

**TITLE 19 NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 35 CAPTIVE WILDLIFE USES**  
**PART 7 IMPORTATION OF LIVE NON-DOMESTIC ANIMALS, BIRDS AND FISH**

**19.35.7.1 ISSUING AGENCY:** New Mexico Department of Game and Fish.  
[19.35.7.1 NMAC - Rp/E, 19.35.7.1 NMAC, 7-9-10]

**19.35.7.2 SCOPE:** Persons who desire to bring wildlife species into the state of New Mexico. It may include the general public, pet importers, holders of Class “A” park licenses, department permittees and others.  
[19.35.7.2 NMAC - Rp/E, 19.35.7.2 NMAC, 7-9-10]

**19.35.7.3 STATUTORY AUTHORITY:** 17-1-14, 17-1-26 and 17-3-32.  
[19.35.7.3 NMAC - Rp/E, 19.35.7.3 NMAC, 7-9-10]

**19.35.7.4 DURATION:** Permanent.  
[19.35.7.4 NMAC - Rp/E, 19.35.7.4 NMAC, 7-9-10]

**19.35.7.5 EFFECTIVE DATE:** July 9, 2010, unless a later date is cited at the end of a section.  
[19.35.7.5 NMAC - Rp/E, 19.35.7.5 NMAC, 7-9-10]

**19.35.7.6 OBJECTIVE:** To provide consistent criteria for the importation of live non-domesticated animals into New Mexico and to protect native wildlife against the introduction of contagious or infectious diseases, undesirable species and address human health and safety issues.  
[19.35.7.6 NMAC - Rp/E, 19.35.7.6 NMAC, 7-9-10]

**19.35.7.7 DEFINITIONS:**

**A.** Accredited laboratory: A lab recognized for CWD testing by the New Mexico department of game and fish with input from the national veterinary services laboratory, Ames, IA.

**B.** Animal health emergency: A situation in which people or animals are at risk of exposure to infectious or contagious diseases as determined by the director.

**C.** APHIS: Animal and plant health inspection service, United States department of agriculture.

**D.** Applicant: Any person or entity that causes or submits a department application for importation.

**E.** Certificate of compliance: An official department document declaring an applicant’s ability to resume importation application eligibility.

**F.** Closed herd sales: Sales of animals from a closed herd directly to the buyer in a manner that allows the buyer to transport the animals from the producer's premises directly to the buyer's premises without contact with animals from another herd, and without contact with other pens or transport facilities used by any other herd.

**G.** CWD: Chronic wasting disease, a transmissible spongiform encephalopathy of cervids.

**H.** CWD exposed animal: An animal that is, or has been in the last 60 months, part of a CWD positive herd.

**I.** CWD positive animal: An animal that has had a diagnosis of CWD confirmed by means of an official CWD test conducted by a laboratory certified by USDA/APHIS.

**J.** CWD negative animal: An animal that has had an official CWD test and that test resulted in a negative classification.

**K.** CWD positive herd: A herd in which a CWD positive animal resided at the time it was diagnosed and which has not been released from quarantine.

**L.** CWD suspect herd: A herd for which laboratory evidence or clinical signs suggest a diagnosis of CWD, but for which laboratory results have been inconclusive or not yet conducted.

**M.** CWD exposed herd: A herd in which a CWD positive or CWD exposed animal has resided within the 60 months prior to the diagnosis.

**N.** CWD trace-back-herd: An exposed herd in which a CWD positive or CWD exposed animal resided in any of the 60 months prior to the diagnosis.

**O.** CWD trace-forward herd: An exposed herd that has received CWD positive or CWD exposed animals from a positive herd within 60 months prior to the diagnosis of CWD in the positive herd.

**P.** Dangerous animal: An animal that due to its nature, biology or its behavior, including predatory or venomous animals, that may present a risk to the health, safety or well-being of the public or other animals including native wildlife, domestic pets or livestock.

**Q.** Department: Shall mean New Mexico department of game and fish.

**R.** Director: Shall mean the director of the department of game and fish.

**S.** Importer: Any person or entity that causes an animal to be brought, transported or shipped into New Mexico with the exception of common mail carriers and delivery service providers during the course of their regular duties.

**T.** Invasive animal: Any non-native animal, except protected wildlife, including any aquatic invasive species (AIS), whose introduction into New Mexico may cause or is likely to cause harm to the economy, environment, protected wildlife, human health or safety.

**U.** Isolation: A period of time imported animals are separated and observed. The observation pen must have fences at least eight feet high. The isolation pen must prevent nose-to-nose contact with all wild ungulates during the observation period.

**V.** Mixed herd: A herd comprised of animals from different sources and held to allow contact or commingling.

**W.** Mixed herd sales: Sales from sale barns, auctions, private arrangements, or other facilities that allow joint penning or adjacent penning of animals from more than one closed herd, or otherwise facilitate or permit commingling, direct contact, or holding, boarding, or sharing the premises by more than one herd simultaneous or successively in time.

**X.** Non-domesticated animal: For the purposes of this rule, any animal species that is wild by nature not listed as semi-domesticated or protected under chapter 17 NMSA, 1978.

**Y.** NPIP: National poultry improvement program.

**Z.** Protected wildlife: Shall mean those taxonomic groups of mammals, birds and fish listed in Chapter 17 NMSA, 1978, including any species that are listed as either state or federally threatened or endangered.

**AA.** Release from captivity: For the purpose of this rule, the act of removing from confinement, letting go, liberating or setting free any imported, live non-domesticated animal into the wild.

**BB.** Semi-domesticated animal: For the purpose of this rule, the director may designate an animal species as semi-domesticated in those instances where individual members of such species are commonly tamed, raised, bred or sold in captivity.

**CC.** Species importation list: A list containing protected, non-game and semi-domesticated animal species established, maintained, updated or amended by the director of the New Mexico department of game and fish. The species importation list may contain importation requirements, restrictions and conditions for each animal species listed.

**DD.** Qualified expert: Only a person officially designated by the director to import a specific non-domesticated animal.

**EE.** Undesirable animal: An animal that may have adverse impacts to health, management or safety.

**FF.** USDA: United States department of agriculture.

**GG.** Whole herd or complete monitoring: Participation by park owners or importers in a program requiring every brainstem (obex) from every animal that dies at the facility to be successfully submitted to an accredited laboratory for CWD testing, regardless whether the death is natural or not. Exception: No more than two deaths within a 60 month period may not have been successfully tested for CWD, if the cervid (carcasses) were inspected by a certified veterinarian and attested to show no clinical sign of CWD.

[19.35.7.7 NMAC - Rp/E, 19.35.7.7 NMAC, 7-9-10]

**19.35.7.8 IMPORTATION OF LIVE NON-DOMESTICATED ANIMALS:** It shall be unlawful to import any live non-domesticated animal into New Mexico without first obtaining appropriate permit(s) issued by the director except those animals identified within the species importation list group I. Permits will only be issued when all application requirements and provisions have been met. Failure to adhere to or violation of permit provisions may result in the applicant/importer becoming ineligible for importation(s). The pendency or determination of any administrative action or the pendency or determination of a criminal prosecution for the same is not a bar to the other.

[19.35.7.8 NMAC - Rp/E 19.35.7.8 NMAC, 7-9-10]

**19.35.7.9** [Reserved]

**19.35.7.10 DIRECTOR'S AUTHORITY:**

**A.** Species importation list: The director of the New Mexico department of game and fish shall develop a species importation list. The species importation list shall be established, maintained, updated or amended by the director as species information and concerns become available and are identified. The species importation list shall be grouped into the following minimum importation "groups" based on the following criteria.

(1) Species importation list group I are designated semi-domesticated animals and do not require an importation permit.

(2) Species importation list group II may be for live non-domesticated animals that are not known to be either invasive or dangerous and do not present a known risk to the health, safety or well-being of the public, domestic livestock or to native wildlife and their habitats.

(3) Species importation list group III may be for live non-domesticated animals that present minimal or manageable concerns that will require specific provisions that must be met prior to issuing an importation permit to address health, safety or well-being of the public, domestic livestock or to native wildlife and their habitats.

(4) Species importation list group IV may be for live non-domesticated animals that are considered dangerous, invasive, undesirable, state or federal listed threatened, endangered, a furbearer or any other species of concern as identified by the director. The importation of these species are prohibited for the general public but may be allowed for, scientific study, department approved restoration and recovery plans, zoological display, temporary events/entertainment, use as service animal or by a qualified expert.

(5) Any species of live non-domesticated animal not currently on the species importation list will be designated group IV until such time as another determination is made by the director.

**B.** Non-domesticated animal importation: The director may, in times of animal health emergency, suspend all importation activities or suspend importation of selected taxa for indefinite periods of time to protect wild and domestic animals from infectious disease epidemics and to protect the people of New Mexico from zoonoses.

**C.** Non-domesticated animal intrastate movement: the director may suspend intrastate movement in an animal health emergency.

**D.** Eligibility requirements for importation (cooperative compliance): The director may declare any applicant or importer who fails to comply with any importation conditions or provisions as ineligible for future importation permits or ability to supply animals into New Mexico until all permit violations are corrected and the appropriate certificate of compliance fees are paid in full.

(1) The director may require an applicant to obtain a certificate of compliance prior to becoming eligible to import any live non-domesticated animals and may impose additional corrective measures in those instances where violations of this provision have been identified.

(2) The director may impose a cease and desist order that makes an applicant ineligible to apply for an importation permit for up to a year in those instances where corrective measures have not been implemented or repeated violations have occurred.

**E.** Certificate of compliance fee: The director shall determine the appropriate certificate of compliance fee per violation not to exceed \$500.00 based on the following criteria:

(1) department expenses including manpower, travel, inspection and compliance monitoring;

(2) department office expenses including mailing, shipping, certificate issuance;

(3) animal care, treatment, housing and feeding;

(4) other miscellaneous expenses.

**F.** Qualified expert: the director shall determine the process and the requirements for a person to be designated a qualified expert for each applicable species.

(1) The director may require an applicant to provide specific qualifications including, but not limited to the following: professional references, experience, training, education and facility specifications.

(2) The determination to approve or deny a qualified expert designation by the director is final and is not subject to appeal.

**G.** Application notices and documents.

(1) The director shall determine required forms, applications and documents to carry out the provisions of this rule.

(2) The director shall determine noticing and posting provisions to carry out the provisions of this rule.

(3) The director shall determine the permit and application conditions and requirements to carry out the provisions of this rule.

**H.** The director shall determine the process and requirements for re-entry into the state.

**I.** The director shall determine the process for expediting applications and permits including an additional application fee of \$25.00.  
[19.35.7.10 NMAC - N/E, 7-9-10]

**19.35.7.11** [Reserved]

**19.35.7.12 APPLICATION FOR IMPORTATION:**

**A.** Any applicant requesting an importation permit for non-domesticated animals must submit the following information with the application:

- (1) a containment or confinement plan indicating where and how the species will be maintained;
- (2) a current and valid certificate from an accredited veterinarian certifying that each animal or rearing facility of origin has been inspected and is in good general health, disease free or that each animal or rearing facility of origin tests disease free for any specific disease(s) following the testing requirements and procedures as identified by the department during the application process, except;

(a) the department may approve an animal supplier that is currently enrolled in an accredited animal breeding program or facility health monitoring standards such as NPIP, AZA, or other government sanctioned program;

(b) the department may approve detailed and verifiable facility of origin health monitoring plans and records to be submitted by an organization(s) in lieu of a health or rearing facility inspection certificate from an accredited veterinarian;

(3) proof from the county and city into which the animal will be imported and held that possession of the animal is allowed;

(4) proof that all necessary federal permits have been obtained;

(5) proof that the requested species does not possess or have the immediate potential to carry infectious or contagious diseases and;

(6) confirmation by the applicant or person in authority representing the applicant agreeing to any conditions and provisions listed on the respective permit, and;

(7) any importing person or entity must notify the department of game and fish within 24 hours of any disease indications or symptoms that manifest themselves among the imported animals.

**B.** Additional conditions for the importation of a dangerous animal; applicant shall agree to the following provisions before an importation permit is approved:

(1) enter into a department approved written agreement releasing the department from liability;

(2) agree to meet all department approved posted warning requirements;

(3) agree to provide a department approved written warning to any person receiving such animal;

(4) government agencies or other entities as designated by the director may be exempted from the liability or warning requirements in this subsection.

**C.** All application fees are non-refundable.

[19.35.7.12 NMAC - N/E, 7-9-10]

**19.35.7.13 TEMPORARY IMPORTATION:** Importation into the state for exhibition, advertising, movies etc. may be approved on an expedited basis provided that the animal will not be in the state for a period of more than 30 days. Specific requirements for the animals will be listed on the application and permit. Specific requirements for importation may be listed on the application. The department will have the final authority to list all conditions on the permit that will be required prior to final approval.

[19.35.7.13 NMAC - Rp/E, 19.35.7.17 NMAC, 7-9-10]

**19.35.7.14 IMPORTATION OF CERTAIN FISH OR FISH EGGS INTO NEW MEXICO:** All fish species or eggs of the families salmonidae, esocidae, percichthyidae, ictaluridae, centrarchidae, percidae, may be imported into the state provided that all conditions stated on the application and permit are met, including the following:

**A.** the name of department approved supplier pursuant to this regulation;

**B.** description of water into which fish will be released is provided; description must include: legal owner of water; legal description of location (township, range, section); county; name of water; size of water (surface acres-lake; miles-stream); source and discharge of water; major use of water; a map of sufficient size and detail to allow the water to be located by someone unfamiliar with the area shall be included;

**C.** species, size, pounds, and number of fish to be imported will be specified;

- D. purpose of importation will be specified;
  - E. full description of person or persons requesting importation, to include: name, address, telephone number, name of contact person;
  - F. GPS coordinates (latitude and longitude in degree decimal minutes (DDM) using WGS 84 datum for each location where fish are stocked.
- [19.35.7.14 NMAC - Rp/E, 19.35.7.11 NMAC, 7-9-10]

**19.35.7.15 APPROVED SUPPLIERS OF FISH OR FISH EGGS FOR IMPORTATION INTO NEW MEXICO:**

- A. The department will maintain a listing of approved fish suppliers.
- B. All approved fish suppliers or their agent must carry a department-issued copy of the importation permit while transporting fish to the approved release site in New Mexico.
- C. Approved supplier or their agent must notify the department of intended port of entry for importation of fish or fish eggs into New Mexico.
- D. Approved supplier may be required to provide a presence/absence disease history (e.g., furunculosis bacterium, enteric redmouth bacterium, proliferative kidney disease, ceratomyxosis of salmonids, etc.) of the hatchery facility if requested by the New Mexico department of game and fish.
- E. Approved suppliers shall meet the criteria and provide pathogen-free certification as specified herein.
- F. **Salmonids:**
  - (1) For the infectious hematopoietic necrosis virus (IHNV), infectious pancreatic necrosis virus (IPNV), and viral hemorrhagic septicemia (VHS).
    - (a) Disease testing will be conducted by another state wildlife agency, United States fish and wildlife service; USDA certified source or other source approved by the New Mexico department of game and fish.
    - (b) Disease testing on fish must use American fisheries society (AFS) blue book procedures - *“suggested procedures for the detection and identification of certain finfish and shellfish pathogens, 4th edition 1994”*.
    - (c) Disease testing will be conducted on an annual basis; annual inspection must have occurred within the previous 12 months of application date.
    - (d) 60 fish per lot will be sampled.
    - (e) For all lots of fish not originating on facility, supplier must provide a historical account documenting fish were reared only at New Mexico department of game and fish approved aquaculture facilities.
  - (2) Salmonids -for the whirling disease pathogen and bacterial kidney disease.
    - (a) Disease testing will be conducted by another state wildlife agency, United States fish and wildlife service; USDA certified source or other source approved by the New Mexico department of game and fish.
    - (b) Lots of fish older than six months will be sampled.
    - (c) 60 fish per lot will be sampled.
    - (d) Inspection will include at least one lot of susceptible salmonids (rainbow trout, cutthroat trout, rainbow-cutthroat hybrids) which has been on the hatchery's water source for at least 10 months.
    - (e) Disease testing will be conducted on an annual basis. Annual inspection must have occurred within the previous 12 months of application date.
    - (f) Positive findings of whirling disease by pepsin-trypsin digestion shall be considered presumptive; positive findings of whirling disease by histology shall be considered confirmatory.
    - (g) For all lots of fish not originating on facility, supplier must provide a historical account documenting fish were reared only at New Mexico department of game and fish approved aquaculture facilities.
    - (h) Supplier may be required to provide a whirling disease history of the hatchery facility if requested by the New Mexico department of game and fish.
    - (i) Presumptive findings: Any presumptive findings of disease with no confirmatory testing shall be deemed a positive finding of the disease.
    - (j) Positive findings of disease: Any facility deemed to have tested positive, by confirmatory findings or presumptive findings without confirmatory testing, under this rule shall be barred from importation into the state of New Mexico until the facility is shown to be pathogen free for a minimum of two consecutive years and has met all other requirements.
    - (k) Renovated facilities: A facility that has been deemed positive under this rule and has undergone complete renovation may apply for importation privileges as a new facility once it has had at least one annual inspection and has met all other requirements. Complete renovation for the purposes of this rule shall be

defined as a facility that has: 1) closed, secured, and sanitized all water sources, 2) confined all water conveyance to closed sealed pipes, and 3) constructed all rearing spaces out of hard surfaced materials. Proof of renovation must be provided with the application for importation privileges. On-site inspection of the facility after renovation may be required prior to authorization to import.

**G.** Warm water fish: For channel catfish imported into New Mexico.

(1) Disease testing will be conducted by another state wildlife agency, United States fish and wildlife service; USDA certified source or other source approved by the New Mexico department of game and fish.

(2) Disease testing will be conducted on an annual basis. Annual inspection must have occurred within the previous 12 months of application date.

(3) Channel catfish will be tested for *Edwardsiella ictaluri* (hole in the head disease).

(4) Approved supplier will document whether fish on the facility have ever been diagnosed with channel catfish virus.

**H.** Triploid grass carp: A notarized certificate of triploidy issued by another state wildlife agency, United States fish and wildlife service, USDA certified source or other source approved by the New Mexico department of game and fish must be provided for all grass carp imported into New Mexico.

**I.** Approved suppliers shall provide signed written assurance to the department that the fish rearing facilities are free of aquatic nuisance species (ANS) and aquatic invasive species (AIS). Failure to provide this assurance shall be reason to deny importation privileges. Approved suppliers shall be liable for any introduction of ANS or AIS caused by their actions.

[19.35.7.15 NMAC - Rp/E, 19.35.7.12 NMAC, 7-9-10]

**19.35.7.16** [Reserved]

**19.35.7.17 IMPORTATION CONDITIONS FOR THE FAMILIES BOVIDAE, ANTILOCAPRIDAE AND CERVIDAE:** All live protected wildlife species of the families Bovidae, Antilocapridae, and Cervidae imported in the state of New Mexico shall meet the following criteria.

**A.** Be permanently and uniquely tattooed in at least one ear and tagged with USDA metal ear tags. The numbers shall be registered with the department of game and fish.

**B.** Be examined by an accredited veterinarian prior to importation. Each animal shall be accompanied by a pre-approved health certificate, certifying a disease-free status.

**C.** Test negative for brucellosis. Serum testing shall be done not more than 30 days prior to importation. All serum samples shall be tested by a cooperative state federal brucellosis laboratory.

**D.** Test negative for bovine tuberculosis not more than 90 days prior to importation. Animals to be imported must originate from a herd that had a negative whole-herd tuberculosis test not more than 12 months prior to importation or have a current "tuberculosis free herd" certificate issued from the state of origin through a department of agriculture accreditation program. Bovine tuberculosis testing must be performed with the current U.S. department of agriculture approved method and be conducted by a federally accredited veterinarian. Exception: Wild sheep are exempt from this testing requirement.

**E.** Test negative for para tuberculosis (Johne's disease) with serologic testing methods. Test results must be verified by the attending veterinarian.

**F.** All cervids to be imported into the state must come from a facility where whole herd or complete monitoring occurs by verifiable proof, and the animal(s) must have shown no sign of chronic wasting disease for 60 months prior to time of importation. All cervids entering New Mexico must have the following statement signed by the owner: "The animals on this application originate from a herd which has complete monitoring and in which chronic wasting disease has not been diagnosed in the last 60 months. These animals originate from a herd that has not been identified as a trace or source herd for chronic wasting disease. These animals have no history and no evidence of ever having been exposed to chronic wasting disease."

(1) No cervid shall be allowed to enter the state if it has had any contact with a CWD suspect, exposed, positive, trace-forward or trace-back animal within 60 months prior to time of importation.

(2) No cervid coming through closed herd sales, a mixed herd or mixed herd sales shall be allowed to enter the state if the herd or auction facility has had any CWD suspect, exposed, positive, trace-forward or trace-back animal on the premises within 60 months prior to time of importation.

(3) No cervid shall enter the state in a conveyance that has held CWD suspect, exposed, positive, trace-forward or trace-back animal within 60 months prior to time of importation.

(4) No cervid shall enter the state, unless it comes from a herd which has complete monitoring.

**G.** All elk to be imported into the state of New Mexico shall be tested for genetic purity. Only Rocky Mountain elk (*Cervus elaphus nelsoni*) will be allowed to be imported into the state of New Mexico. Any elk showing red deer hybridization or hybridization of other elk subspecies will not be allowed into the state. All testing shall be done ONLY by a New Mexico department of game and fish approved laboratory.

**H.** All progeny from female elk impregnated prior to importation into New Mexico shall be tested for hybridization of red deer and other elk subspecies.

**I.** White-tailed deer subspecies to be imported into the state of New Mexico must have originated and must exist west of the 100<sup>th</sup> meridian and test negative for meningeal worm.

**J.** Be permitted in compliance with Subsection A of 19.31.1.10 NMAC.

(1) Cost of testing: All testing will be at owner's expense.

(2) After entering the state, all animals shall be held in a separate facility by the owner and/or importer. All imported animals, prior to release, may be inspected at any time by a department of game and fish official or designee.

(3) Owners/importers must notify the department of game and fish within 24 hours of any disease indications or symptoms that manifest themselves among the imported animals prior to final inspection.

(4) Animals shall be held in isolation in the event of an animal health emergency as declared by the director.

(5) Final inspection / permit validation: No animals may be released from the separate facility into the class A park or other enclosure until the owner has received a release approval signed by a department of game and fish official.

[19.35.7.17 NMAC - Rp/E, 19.35.7.9 NMAC, 7-9-10]

#### **19.35.7.18 INTRASTATE TRANSPORTATION FOR THE FAMILIES BOVIDAE, ANTILOCAPRIDAE AND CERVIDAE:**

**A.** Transporting requirements - All live cervids transported within the state of New Mexico shall;

(1) be permanently identified with a unique tattoo and any one of the following: electronic identification device, tamper-proof ear tags, USDA metal ear tags; the numbers shall be registered with the department of game and fish; and

(2) shall be legally possessed.

**B.** The director may suspend intrastate movement in an animal health emergency.

[19.35.7.18 NMAC- Rp/E, 19.35.7.10 NMAC, 7-9-10]

**19.35.7.19 RELEASE FROM CAPTIVITY FOR IMPORTED ANIMALS:** No person shall release from captivity an imported animal into New Mexico except by obtaining a release permit from the director. The transfer of an imported animal from one person to another person does not constitute a release from captivity.

**A.** Prior to approval by the director an applicant must:

(1) submit a plat of the release area;

(2) submit verification that landowners, tribal officials, state officials, federal officials and county officials that may be directly affected by the release have been notified of the potential release in writing and have been given 20 days to respond to the release; responses must be submitted with the application; it is the responsibility of the applicant to notify the above and submit responses to the department; failure to notify as indicated herein or to submit responses will result in the application being rejected until this condition is met and any compliance fees are paid;

(3) demonstrate that the intended release is provided for in state or federal resource or species management plans or strategies (CWCS).

**B.** Any individual or group of isolated animals in which signs of infectious or contagious disease is evident will not be released, will remain in isolation, and, at the recommendation of the state veterinarian:

(1) the animals shall be treated and restored to health until they no longer pose a threat of infection to wild, free ranging wildlife or to other captive animals in the facility or;

(2) the isolated animals shall be destroyed and remains will be disposed in a manner conforming to state, federal or local rules and regulations.

**C.** The director shall not approve any release permit that conflicts with current conservation management.

[19.35.7.19 NMAC - Rp/E, 19.35.7.14 NMAC, 7-9-10]

**19.35.7.20** [Reserved]

**19.35.7.21 DENIAL OF PERMIT APPLICATION:** The appropriate department division chief shall notify the applicant of a denial to import non-domesticated animals in writing. A denied application will not be further considered unless the applicant is granted an allowance through the director's review or the commission appeal process.

[19.35.7.21 NMAC - Rp/E, 19.35.7.16 NMAC, 7-9-10]

**19.35.7.22 IMPORTATION PERMIT APPEAL PROCESS:** The denial of an importation permit may only be set aside if each step in the application and appeal process is adhered to sequentially and the appeal is conducted in accordance with the following procedures.

**A.** Director's review: any applicant whose importation permit application has been denied may request a review by the director in accordance with the following procedures.

(1) The applicant must submit by certified mail a written request to the director within 30 days of denial.

(2) A request for the director's review must contain the reason for the objection.

(3) The director will consider any additional evidence and information that was not previously considered in the initial denial.

(4) The director will consider any conflicts with native wildlife, threats to human health, domestic animals or livestock and qualified expert designation when making a determination.

(5) The designation within a specified group on the director's species importation list cannot be used as the basis for review or appeal.

(6) The director shall make a determination and send the applicant his decision within 45 days.

(7) The determination to approve or deny a qualified expert designation by the director is final and is not subject to appeal.

**B.** Commission appeal: any applicant may appeal the decision by the director in accordance with the following procedures.

(1) The applicant must submit by certified mail a written appeal to the chairman of the state game commission within 20 days of denial by the director.

(2) The appeal to the chairman must contain the reason for the objection.

**C.** Basis for decision: The commission may set aside the decision of the director only if;

(1) the commission determines that the decision of the director was arbitrary or capricious;

(2) the decision of the director was not based on law or regulation;

(3) the appellant provides additional data or proves significant evidence that contradicts the data of the department;

(4) the decision of the commission shall be final.

**D.** An appeal filed with the commission will be heard at the next scheduled commission meeting subject to agenda item availability and related time constraints.

[19.35.7.22 NMAC- Rp/E, 19.35.7.18 NMAC, 7-9-10]

**19.35.7.23 EXCEPTIONS:** Employees of the New Mexico department of game and fish and other state agencies acting in the course of their official duties are not required to have an importation permit. However, all disease testing requirements specified in this rule must be met prior to importation.

[19.35.7.23 NMAC- Rp/E, 19.35.7.19 NMAC, 7-9-10]

#### **HISTORY OF 19.35.7 NMAC:**

NMAC History:

19 NMAC 31.1, Hunting and Fishing - Manner and Method of Taking, filed 3-1-95.

19.35.7 NMAC, Importation of Live Non-Domesticated Animals, Birds and Fish, filed 3-17-00.

History of Repealed Material:

19.35.7 NMAC, Importation of Live Non-Domesticated Animals, Birds and Fish, filed 3-17-00 - Repealed effective 7-9-10.