

Agenda Item 6A

Revocations and Suspensions



Authority

17-1-14 NMSA 1978, General powers and duties of state game commission;

B. The state game commission shall have authority to:

(10) after reasonable notice and hearing, suspend or revoke any license or permit issued pursuant to the provisions of Chapter 17 NMSA 1978 and withhold license privileges from any person procuring a license through misrepresentation, violating any provisions of Chapter 17 NMSA 1978 or hunting without a proper license;

(11) adopt rules establishing procedures that provide reasonable notice and a hearing before the state game commission for the suspension, revocation or withholding of license privileges for a definite period of time for a person charged with violating the provisions of Chapter 17 NMSA 1978, subject to such judicial review as may be provided by law;



Authority PA's and Compact

17-2-10.3 NMSA 1978, Game and fish penalty assessment; license revocation

A. The state game commission is authorized to revoke the hunting or fishing license, or both, of a person who fails to pay a penalty assessment or who fails to appear, after proper notice, for hearings as required by law or regulation.

B. The state game commission may revoke the hunting or fishing license, or both, of any person, resident or nonresident, who is convicted in another state of any single offense that, if committed in New Mexico, would be grounds for revocation of license.



Authority Guides and Outfitters

17-2A-3 NMSA 1978, Hunting guides and outfitters.

D. The state game commission shall develop a point system for the suspension or revocation of a guide or outfitter registration. The point system shall be similar to the point system that governs individual hunting and fishing license privileges.



Authority

17-3-34 NMSA 1978. Revocation of license, certificate or permit for violation of law; notice and hearing; judicial review.

A. If the holder of any license, certificate or permit persistently, flagrantly or knowingly violates or countenances the violation of any of the provisions of Chapter 17 NMSA 1978 or of any regulations referred to in Section 17-2-10 NMSA 1978, the license, certificate or permit shall be revoked by the state game commission after reasonable notice given the accused of the alleged violation and after the accused is afforded an opportunity to appear and show cause against the charges.

B. At the hearing, the state game commission shall cause a record of the hearing to be made and shall allow the person charged to examine witnesses testifying at the hearing. Any person whose license, certificate or permit has been revoked by the commission may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.



Authority Shooting Preserve

17-3-42 NMSA 1978. Revocation of permits.

Any permit issued under the Private Regulated Shooting Preserve Act 17-3-35 to 17-3-42 NMSA 1978 may be revoked for a violation of any provision or any regulation made by the commission relating to the act.



Authority Remote Hunting

17-3-49 NMSA 1978. Computer assisted remote hunting prohibited; penalties.

C. When a person who violates the provisions of this section possesses a license, certificate or permit issued by the state game commission, the license, certificate or permit shall be subject to revocation by the commission pursuant to Sections 17-1-14 and 17-3-34 NMSA 1978.



Authority for Furbearers

17-5-9 NMSA 1978. Penalty; revocation of license; sale of pelts.

Any person who violates or aids, abets or assists in the violation of any provision of Sections 17-5-1 through 17-5-9 NMSA 1978 or any person who makes any false statement as to the residence of any applicant for a trapper's license or fur dealer's license or any nonresident who fraudulently procures a resident license is guilty of a misdemeanor. In addition, the department of game and fish may revoke, for the year in which the violation occurred, the trapper's or fur dealer's license for any person convicted. All skins, pelts or furs involved in the violation remain the property of the state and shall be sold for the benefit of the game protection fund.



Authority for Criminal Trespass

30-14-1 NMSA 1978. Criminal Trespass.

E. Whoever commits criminal trespass is guilty of a misdemeanor. Additionally, any person who violates the provisions of Subsection A, B or C of this section, when in connection with hunting, fishing or trapping activity, shall have his hunting or fishing license revoked by the state game commission for a period of not less than three years.



19.31.2 NMAC Hunting and Fishing License Revocation Rule

Objective: To revoke, suspend or deny the privileges of any person: who persistently, flagrantly or knowingly violates any of the provisions of Chpt. 17, any rule adopted by the commission, the conditions of their agreement, license, permit or 30-14-1; who fails to pay a PA pursuant to 17-2-10; who fails to appear, after proper notice, for hearings as required by law or regulation; who has a civil judgement assessed against them until those damages have been paid in full; whose privileges have been revoked by a wildlife violator compact member state or any resident that fails to meet the terms of a citation issued from a compact state pursuant to Interstate Wildlife Violator Compact; or, who does not comply with a department sponsored private lands agreement.



19.31.2 NMAC Definitions

- **Conviction-** 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.
- **Certificate of Compliance-** a certified statement from HSD stating that an obligor is in compliance with a judgement and order for support or in compliance with a subpoena or warrant relating to paternity or child support proceedings.
- **Revocation-** when a person's privileges are taken away by the commission or department, after notice and opportunity for a hearing.
- **Suspension-** when a person's privileges are taken away by the commission or department, after notice and opportunity for a hearing, until the person comes into compliance.



Criminal Revocation Categories **and Points**

- Each conviction or PA for a violation of Chpt. 17, Criminal Trespass or commission rule will result in the assessment of points.
- Any person with 20 or more points accumulated within any consecutive three year period shall have all of their privileges subject to revocation or suspension.
- The tolling of time for the three year consecutive years shall begin from the date of conviction or the date a PA was accepted.
- 20 pt., 17pt., 15 pt., 10 pt., 7 pt., 5 pt. and 3 pt. criminal violations



Admin. Revocation Categories and Points

- Any person may be assessed admin revocation points for admin violations.
- Any person with 20 or more points accumulated within any consecutive three year period shall have all of their privileges subject to revocation or suspension.
- An outfitter, guide or applicant's admin revocation points shall only be against their outfitting or guiding registration unless they have accumulated 20 or more criminal revocation points.
- Admin 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.
- 20 pt., 10 pt. and 5 pt. violations



Revocation Timeframes

- A. Any person found to have accumulated 20 or more points within any consecutive 3 year period in violation of Chpt. 17, 30-14-1 or SGC rule, after notice and opportunity to be heard by a hearing officer, shall have their privileges revoked for a definite period of time, unless otherwise provided by law.
- B. 2nd revocation (non-egregious) \leq 5 years.
- C. 3rd / subsequent revocation (non-egregious) \leq 7 years.
- D. Felony waste of game 1st offense \leq 7 years
- E. Felony waste of game 2nd / subsequent \leq 10 years.
- F. Buying, selling or trading illegal wildlife \leq 5 years.
- G. Buying, selling or trading illegal wildlife 2nd / subsequent \leq 7 years.



Revocation Timeframes cont.

- H. Any person not in compliance with private land agreement shall have their private lands program privileges revoked for ≤ 3 years.
- I. Any person not in compliance with the Parental Responsibility Act 40-5A-1 NMSA 1978 or the Interstate Wildlife Violator Compact 11-16-1 NMSA 1978 shall have their privileges revoked or suspended for the timeframe designated and allowed by law.
- J. The commission may revoke a person's privileges for any definitive period of time they deem appropriate if they determine that the person has committed a flagrant or egregious violation of Chpt. 17 NMSA 1978, 30-14-1 NMSA 1978 or SGC rule, and provided that any revocation under this section shall commence consecutively to any current revocation.



Timeline to Initiate Revocation

If the department fails to initiate a revocation or suspension action against an individual within one year of the date of conviction or acceptance of a PA misdemeanor, which results in the accumulation of 20 or more points, the department shall not bring revocation/suspension action.



Revocation Procedures

- Department shall mail out a Notice of Contemplated Action (NCA) once it is determined there is sufficient evidence that a person has accumulated 20 or more points.
- Respondent has 20 days to request a hearing once they receive the certified NCA.
- If no hearing is requested, the commission may take action contemplated in the notice and such action is final and not subject to judicial review.
- Within 20 days of commissions decision which is signed by the chairwoman, the department shall serve the respondent with a copy of the written decision



Revocation Procedures

- If a hearing is requested, the department must notify the respondent within 20 days of the time and place of the hearing.
- Hearing shall be held not more than 90 days or less than 30 days from the date of service.
- If an continuance is requested by department and granted by hearing officer the hearing shall be rescheduled within 60 days of original hearing date.
- If continuance is requested by respondent and granted by the hearing officer all timelines are waived for the hearing.



Hearings

- Hearings shall be held in Santa Fe county.
- Hearings shall be conducted by a hearing officer designated by commission.
- Open to the public.
- Hearing and language interpreters provided if requested.
- Mitigating circumstances to determine the recommended period of revocation.



General Revocation Rules

- Upon written request, any party is entitled to the names and addresses of witnesses, copies of evidence.
- All notices or decisions shall be served by certified mail with return receipt requested, at the last known address shown by department records.



Hearing and Post-Hearing Procedures

- Hearings must be audio recorded
- Hearing officers must produce a report of their findings of fact and recommended decision to the department w/in 20 days.
- Department must serve a copy of report to respondent.
- Respondent can file a written exception to the hearing officers report w/in 30 days



Final Decision of the Commission

- After hearing is completed, GC shall review and consider the hearing officer report and written exceptions.
- GC shall not permit any oral arguments.
- GC shall not consider any evidence outside of hearing officer report and written exceptions.
- GC final decision shall be made by quorum at a properly scheduled meeting.
- Department shall serve respondent with a copy of GC written decision signed by the chairwoman w/ in 20 days of decision.



Judicial Review

- Any person who has been revoked by GC or department and who has requested and received a hearing may appeal to the district court.
- District court shall set aside the decision only if it is found to be:
 - Arbitrary, capricious or an abuse of discretion;
 - Not supported by substantial evidence;
 - Otherwise not in accordance with law.



Wildlife Violator Compact

- Any person who appears on the WVC list who has been revoked by another WVC member state shall be revoked/suspended in NM.
- Any resident who fails to comply with the terms of a citation from a member state shall have their privileges suspended in NM until they comply.
- The department sends certified notices and hearings can be requested.
- Limited evidence to be heard at hearings.
- Department shall notify GC of the number of individuals revoked/suspended at commission meeting.



Parental Responsibility Act

- Any person in violation of the PRA, after notice and opportunity to request a hearing, shall have their privileges suspended until they provide a certificate of compliance from HSD and paid the reinstatement fee.
- Certified notices are sent to obligor.
- Hearings are limited to specific evidence.
- Department shall notify GC of the number of individuals suspended at commission meeting.



Failure to pay PA or Civil

- A person who fails to pay a penalty assessment or civil judgement shall be suspended until in compliance.
- Department sends certified notices.
- Person has 30 days to request hearing or come into compliance.
- Department shall notify GC of the number of individuals suspended at commission meeting.
- Any person who pays PA or Civil will have privileges reinstated.



Common Rev. Violations

- PA- FWOL (7 pts. Suspended until paid) - **719**
- Revocation violation (20 pts.) - **87**
- Hunting Big Game w/out license (20 pts.) - **69**
- Residency (20 pts.) - **67**
- Unlawful possession in season (10 pts.) - **58**
- Unlawful possession out of season (20 pts.) - **45**
- FWOL (7 pts.) - **42**
- Shooting from the road (15 pts.) - **33**
- PA stamps (3 pts.) - **32**
- Waste of Game (misd.) (20 pts.) - **25**
- Take BG out of season (20 pts.) - **25**
- Hunting BG in wrong unit/area (17 pts.) - **22**
- Criminal Trespass (20 pts.) - **20**
- Outfitting w/out registration (20 pts.) - **15**
- Spotlighting (20 pts.) - **12**



