

## COMMISSION MEETING AGENDA BRIEFING

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**Meeting Date:** March 8, 2024

**Agenda Number:** 12

**Presenter:** James Pitman

**Corroborator:**

**Agenda Title:** Rule Hearing on Hunter Education Rule 19.36.3 NMAC

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### 1. Summary of Agenda Item

Sections 17-2-33 through 17-2-35 NMSA 1978 create the Hunter Training Act and give the Department of Game and Fish the authority to promulgate rules to implement the provisions of the Act. The Hunter Education Rule 19.36.3 NMAC contains regulation designed to carry out the provisions of the Hunter Training Act. Rule clarification is needed to address recent advances in available technology that allow very young children (ex. age 3) to take and pass an online Hunter Education course and apply for the big game draw in New Mexico. Proposed changes address this rule clarification based on available data and public input.

Specific proposed changes include:

- Adding new language into rule that clarifies students utilizing Out-of-State Hunter Education Certifications in New Mexico are restricted to hunters ages 9 and older.
- If passed, this rule would be valid for 4 years, effective April 1, 2024, valid through March 31, 2028.
  - Given that the 2024 draw application period is well underway and an April 1, 2024 implementation has the potential to impact current draw applications, the Department is providing an alternative\* that section 19.36.3.8 become valid starting April 1, 2025 and be implemented for all 2025-26 draw applications.

### 2. Background Information

While online Hunter Education courses existed prior to the Covid-19 pandemic, the number of available online Hunter Education courses, and public utilization of said online course offerings, increased significantly during the Covid-19 Pandemic.

Some states that offer online Hunter Education courses do not set a minimum age to take and pass their courses online. The Hunter Education Rule 19.26.3 NMAC allows a hunter training course of another state to meet the hunter training course requirements in New Mexico. Rule clarification is needed to prevent students of any age meeting the current course requirement needed to hunt and submit applications for the big game draw in New Mexico.

Specific proposed changes include:

- Adding new language into rule that clarifies students utilizing Out-of-State Hunter Education Certifications in New Mexico are restricted to hunters ages 9 and older.

- If passed, this rule would be valid for 4 years, effective April 1, 2024, valid through March 31, 2028.
  - Given that the 2024 draw application period is well underway and an April 1, 2024 implementation has the potential to impact current draw applications, the Department is providing an alternative that section 19.36.3.8 become valid starting April 1, 2025 and be implemented for all 2025-26 draw applications.

### **3. Strategic Plan References and Possible Impacts of Agenda Item**

Amending the rule to address age requirements and restrictions for hunter training courses will help reduce the likelihood of hunter accidents due to very young children, unable to safely handle a firearm and unable to retain an understanding of firearm safety, attempting to hunt. Amending the rule to address age requirements and restrictions will also help reduce the likelihood of parents or guardians submitting big game draw applications for very young children in an attempt to illegally hunt themselves on any drawn tags.

### **4. Considerations Regarding Duplications and/or Conflicts with Existing Rules or Statutes**

No conflict is known to exist in rules or statutes.

### **5. Description and Summary of Public Involvement Process and Results**

The Department posted, via its website, the proposed changes to the Hunter Education Rule, including the notice of public record, the summary of proposed changes, the technical information utilized in rule development, the underline/strikethrough version of the proposed rule, and a clean copy of the proposed rule. The Department also posted the presentations discussing proposed changes to the rule on the Department's website, as well as posting the agenda item briefings and recordings of both the initial rule discussion and subsequent discussion presentations from the August 25, 2023 and October 27, 2023 Commission meetings. The Department held a virtual stakeholder meeting for Hunter Education instructors online, via Zoom, on September 27, 2023 and held a general public meeting in Albuquerque, as well as virtually via Zoom, on September 28, 2023. The Department has received a total of 44 public comments as of March 4, 2024 via the [DGF-HunterEducation-Rule@state.nm.us](mailto:DGF-HunterEducation-Rule@state.nm.us) email address and comment cards at the public meeting.

### **6. Suggested Motion**

The Department respectfully suggests one of the following motions unless Commission discretion indicates a different course of action:

Option 1 (as noticed):

"Move to adopt the proposed changes to 19.36.3 NMAC as presented by the Department, with an effective date of April 1, 2024, and allow the Department to make minor corrections to comply with filing this rule with State Records and Archives."

Option 2 (alternative):

"Move to adopt the proposed changes to 19.36.3 NMAC as presented by the Department, with an effective date of April 1, 2024, with the amendment that section 19.36.3.8 will

become effective April 1, 2025 and apply to all 2025-26 draw applications and hunts, and allow the Department to make minor corrections to comply with filing this rule with State Records and Archives.”

**TITLE 19        NATURAL RESOURCES AND WILDLIFE**

**CHAPTER 36    WILDLIFE EDUCATION AND TRAINING**

**PART 3         HUNTER EDUCATION**

**19.36.3.1        ISSUING AGENCY:** New Mexico department of game and fish.

[12/30/95; 19.36.3.1 NMAC - Rn, 19 NMAC 36.1.1, 1/1/2013; A, 1/1/2021; 4/1/2024]

**19.36.3.2        SCOPE:** Hunters under the age of eighteen years.

[12/30/95; 19.36.3.2 NMAC - Rn & A, 19 NMAC 36.1.2, 1/1/2013; A, 1/1/2021; 4/1/2024]

**19.36.3.3        STATUTORY AUTHORITY:** Sections 17-2-33 through 17-2-35 NMSA 1978 create the Hunter Training Act and give the department of game and fish the authority to promulgate rules to implement the provisions of the act.

[12/30/1995; 19.36.3.3 NMAC - Rn & A, 19 NMAC 36.1.3, 1/1/2013; 4/1/2024]

**19.36.3.4        DURATION:** ~~January 1, 2021 through December 31, 2024.~~ April 1, 2024 through December 31, 2028.

[12/30/1995; 19.36.3.4 NMAC - Rn, 19 NMAC 36.1.4, 1/1/2013; A, 1/1/2021; 4/1/2024]

**19.36.3.5        EFFECTIVE DATE:** ~~December 30, 1995~~ April 1, 2024, unless a later date is cited at the end of a section.

[12/30/1995; 19.36.3.5 NMAC - Rn & A, 19 NMAC 36.1.5, 1/1/2013; 4/1/2024]

**19.36.3.6        OBJECTIVE:** Regulation designed to carry the provisions of the Hunter Training Act.

[12/30/1995; 19.36.3.6 NMAC - Rn, 19 NMAC 36.1.6, 1/1/2013; 4/1/2024]

**19.36.3.7        DEFINITIONS:** [RESERVED]

**19.36.3.8        HUNTER TRAINING COURSE REQUIRED:** It shall be unlawful for any person under the age of eighteen years to purchase or apply for any type of firearm hunting license unless that person has first successfully completed the New Mexico hunter training course or a hunter training course of another state which is approved by the New Mexico department of game and fish. An approved hunter training course of another state may only be utilized by persons age nine (9) years and older.

[6/25/1990; 19.36.3.8 NMAC - Rn & A, 19 NMAC 36.1.7, 1/1/2013; A, 1/1/2021; 4/1/2024]

#### **19.36.3.9 TYPES OF COURSES:**

**A.** A person under the age of eighteen years who satisfies the requirements of either of the following training courses shall be issued a certificate following successful completion of a hunter training course:

(1) Completion of an approved hunter training course comprised of class work and firearms proficiency training and testing; or

(2) completion of an approved hunter training course comprised of a written lesson and testing and current registration in the department's mentored-youth program.

**B.** Registration in the department's mentored-youth program is limited to first-time youth hunters, 8 to 17 years of age, for a period of two consecutive license years and a person shall register in the program only once.

**C.** Mentored-youth program hunters may hunt with a firearm only after successful completion of the written lesson and testing portion of the course and while supervised by a licensed and mentor certified or hunter education certified parent, guardian or another licensed adult with consent of the parent or guardian who is within unaided voice and sight distance.

(1) Mentors shall possess a mentor certification number obtained after completion of a hunter training course comprised of a written lesson and testing and current registration in the department's mentored-youth program; or

(2) shall possess a hunter education certification number obtained through a New Mexico hunter training course or a hunter training course of another state which is approved by the New Mexico department of game and fish.

**D.** Mentored-youth program hunters shall be limited by age to hunt as follows:

(1) Mentored-youth under the age of ten years shall be limited to hunting small-game; or

(2) mentored-youth ten to seventeen years of age shall be limited to hunting small-game, turkey, deer, pronghorn antelope and javelina.

[19.36.3.9 NMAC - N, 1/1/2013; A, 12/30/2014; A, 1/1/2021; 4/1/2024]

**19.36.3.10 PENALTY:** Any person violating the provisions of 19.36.3.8 NMAC is guilty of a petty misdemeanor and will be subject to penalties provided in Section 31-19-1, New Mexico Statutes Annotated, 1978 Compilation.

[6/25/1990; 19.36.3.10 NMAC - Rn & A, 19 NMAC 36.1.8, 1/1/2013; 4/1/2024]

#### **19.36.3.11 REVOCATION OF HUNTER TRAINING CARD:**

**A.** Hunter training certification will be revoked in accordance with 19.31.2 NMAC.

**B.** Hunter training certification may also be revoked for negligent use of a firearm.

[6/25/1990, 12/30/1995; 19.36.3.11 NMAC - Rn, 19 NMAC 36.1.9, 1/1/2013; A, 1/1/2021; 4/1/2024]

#### **19.36.3.12 LIVE-FIRING COURSES:**

**A.** Live-firing courses may be taught in conjunction with hunter education classes, in accordance with policies and procedures developed by the agency and distributed to certified instructors.

**B.** Live-firing courses may be taught only by hunter education instructors certified in live-firing instruction.

[10/3/1991; 19.36.3.12 NMAC - Rn, 19 NMAC 36.1.10, 1/1/2013; 4/1/2024]

**HISTORY OF 19.36.3 NMAC:**

**History of repealed materials:**

19.36.3 NMAC, Hunter Education, 12/2/2014 – Repealed effective 1/1/2021.

19.36.3 NMAC, Hunter Education, 1/1/2021 – Repealed effective 4/1/2024.