

## **New Mexico AIS Regulations**

### **N.M. Admin. Code Tit. 19, Ch. 30, Part 14 (Aquatic Invasive Species)**

**§ 19.30.14.1 Issuing Agency:** New Mexico Department of Game and Fish.

**§ 19.30.14.2 Scope:** Providing for the control and prevention of the spread of aquatic invasive species in New Mexico.

**§ 19.30.14.3 Statutory Authority:** Chapter 17, including 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 aquatic invasive species.

**§ 19.30.14.4 Duration:** Permanent.

**§ 19.30.14.5 Effective Date:** July 11, 2017, unless a later date is cited at the end of a section.

**§ 19.30.14.6 Objective:** To establish and define the procedures and restrictions for controlling or preventing aquatic invasive species.

#### **§ 19.30.14.7 Definitions:**

- A. “Department” shall mean the New Mexico department of game and fish.
- B. “Director” shall mean the director of the New Mexico department of game and fish.
- C. “Warning tag” as used herein, shall mean a document or tag issued by the department or other state or federal agency and affixed to a conveyance or equipment that prohibits a conveyance or equipment from entering into a water body until being properly decontaminated or otherwise approved for re-entry.
- D. “Impound” shall mean to detain or subject to temporary control of the state other than detention for purposes of inspection a conveyance or equipment until the owner or person in control thereof shall meet all conditions for release of such conveyance or equipment.
- E. “Decontaminate” shall mean to clean, drain, dry or otherwise treat a conveyance in accordance with guidelines established by the director, including minimum standards as described in the Uniform Minimum Protocols and Standards for Watercraft Inspection Program for Dreissenid Mussels in the Western United States (2012) or versions thereafter in order to remove or destroy an aquatic invasive species.
- F. “Proof of decontamination” shall mean verifiable documentary proof, official marking or tag affixed to the conveyance or equipment, or otherwise provided to the owner or person in control of a conveyance or equipment trained personnel to effect decontamination of the conveyance or equipment, or otherwise demonstrate compliance with the decontamination

requirement established by the director; such certification shall be valid only until the conveyance or equipment re-enters a water body.

- G. “Trained personnel” means individuals who have successfully completed the United States fish and wildlife service’s aquatic invasive species watercraft inspection and decontamination training, level I, level II or an equivalent training recognized by the director.
- H. “Watercraft inspection and decontamination seal” shall mean a device issued by trained personnel that attaches the conveyance or equipment to the trailer to indicate that the conveyance or equipment has not been launched since it was last inspected or decontaminated, and is accompanied by a receipt.

**§ 19.30.14.8 Warning Tag:**

The director shall prescribe and procure the printing of warning tags to be used for the state to identify any conveyance or equipment known or believed to contain an aquatic invasive species or a conveyance or equipment leaving an infested water body without being decontaminated.

- A. Trained personnel may affix a warning tag to any conveyance or equipment known or believed to contain aquatic invasive species, based upon its point of origin or exposure to infested water, unless the person in control of such equipment or conveyance has proof of decontamination, or can otherwise demonstrate that the equipment or conveyance is not infested.
- B. Trained personnel may affix a warning tag to a conveyance or equipment if they have reason to believe aquatic invasive species may be present and the person operating or in control of such conveyance or equipment refuses inspection.
- C. Each warning tag shall be affixed on boats and other similar vessels within 12" of the boat number on the port (left) side, to the windshield of the conveyance or equipment, or in the case where a transport company is transferring the conveyance or equipment, via United States mail, electronic mail or hand delivery to both owner and transport company. In cases where no boat number is found the warning tag shall still be affixed in the same general location.
- D. Each warning tag shall be individually affixed to all other conveyances and equipment in the most visible manner possible.
- E. No warning tag may be removed except by trained personnel or a person or entity certified by the director and only if the respective personnel, person or entity is acting in their official capacity and has inspected the conveyance or equipment, satisfied that proper decontamination or elimination of aquatic invasive species has occurred.

**§ 19.30.14.9 Impoundment of Conveyance or Equipment:**

- A. Any law enforcement officer may impound any conveyance or equipment if warning tagged

and the conveyance or equipment is currently in or entering a water body.

- B. Any law enforcement officer may impound any conveyance or equipment known or believed to contain aquatic invasive species if such conveyance or equipment is currently in a water body or the person operating or in control of such conveyance or equipment fails to follow the enforcement officer's command to immediately prevent such from entering or remaining in a water body.
- C. A warning tag shall be immediately affixed to any conveyance or equipment impounded pursuant to Subsection B above.
- D. Any impounded conveyance or equipment shall only be released from impoundment:
  - (1) upon receipt of satisfactory proof that decontamination requirements as prescribed by the director have been met; or
  - (2) upon receipt of a conditional release from the director wherein the owner or person responsible for the conveyance or equipment agrees to the specific terms and conditions that require immediate decontamination followed by an inspection to verify decontamination has occurred.
- E. It shall be the responsibility of the owner of any impounded conveyance or equipment to pay all costs, including storage fees, decontamination charges and towing associated with the impoundment and to reimburse any agency that incurs expenditures for the impoundment.

**§ 19.30.14.10 Limited Transport:** The department's employees, agents or designees, or employees of other state or federal agencies while acting in their official capacity may authorize an owner or person in control of a warning tagged conveyance or equipment to transport the conveyance or equipment to a location approved by the department or their designee.

**§ 19.30.14.11 Waiver and Release of Liability:** Prior to being eligible for decontamination by the state or its designee the owner or person in control of a warning tagged conveyance or equipment shall sign and deliver to the department a release of liability in a form approved by the director.

**§ 19.30.14.12 Inspection and Decontamination Program:**

- A. Trained personnel may establish check stations to inspect all conveyances or equipment prior to entering, being launched onto or being directly exposed to any water body of the state. It shall be unlawful for an owner or person in control of a conveyance(s) or equipment to knowingly avoid an established check station.
- B. It shall be unlawful for an owner or person in control of conveyances or equipment transported into New Mexico or registered in a state other than New Mexico to knowingly introduce, launch or directly expose a conveyance(s) or equipment to any water body of the state

without first receiving an inspection and/or decontamination by trained personnel. Proof of decontamination may be used in lieu of an inspection at the discretion of trained personnel.

C. The owner of a conveyance or equipment that is greater than or equal to 26 feet in length and will be transported into or within New Mexico shall notify the department aquatic invasive species program coordinator at least 14 days prior to the anticipated date of transport.

D. Upon completion of any conveyance or equipment inspection, trained personnel may require decontamination, re-inspection and additional drying time prior to the conveyance or equipment entering any water body of the state.

E. Trained personnel may affix a watercraft inspection and decontamination seal to a conveyance or equipment to serve as proof of decontamination or inspection. Conveyances or equipment with an intact watercraft inspection and decontamination seal with accompanying receipt may be allowed to enter a water body of the state without further inspection or decontamination upon verification by trained personnel.

F. It shall be unlawful for the owner or person in control of a conveyance(s) or equipment transported on a public road in New Mexico to have any plug or other barrier in place that prevents water drainage from bilge lines, ballast tanks, motor cooling systems, live wells, compartments and equipment.

G. It shall be unlawful for the owner or person in control of a conveyance(s) or equipment to fail to take reasonable measures upon exiting a waterbody to decontaminate all equipment, compartments or spaces that are wet, hold water or could transfer AIS, including aquatic vegetation.

H. Trained personnel may not self-inspect, decontaminate or attach a seal to their own conveyance or equipment.

#### **N.M. Admin. Code 19.31.2 (Hunting and Fishing License Revocation)**

*\* AIS-relevant provisions: N.M. Admin. Code §§ 19.31.2.8(A); 19.31.2.9(A)(19*

**§ 19.31.2.1 Issuing Agency:** New Mexico Department of Game and Fish.

**§ 19.31.2.2 Scope:** Person or persons who violate the provisions of Chapter 17, 30-14-1, and the Parental Responsibility Act (40-5A-1- 40-5A-13) NMSA 1978.

**§ 19.31.2.3 Statutory Authority:** NMSA 1978 Sections 11-16-5 and 11-16-6; sections 17-1-14(B)(10) and (11); Sections 17-3-34; Section 30-14-1; and Sections 40-5A-3, and 40-5A-6.

**§ 19.31.2.4 Duration:** Permanent.

**§ 19.31.2.5 Effective Date:** September 14, 2012, unless a later date is cited at the end of a section or paragraph.

**§ 19.31.2.6 Objective:** To revoke or suspend the hunting, fishing, trapping, guiding and outfitting privileges of any person who persistently, flagrantly or knowingly violates or countenances the violation of any of the provisions of Chapter 17 NMSA 1978, or any rule adopted by the state game commission, or Section 30-14-1 NMSA 1978; to revoke or suspend the hunting, fishing, trapping, guiding and outfitting privileges or other privileges or authorities granted by an agreement, license or permit issued by the department of game and fish, of any person whose name appears on a human services department certified list of obligors not in compliance with the Parental Responsibility Act, 40-5A-1 NMSA 1978; or to revoke or suspend the hunting, fishing, trapping, guiding and outfitting privileges pursuant to the wildlife violator compact, 11-16 -1 NMSA 1978, of any person who has been placed on revocation by a wildlife violator compact member state, or temporarily suspend those privileges of any resident that fails to meet the terms of a citation issued from a compact state; or to revoke or deny the private land agreement privileges of any person who does not comply with a department sponsored private lands agreement.

**§ 19.31.2.7 Definitions:**

- A. “Commission” means the New Mexico state game commission.
- B. “Department” means New Mexico department of game and fish.
- C. “Director” means the director of the department of game and fish.
- D. “Obligor” means a person who has been ordered to pay child or spousal support pursuant to a judgment and order for support.
- E. “Respondent” means any person holding a license, permit, certificate, landowner agreement, or applicant thereof, who is served a notice of contemplated action.
- F. “Revocation” means when a person's hunting, fishing, trapping, guiding and outfitting privileges, or other privileges or authorities granted by an agreement, license or permit issued by the department of game and fish, are taken away by the state game commission after notice and opportunity for a hearing.
- G. “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.

**§ 19.31.2.8 REVOCATION CATEGORIES AND TIMEFRAME:**

- A. Points: Any person with 20 or more points accumulated within any consecutive three-year period, shall have all of his or her hunting, fishing, trapping, guiding and outfitting privileges, or other privileges or authorities (granted by an agreement, license, permit or certificate issued) under Chapter 17 NMSA 1978 and its implementing rules subject to revocation or suspension.

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

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

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

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

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

(3) Any person, who, after having had their privileges revoked for a second time, is found to have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17 or its implementing rules, for a third or subsequent time, shall have his or her license, permit, certificate, and privilege to hold such, revoked for up to seven years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

(4) Any person found to have taken or killed a bighorn sheep, ibex, oryx, barbary sheep, elk, deer, or pronghorn antelope, without a valid license or during closed season, which results in the unnecessary or wanton waste of game, shall have his or her license, permit, certificate, and privilege to hold such, revoked for up to seven years, unless otherwise provided for by law.

(5) Any person found to have taken or killed a bighorn sheep, ibex, oryx, barbary sheep, elk, deer, or pronghorn antelope, without a valid license or during closed season, which results in the unnecessary or wanton waste of game, for a second or subsequent time, shall have his or her license, permit, certificate, and privilege to hold such, revoked for up to ten years, unless otherwise provided for by law.

(6) Any person that buys, sells, trades or attempts to buy, sell or trade illegal wildlife or the parts thereof, or aids and abets in this activity, shall have his or her license, permit, certificate, and privilege to hold such, revoked for up to five years, unless otherwise provided for by law.

(7) Any person that buys, sells, trades or attempts to buy, sell or trade illegal wildlife or the parts thereof, or aids and abets in this activity, for a second or subsequent time, shall have his or her license, permit, certificate, and privilege to hold such, revoked for up to seven years, unless otherwise provided for by law.

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

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

(10) The commission may revoke a person's license, permit, certificate, and privilege to hold such, for any definite period of time they deem appropriate if they determine that the person has committed a flagrant or egregious violation of Chapter 17 or its implementing rules.

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

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

- (1) illegally taking, attempting to take, killing, capturing or possessing any big game species outside of hunting season in violation of Section 17-2-7 or 17-3-33;
- (2) except as otherwise provided by Sections 17-2-37 to 17-2-46, taking, possessing, transporting, exporting, processing, selling or offering for sale, or shipping any species or subspecies of wildlife listed on the state list of endangered species or the United States' list of endangered native and foreign fish and wildlife;
- (3) any violation of Section 17-3-6;
- (4) selling, offering for sale, offering to purchase or purchasing any game animal, game bird or protected species, in violation of Section 17-2-7;
- (5) hunting with the aid of an artificial light or spotlight, in violation of Section 17-2-31;
- (6) hunting big game outside the ranch boundaries for which a ranch-only license is issued or otherwise hunting big game in the wrong area, in violation of Section 17-2-7;
- (7) criminal trespass, in violation of Section 30-14-1, when in connection with hunting, fishing or trapping activity; revocation to be for three years;
- (8) for violations of Section 17-2-29, involving hunting or boating while intoxicated (revocation for a period of one year, as prescribed by Section 17-2-30);
- (9) buying of licenses, permits certificates or registration without sufficient funds to pay for same;
- (10) any violation of Section 17-3-48, provided that any revocation under this section shall commence consecutively to any current revocation;
- (11) guiding or outfitting without being registered in violation of Section 17-2A-3;
- (12) using an outfitter or guide license issued to another;
- (13) hunting big game without a license;
- (14) any violation of Section 17-3-49;
- (15) any violation of Section 17-2-7.1;
- (16) any person submitting, or allowing to be submitted for them, false or fraudulent harvest reporting information as required by rule;



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

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

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

(20) accessory to any of the above.

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

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

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

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

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

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

(6) importation of any species in violation of Section 17-3-32 without a permit;

(7) any violation of Section 17-3-45;

(8) accessory to any of the above violations.

C. 10-point violations: Any person violating any of the following provisions shall be assessed 10 points:

(1) hunting in a closed area;

(2) exceeding the bag limit of game;

(3) illegal possession of fish;

(4) exceeding the bag limit on fish;

(5) fishing by an illegal method;

(6) procurement or possession of additional deer license, except as provided by rule;

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

(8) illegal possession of any big game species or turkey during hunting season;

(9) hunting turkey or small game without a license;

(10) hunting, taking or attempting to take protected game, game fish, or furbearers on private land, without written permission, in violation of Chapter 17 NMSA 1978 and its implementing rules;

(11) accessory to any of the above violations.

D. 7-point violations: Any person fishing without a license shall be assessed seven points.

E. 5-point violations: Any person violating any provision of Chapter 17 NMSA 1978 and its implementing rules not specifically listed herein, except for violations of Section 17-2A-3 and its implementing rules shall be assessed five points.

**§ 19.31.2.10 Notice Of Contemplated Action:** The department shall mail out a notice of contemplated action ('NCA') as required by this section when it determines that there is sufficient evidence that a person has accumulated 20 or more points, or when the commission is contemplating revoking a landowner's 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 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, the commission may take the action contemplated in the notice and such action shall be final and not subject to judicial review.

**§ 19.31.2.12 Hearing Requested:** If a respondent does request 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 nor less than 30 days from the date of service of such notice.

**§ 19.31.2.13 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 at the department's recommendation and the commission retains authority for the final decision.

**§ 19.31.2.14 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 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 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.

**§ 19.31.2.17 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 Hearing Open to the Public:** All hearings conducted under this rule shall be open to the public.

**§ 19.31.2.19 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 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 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 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 Final Decision of the Commission:**

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

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

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

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

E. Default orders for failure to request a hearing: The commission shall consider the department's submission of names of respondents who have not requested a hearing and whose license(s),

permit(s), certificate(s), landowner agreement(s), or application(s) shall be automatically revoked and associated privileges suspended pursuant to Section 8 of this rule.

**§ 19.31.2.24 JUDICIAL REVIEW:** In accordance with Section 17-3-34 NMSA 1978, any person whose license, permit, certificate 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 Wildlife Violator Compact Suspension and Revocation:** Any person whose name appears on the wildlife violator compact list or who has been revoked by another wildlife violator compact member state and is in accordance with Section 17-2-10.3.B NMSA 1978 shall have his or her license, permit, certificate or registration immediately and temporarily withheld or suspended, if any such license, permit, certificate or registration has been issued by the department. Any resident who fails to comply with the terms of a citation including failure to appear, from a member state shall have his or her license, permit, certificate or registration immediately and temporarily withheld or suspended, if any such license, permit, certificate or registration has been issued by the department. 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.

**§ 19.31.2.26 Suspension:** The Parental Responsibility Act ('PRA'), 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 if 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 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, registration and associated privileges suspended until he or she provides a certificate of compliance from the human services department.

A. Notice procedures: When the department receives a human services department certified list of obligors not in compliance with the PRA, the department will present the list to the commission for the approval of the issuance and service of 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 nor 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.
- (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;

(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;

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

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

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

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

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

D. 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 Failure To Pay Penalty Assessment Or Civil Damage:** In accordance with Section 17-2-10.3 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 shall be suspended for three years, or until the penalty assessment is paid in full. Any person that has had a civil judgment assessed against them pursuant to Section 17-2-26 shall have their license, permit, or certificate, and the associated privileges suspended until those damages have been paid in full.

A. Notice procedures: When the department determines that a person has failed to pay a penalty assessment pursuant to Section 17-2-10.2, or that a person has failed to pay damages pursuant a civil judgment in accordance with Section 17-2-26, the department will present to the commission, at a regularly scheduled commission meeting, a list of such persons for the commission to approve the serving of a NCA to the listed persons. The department shall send a NCA as required by this section to any named person who holds a license, permit, or certificate. The NCA, sent by certified mail with return receipt requested, shall consist of a written notice advising the respondent that the department has grounds to take action, and that on behalf of the commission it shall suspend the license, permit, certificate or registration and any privileges thereof unless the person:

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

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

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

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

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

(3) The department, within 20 days of receipt of such request, shall notify the respondent of the time and place of the hearing, the name or names of the person or persons who shall conduct the hearing for the commission, and the statutes and rules authorizing the commission to take the contemplated action. The hearing shall be held not more than 90 nor 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.

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

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

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

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

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

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

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

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

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

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

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

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

C. Default orders for failure to request a hearing: In the event a respondent does not request a hearing, or pay their outstanding assessment or damages within 30 days of the date that notice

was mailed, the commission grants approval to the department through the director to administer these suspensions without further commission consideration or notice.

D. 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.