting, fishing, trapping, outfitting, guiding or land management for which points have not already been assessed shall be misconduct.

D. **Breach of contract:** An outfitter or guide shall not breach a contract, as determined by a court of competent jurisdiction, with any person using outfitting or guiding services of the outfitter.

E. **Failure to comply with registration audit or conditions:** An outfitter or guide, including a renewing applicant, shall submit to the department any documentation requested by the department within the specified timeframe or deadline set by the department.

F. **Failure to disclose:** An outfitter or guide applicant shall not submit false or fraudulent documentation or statements or knowingly omit required information in connection with an application for registration or renewal.

G. **Failure to supervise guides:** Outfitters shall responsibly supervise each registered guide working under the outfitter's direction.

[19.30.8.13 NMAC - Rp, 19.30.8.12 NMAC, 01/01/2018]

19.30.8.14 CRIMINAL VIOLATIONS:

A. It is unlawful to apply for or receive an outfitter or guide registration while on revocation.

B. It is unlawful for a guide to book or service a hunter-client unless employed or contracted to do so by a registered outfitter.

C. It is unlawful to use an outfitter or guide registration issued to another.

D. It is unlawful for an outfitter to allow or use an unregistered person to perform outfitting or guiding services for the outfitter.

E. It is unlawful for any person to guide or outfit in New Mexico without completing all requirements and possessing a current registration from the department. Each guide or outfitter shall carry proof of registration in the field and provide such proof upon request.

F. It is unlawful to apply in the special drawing pool using a New Mexico outfitter number prior to having a valid, signed contract with the same New Mexico outfitter.

G. It is unlawful for a New Mexico outfitter to knowingly allow a hunter-client to apply in the special drawing pool prior to having a valid, signed contract.

H. It is unlawful to hunt with a license obtained through the special drawing pool without being accompanied by, and contracted with, a New Mexico outfitter or their guide for at least two days during the hunt.

I. It is unlawful for any outfitter to not have a valid, signed contract with each hunter-client as prescribed in 19.30.8.12 NMAC.

J. It is unlawful for any outfitter to refuse or fail to produce a contract when requested by the department.

K. It is unlawful for any person to submit an application for any hunt or for any person to counsel, aid or abet any person in submitting an application for any hunt in the special drawing pool with an unregistered or unqualified outfitter number.

L. It is unlawful for an outfitter or guide to have more than four hunter-clients in the field for each registered guide or outfitter.

M. It is unlawful for an outfitter or guide to contract with themselves or to guide themselves using a special drawing pool license.

[19.30.8.14 NMAC - Rp, 19.30.8.17 NMAC, 01/01/2018]

19.30.8.15 REVOCATION POINT SYSTEM: Any person in violation of this section is subject to revocation and point assessments pursuant to 19.31.2 NMAC.

[19.30.8.15 NMAC - Rp, 19.30.8.16 NMAC, 01/01/2018]

19.30.8.16 CRIMINAL PENALTY PROVIDED: A violation of any criminal provision of this rule or Section 17-2A-3 NMSA 1978 that is a criminal violation, is a misdemeanor and shall be punished in accordance with the provisions of Section 17-2-10 NMSA 1978.

[19.30.8.16 NMAC - Rp, 19.30.8.17 NMAC, 01/01/2018]

19.30.8.17 HEARING REQUESTED: A registration revocation hearing may be requested and will be provided in accordance with 19.31.2 NMAC.

[19.30.8.17 NMAC - Rp, 19.30.8.18 NMAC, 01/01/2018]

HISTORY OF 19.30.8 NMAC:

History of Repealed Material:

19.30.8 NMAC, Guide and Outfitter Registration, filed 4/16/2003, repealed effective 11/30/2011.

19.30.8 NMAC, Guide and Outfitter Registration, filed 11/30/2011, repealed effective 01/01/2018.