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Issuing agency name and address: Agency DFA code:

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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): 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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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.

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.