



COLORADO

Parks and Wildlife

Department of Natural Resources

1313 Sherman St, Room 111
Denver, CO 80203
P 303.866.3203

TO: Members of the Colorado Parks and Wildlife Commission
FROM: Krista Heiner, Regulations Manager
RE: Chapter W-16 Draft Regulations, March 2020 Parks and Wildlife Commission Meeting
DATE: March 6, 2020

Draft regulatory changes for Chapter W-16 - "Parks and Wildlife Procedural Rules" - 2 CCR 406-16 are summarized below. If there are questions about the agenda item below, or if additional information is needed, please feel free to contact me at 303-866-3203 x4609.

Agenda Item 15: Chapter W-16 - "Parks and Wildlife Procedural Rules" - 2 CCR 406-16

Open for consideration of draft regulations including, but not limited to:

- **Revising the process by which the Division and Commission respond to citizen petitions for rulemaking (p. 10-11)**
Previous regulations prompted staff to file a rulemaking notice with the Secretary of State if a petitioner filed a complete citizen petition for rulemaking on time. This presumed the Commission wanted to consider making a regulatory change and obligated the staff to analyze the petition without the benefit of any direction from the Commission. In addition, previous regulations granted citizen petitioners the opportunity to make oral presentations to the Commission, which may not be necessary in all circumstances and limited CPW's ability to manage Commission meeting agendas. The new regulations require petitioners to provide contact information, a copy of the proposed rule (preferably in redline format), the reasons for the proposed rule, and a statement of the Commission's statutory authority. The new regulations do not put a strict timeline on when citizen petitions would be noticed for rulemaking and do not automatically grant citizen petitioners the opportunity to make an oral presentation to the Commission concerning their petition. Citizens always have that right during public comment. These amendments maximize CPW's flexibility in responding to citizen petitions while retaining the public's ability to bring forward proposed regulatory changes.

In addition, the Commission's July 8, 2016 policy on Public Rulemaking Petitions has been revised and a draft redline version of the changes, as well as a clean version of the draft policy with proposed changes incorporated are included for consideration.

DRAFT REGULATIONS - CHAPTER W-16 - PARKS AND WILDLIFE PROCEDURAL RULES

ARTICLE I - MEETINGS

#1601 - Conduct of Meetings

See Article 4 of Title 24, CRS, for rule making and other applicable meeting and hearing requirements

A. Regular Meetings

1. Public Presentation - In addition to normally scheduled opportunities to testify on matters before the Commission, persons or groups wishing to participate in a regular Commission meeting may request to be placed on the agenda by submitting a written request to the Director at least 30 days before the meeting. The public may participate during the meeting at the discretion of the Chairman or presiding officer.

B. Adjudicatory Hearings

1. Review of Game Damage Settlements and Claim Denials

See §§ 33-3-101 to 204, CRS, for additional detail and requirements

- a. Game Damage Claims Settled by Agreement Between Claimants and the Division
 - 1) Only settlements of game damage claims equaling or exceeding \$5,000 in total value must be reviewed by the Commission, and then only where the damage is something other than forage loss to wild ruminants on privately owned or leased private land. All other settlements may be paid by the Division without Commission review.
 - 2) Review will be based on the written materials and documentary evidence provided to the Commission by the Division and, unless the Commission directs otherwise, there will be no oral presentations or further submittals to the Commission on the settlement.
 - 3) Except as may otherwise be directed by the Commission, game damage settlements will be reviewed at the next regular meeting of the Commission following their receipt, provided the settlement, together with its supporting materials and documentation, is received by the Commission at least thirty days prior to the meeting.
- b. Game Damage Claims Recommended for Denial by the Division
 - 1) Any claimant seeking or otherwise requiring Commission review of a game damage claim recommended for denial by the Division, or a game damage claim where the claimant and the Division have otherwise failed to reach a settlement, shall file a written request for review with the Commission. The requirement for a written request for review applies to all claimants, including claimants that have waived arbitration of a forage loss to wild ruminants on privately owned or leased private land. Such request for review shall be mailed to the Commission within ten (10) days of claimant's receipt of the Division's written notice of denial or offer of settlement unacceptable to the claimant.
 - 2) The request for review shall include:
 - a. the claimant's name, address and telephone number;
 - b. a narrative statement of the claim, including the amount at issue and a complete statement of the factual and statutory basis supporting payment of the claim as requested;
 - c. copies of the ten (10) day notification(s) and proof of loss filed with the Division;

- d. copies of the written documentation submitted with, and in support of, the proof of loss;
 - e. any other documentary evidence supporting the claim or disputing the grounds stated as the basis for the Division's action in its notice of denial or offer of settlement, including photographs, and;
 - f. any other written materials supporting the claim or disputing the grounds stated as the basis for the Division's notice of denial or offer of settlement, including signed statements by third party witnesses.
- 3) Commission review will be based on the request for review and any written materials or documentary evidence provided to the Commission by the Division in response to the request for review submitted by the claimant, and unless the Commission directs otherwise, there will be no oral presentations or further submittals to the Commission.
 - 4) Except as may otherwise directed by the Commission, such claims will be reviewed at the next regular meeting of the Commission following their receipt, provided the request for review is received by the Commission at least thirty days prior to the meeting.

2. License Suspension Appeals

See § 33-6-106, CRS for additional detail and requirements

- a. All license suspensions will be heard initially and decided by the Commission's hearing examiner. A copy of the hearing examiner's initial decision shall be sent to the licensee by certified mail, return receipt requested, to the last known address of such person. The hearing examiner's decision shall advise him or her of the right to appeal that decision to the Commission. Any person seeking or otherwise requiring Commission review of the hearing examiner's decision shall file a written request for review with the Commission (and provide a copy to the hearing examiner). Such request for review shall be mailed to the Commission within thirty (30) days of receipt of the hearing examiner's decision. If a timely appeal is not made to the Commission, the hearing examiner's decision shall become effective as of (1) the date stated therein (in no event sooner than 35 days after the issuance of such decision) or (2) the date of licensee's receipt of the decision or of attempted delivery to the licensee's last known address, whichever is later. If a timely appeal is made to the Commission, the hearing examiner shall send notice to the licensee of the date of their scheduled hearing before the Commission and advise that the hearing examiner's initial decision to suspend is automatically stayed pending Commission review and final action.
- b. The request for review shall include:
 - 1) the person's name, address, telephone number and case file number;
 - 2) a narrative statement of the person's position, including a complete statement of the factual and statutory basis supporting relief from the decision of the hearing examiner and the relief requested;
 - 3) copies of any written documentation or documentary evidence submitted to the hearing examiner;
 - 4) copy of the hearing examiner's decision, including the findings of fact and conclusions of law, and;
 - 5) a copy of the transcript of the hearing on the suspension of license privileges conducted by the hearing examiner. The person requesting review shall be responsible for the production of the transcript.
- c. Commission review will be based on the request for review and any additional written materials and documentary evidence provided to the Commission by the hearing examiner in response to the request for review, and unless the Commission directs otherwise, there will be no oral presentations or further submittals to the Commission.

- d. Except as may otherwise be directed by the Commission, license suspensions will be reviewed at the next regular meeting of the Commission following their receipt, provided the request for review is received by the Commission at least thirty days prior to the meeting. The decision of the Commission shall become effective the date of the licensee's receipt of the decision or the date of attempted delivery to the licensee's last known address.
- e. Written notice of the final decision of the commission shall be sent to the licensee by certified mail, return receipt requested, to the last known address of such person. The notice shall advise the licensee that he or she may appeal the Commission's suspension decision to the state district court as provided in § 24-4-106, C.R.S., by bringing an action for judicial review within 35 days after such action becomes effective. If such judicial action is initiated, the licensee may contemporaneously apply in writing to the Commission (and provide a copy to the hearing examiner) for a stay of the license privileges suspension pending review and final action by the district court.
- f. When deciding upon the duration of any license privileges suspension term, the hearing examiner will consider the facts of the underlying violation(s) giving rise to the criminal conviction(s) and the administrative license suspension hearing, along with all relevant written materials and documentary evidence contained in the Division's records, all written materials and documentary evidence provided by the party prior to the administrative license suspension hearing, and all evidence provided during the hearing, and will give specific consideration to the absence or presence of the following factors:
 - 1) Whether the violation(s) caused or resulted in the take of wildlife, injury or death of a person, or damage to or destruction of public or private property;
 - 2) The number of violations arising from the same transaction or occurrence;
 - 3) Whether the violation(s) involved the take of species listed as endangered, threatened or of special concern;
 - 4) Whether the violation(s) involved the take of trophy wildlife;
 - 5) Whether the violation(s) showed an intentional, knowing, or negligent disregard for wildlife or public safety;
 - 6) Whether the violation(s) involved intentional, knowing or negligent action on behalf of the party;
 - 7) Whether the party has any prior violations of wildlife statutes or regulations, or violations of state or federal law committed while hunting, fishing, or engaging in a related activity;
 - 8) Whether the party has any prior license suspensions;
 - 9) Whether the violation(s) occurred while the party was subject to a prior suspension or otherwise unlicensed;
 - 10) Whether the violation(s) involved any assault or threat to or resisting a peace officer;
 - 11) Whether the party self-reported the violation(s) or otherwise attempted to remedy or ameliorate the harm caused by the violation(s);
 - 12) The experience and age of the party and other social factors or circumstances associated with the violation(s);
 - 13) Whether the party interfered with or hindered the investigation of the violation(s);
 - 14) The criminal penalties imposed as part of the violation(s);
 - 15) Whether the party acted alone or in concert with other parties;
 - 16) The species and the number of wildlife taken, and;
 - 17) Whether the violation(s) involved any specified illegal manner of take (use of bait, traps, snares, poison, etc.).Based on all the evidence presented, the hearing examiner will determine the weight to be given to any factor and that factor's effect on the duration of the suspension term.

3. Review of Petitions for Declaratory Orders

See §§ 24-4-105(11), CRS for additional detail and requirements

- a. Any person may petition the Commission for a declaratory order to terminate a controversy or to remove uncertainty as to the applicability to the petitioner of any statutory provision or any rule or order of the Commission.
- b. The petition must be in writing and shall include:
 - 1) the petitioner's name, address and telephone number;
 - 2) the statutory provision, rule or order at issue;
 - 3) a narrative statement of all facts necessary to show the nature of the controversy or uncertainty and the manner in which the statutory provision, rule or order applies or potentially applies to the petitioner;
 - 4) whether the petitioner holds any permits, passes, or registrations issued pursuant to Articles 10 through 15 of Title 33, C.R.S., as amended.
- c. The Commission will determine, in its discretion and without notice to the petitioner, whether to rule upon the petition. In determining whether to rule upon a petition filed pursuant to this regulation, the Commission will consider the following matters, among others:
 - 1) Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to the petitioner of any statutory provision or of any regulation of the Commission.
 - 2) Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Commission or a court involving one or more of the petitioners.
 - 3) Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Commission or a court but not involving the petitioner.
 - 4) Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.
 - 5) Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, Colorado R. Civ. P., which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, regulation, or order in question.
- d. Commission review, if any, will be based on the petition and any additional written materials and documentary evidence provided to the Commission by the Division in response to the petition, and unless the Commission directs otherwise, there will be no oral presentations or further submittals to the Commission.
- e. Except as may otherwise be directed by the Commission, petitions for declaratory orders will be reviewed at the next regular meeting of the Commission following their receipt, provided the petition is received by the Commission at least thirty days prior to the meeting.
- f. If the Commission determines that it will rule on the petition, the following procedure will apply:
 - 1) The Commission may rule upon the petition based solely upon the facts presented in the petition. In such a case:
 - i. Any ruling of the Commission will apply only to the extent of the facts presented in the petition and any amendment to the petition.

- ii. The Commission may order the petitioner to file a written brief, memorandum or statement of position.
 - iii. The Commission may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.
 - iv. The Commission may dispose of the petition on the sole basis of the matters set forth in the petition.
 - v. The Commission may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition.
 - vi. The Commission may take administrative notice of the facts pursuant to the State Administrative Procedure Act and may utilize available experience, technical competence and specialized knowledge in the disposition of the petition.
 - vii. If the Commission rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision and the reasons for such action.
- 2) The Commission may, in its discretion, set the petition for hearing, upon due notice to the petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Commission intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statutory provision, rule or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Commission to consider.
- g. The parties to any proceeding pursuant to this regulation shall be the division and the petitioner. Any other person may seek leave of the Commission to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Commission. A petition to intervene shall set the same matters as required by # 600-4. Any reference to "petitioner" in this regulation also refers to any person who has been granted leave to intervene by the Commission.
 - h. Any declaratory order or other order disposing of a petition pursuant to this regulation shall constitute final agency action subject to judicial review pursuant to section 24-4-106, C.R.S.
4. All Other Adjudicatory Hearings

See §§ 24-4-105 and 33-1-111, CRS for additional detail and requirements

- a. Unless the Commission directs otherwise, all other adjudicatory matters within the jurisdiction of the Commission will be heard initially and decided by an administrative law judge within the Division of Administrative Hearings.
- b. Any person requesting an adjudicatory hearing on a matter within the jurisdiction of the Commission shall file a written request for a hearing with the Commission.
- c. The request for an adjudicatory hearing shall include:
 - 1) the person's name, address and telephone number;
 - 2) a narrative statement of the person's position, including a complete statement of the factual basis and legal justification for any relief requested;
 - 3) copies of any written documentation or documentary evidence supporting the person's position;
- d. Except as may otherwise be directed by the Commission, requests for adjudicatory hearings will be reviewed at the next regular meeting of the Commission following their receipt,

- provided the request is received by the Commission at least thirty days prior to the meeting. There will be no oral presentations to the Commission.
- e. The person will be notified of the assignment of the matter to the Division of Administrative Hearings or whether the Commission will hear the matter itself.
 - f. All further proceedings will be conducted in accordance with §§ 24-4-105, CRS

ARTICLE II - IMPLEMENTATION OF HB1158

#1602 - PURPOSE AND SCOPE

These rules govern administrative proceedings pursuant to the Commission's obligations under House Bill 1158 as described by Section 37-60-122.2 CRS and Section 5 of Chapter 266, Session Laws of Colorado 1987. This Act, dated July 13, 1987, directs the Wildlife Commission (Commission) and the Water Conservation Board (Board) or the Governor to determine an official State position on a wildlife mitigation plan submitted by an applicant proposing to construct, operate or maintain a water project requiring federal approval. It also establishes State grants to assist in paying for wildlife mitigation and/or enhancement measures. These rules are written to be compatible with the Board's "Rules and Regulations for the Implementation of Colorado's Fish and Wildlife Mitigation and Enhancement Grant Program."

These rules apply to all actions required by and taken pursuant to Section 37-60-122.2 CRS, (1984 and 1987 Supp.) and Section 5 of Chapter 266, Session Laws of Colorado 1987.

These rules apply to all applicants who file an application for, or receive a permit for, a proposed water project on or after July 13, 1987.

These rules do not apply to the Animas-La Plata Project, the Two Forks Dam and Reservoir Project, the Homestake Water Project or to any project which is eligible for a nationwide permit pursuant to Section 404 of the Federal Clean Water Act or to any project, except reservoirs, which requires an individual permit pursuant to Section 404 of the Federal Clean Water Act unless the applicant elects to submit a wildlife mitigation or enhancement plan.

These rules do not apply to actions concerning or carrying out other statutory responsibility of the Commission.

#1603 – DEFINITIONS

- A. Applicant** means any person or entity proposing to construct a water diversion, delivery or storage facility in the state of Colorado requiring an application for a permit, license, or other approval from the United States.
- B. Approval** means any form of approval which is required from the United States prior to the construction of a project.
- C. Board** means the Colorado Water Conservation Board.
- D. Commission** means the Colorado Parks and Wildlife Commission.
- E. Construction Costs** means the best estimate of the physical construction costs of the project as fixed by the Board as of the date of the grant application. Costs are limited to design, engineering and physical construction and will not include the costs of planning, financing, and environmental documentation, mitigation costs, legal expenses, site acquisition or water rights.

- F. **Construction Fund** means the Board's construction fund as established by Section 37-60-121, CRS.
- G. **Division** means the Colorado Division of Parks and Wildlife and, when necessary, it may be construed as referring to the Commission.
- H. **Enhancement** means the improvement of the total value of fish and wildlife resources affected by the project beyond that required by mitigation and beyond that which would occur without the project.
- I. **Enhancement Grant** means a sum of money or other remuneration awarded to the applicant by the Board, to pay for the State's contribution to the implementation of an enhancement plan.
- J. **Enhancement Plan** means a document describing the measures to be completed by the applicant which will enhance fish and wildlife resources beyond that which would occur without the project. It includes a cost estimate for the implementation of the plan and a schedule for completion.
- K. **Fish and Wildlife Resources Account** means the account established in the Board's Construction Fund to provide funding for mitigation and enhancement grants.
- L. **License** means any license which is required from the United States prior to the construction of a project.
- M. **Mitigation** means any action or measures taken to address undesirable project impacts on fish and wildlife resources which may be accomplished in several ways, including reducing, minimizing, rectifying, compensating, or avoiding impacts.
- N. **Mitigation Grant** means a sum of money or other remuneration awarded to the applicant by the Board to pay for the State's contribution to the implementation of a mitigation plan.
- O. **Mitigation Plan** means a document describing the measures to be completed by the applicant which will mitigate losses to fish and wildlife resources resulting from the project. It includes a cost estimate for the implementation of the plan and a time schedule for completion.
- P. **Notice** means the date the Division receives documents required of an applicant for a mitigation plan.
- Q. **Permit** means any permit, other than a nationwide 404 permit, which is required from the United States prior to the construction of a project.
- R. **Project** means a water diversion, delivery, or storage facility or facilities, and any combination thereof, together with all associated and appurtenant project works.
- S. **Water diversion, delivery or storage facility** means any structure or structures built for the purpose of diverting or transporting water from a stream, lake or reservoir, on or off channel, to any type of a supply system, or any structure built for the purpose of storing water for subsequent application to beneficial use.

#1604 - PROCEDURES FOR ARRIVING AT AN OFFICIAL STATE POSITION ON MITIGATION

A. Requirement of Applicants

1. An applicant proposing to construct a water project requiring an application for a federal permit, license, or other approval as described in #1602 shall advise the Division and the Board, in writing, within five working days of submission of an application for federal permit, license or other approval, and provide each agency with a copy of the application and all materials cited in, referenced in, or submitted with the application.
2. When the applicant has prepared a wildlife mitigation plan which is ready for Commission evaluation, the applicant shall give notice to the Commission by submitting 15 copies of the plan to the Division, five of which are to be submitted to the appropriate Division Regional office and ten to the Denver headquarters office; and 15 copies to the Board. The following information shall be prepared within the time sequence and framework of established federal environmental impact review requirements. The mitigation plan shall include:
 - a. A description of the project.
 - b. An estimate of construction costs.
 - c. An assessment of the fish and wildlife resources impacted by the project, measures to mitigate the losses to fish and wildlife resources, a time schedule, and the costs and benefits of the plan.
 - 1) A wildlife impact assessment identifies, predicts the direction and magnitude of, and evaluates and communicates the significance of a project as it affects wildlife. The assessment is dependent upon baseline data that provides an overview of the wildlife resources and related conditions as they currently exist in the area. It also provides a basis for analyzing and determining the extent and scope of project impacts, or its alternatives, to wildlife. The assessment is an integral part of the environmental impact assessment process and is not intended to be separate from or beyond the scope of that process.
 - 2) Decisions regarding such things as study design, period of study, and responsibility for data collection and costs should be approached on a case by case basis and agreed to through interagency review at the initiation of the environmental assessment process.
 - 3) The wildlife impact assessment and recommendations for mitigating losses will be based upon a systematic evaluation of fish and wildlife resources and habitats using the best available scientific information and professional judgment. The plan will contain an estimated cost and assignment of development, operation and maintenance of the mitigation measures and a monitoring plan.
 - 4) Where possible, impacts to wildlife and habitat will be separated into the following categories: direct and indirect; on-site and off-site; public lands and private lands; and cumulative impacts. In the disclosure of predicted impacts, each category may have separate mitigation measures associated with it, which when assembled make up a mitigation plan.
 - 5) Normally, mitigation should occur concurrently with or prior to project development, be proportional to impacts, and last for the entire period in which impacts to wildlife resources persist as federal, state and local laws and regulations provide.

B. Commission Action

1. Upon receipt of all the information required in #1604.A.2. the Division will respond, within ten working days, to the applicant with a written acknowledgment that the necessary documents have been received. The date of receipt by the Division is the official date of notice to the Division and the 60 calendar day review period will be initiated culminating in a Commission recommendation for a State position.
2. Within 60 calendar days after an applicant gives notice by submitting a mitigation plan to the Division, unless extended in writing by the applicant, the Commission will make its evaluation of the project's impact on fish and wildlife resources and submit its recommendation to the Board.
3. The Commission will make its evaluation regarding the probable impact of the proposed project on fish and wildlife resources and their habitat based on the information submitted pursuant to #1604.A.2. The Commission may consider the following criteria in making their recommendation that the mitigation plan is economically reasonable and reflects a balance between protecting the fish and wildlife resources and the need to develop the state's water resources:
 - a. The value and significance of the affected wildlife resource.
 - b. The potential impacts of the project and its alternatives to wildlife.
 - c. The availability of best existing technology to implement and monitor the success of the mitigation plan.
 - d. The degree to which the identified impacts are mitigated and the permanence of desired effects of the mitigation measures.
 - e. The cost of the planned mitigation in comparison to the benefits to the affected wildlife resource.
 - f. The net benefits of the project and its mitigation plan to the state's wildlife resources.
 - g. The consistency of wildlife mitigation with other environmental and conservation goals.
 - h. The legal ramifications of state water law on implementing the proposed mitigation measures.
4. If the Commission and the applicant agree upon a mitigation plan, the Commission shall recommend that the Board adopt the plan at its next meeting as the official state position on the mitigation action required of the applicant.
5. When the Commission and the applicant do not agree upon a mitigation plan, the Commission shall transmit to the Board 15 copies of its report which shall include (1) its evaluation of the project's impact on fish and wildlife, (2) its mitigation recommendations, including an estimate of the costs and benefits of its plan, and (3) its analysis of the applicant's mitigation plan. Documentation will include the significance of the fish and wildlife resources impacted by the project and a comparison of the impacts to the fish and wildlife resources resulting from both plans.

#1605 - Procedures for Granting an Enhancement Grant

A. Requirements of Applicants

Any applicant who can demonstrate that the project will enhance fish and wildlife resource values over and above existing levels may apply, within two years after the adoption of the official State position on mitigation, for an enhancement grant by submitting ten (10) copies of an enhancement plan to the Division's Denver office and five (5) copies to the appropriate regional office.

The enhancement plan will include:

1. A time schedule for construction of the project and implementation of the mitigation measures.
2. Any significant changes in the project and/or the mitigation plan.
3. A time schedule for the implementation of the enhancement measures.
4. A cost estimate of implementing the enhancement plan.
5. An analysis of the plan's benefits to fish and wildlife.
6. Desired results of the enhancement plan.
7. Impact of the enhancement measures on the surrounding environment.
8. A cost estimate and assignment for the operation and maintenance of the enhancement measures.
9. A plan to monitor the effectiveness of the enhancement measures.

B. Commission Action

1. The Commission will review the applicant's enhancement plan according to the requirements defined in #1605.A. If the Commission approves the applicant's plan it will submit a report to the Board approving the enhancement plan, evaluating the plan's contribution to the state's fish and wildlife resources, approving the cost estimate, and committing the Commission to contribute one-half of the costs. Commission concurrence of the enhancement plan is required before the Board can consider an enhancement grant.
2. If the Board agrees to fund the enhancement plan, the Commission will enter into a contract among the Commission, the applicant, and the Board, prior to the disbursement of the enhancement grant.

ARTICLE III – CITIZEN PETITIONS

#1606 - Citizen Petition Requirements

~~A. Any person may petition the Commission to initiate rulemaking pursuant to 24-4-103(7), C.R.S. All petitions for rulemaking must contain the following information: (1) The name, address, and telephone number of the person requesting the rulemaking; and (2) A copy of the rule proposed in the petition, preferably in redline format, and a general statement of the reasons for the requested rule or revision. Persons desiring to create, modify, or remove a Commission regulation pursuant to 24-4-103(7), C.R.S. must submit a citizen petition proposal for consideration. The petitioner shall have the burden of proof to demonstrate that the amendment should be adopted~~

~~by the Commission. The petition shall be in writing, shall include the petitioner's name and adequate contact information, and shall contain a clear and concise statement of the basis and purpose behind the requested amendment. Each request shall also include appropriate additional evidence and documentation in support thereof. Petitions that do not meet these minimum requirements will be considered incomplete and will not be addressed by the Commission.~~

- ~~B. Proposed amendments to a chapter that is opened annually based on the Division's regulatory calendar will only be considered when that chapter is open. For amendments to chapters that are not opened annually, the petition will be heard at the public meeting determined most appropriate by the Commission Chair. C. Any petition that is submitted late or without adequate time to be included in the applicable public rule-making notice will be held by the Division until that chapter reopens or the petition is scheduled to be heard by the Commission Chair.~~

#1607 - ReservedCitizen Petition Public Presentations

- ~~A. A citizen petition presentation to the Commission will generally be limited to fifteen (15) minutes or less, unless otherwise determined appropriate by the Commission Chair.~~
- ~~B. Each petitioner is strongly encouraged to present their own petition. If a petitioner is unable to attend or present their petition to the Commission, Division staff will present the petition but will not address questions on behalf of the petitioner.~~

#1608 - ReservedResubmission of Denied Petitions

- ~~A. Citizen petitions that are denied by the Commission may not be re-submitted for further consideration until after at least one full calendar year after Commission action and then only if new and substantial information has been developed and added to the petition. Re-submitted petitions must also comply with the timelines outlined in Commission Regulations #1606(B) and #1606(C).~~

ARTICLE IV – REFUNDS, REIMBURSEMENT AND RESTORATION OF PREFERENCE POINTS

#1670 Refunds and Restoration of Preference Points

See also §§ 33-4-102 (6) for statutory provisions related to refunds

- A. General Refund Procedures** – Except as provided herein, anyone may request and be given a refund for a license no later than fourteen (14) days prior to the opening day of the applicable turkey season for turkey licenses or thirty (30) days prior to the opening day of the season for which the license was issued for all other licenses, minus a \$15.00 processing fee. The \$15.00 processing fee will not be charged for refunds requested on youth licenses or due to extreme medical circumstances involving the license holder, death of the license holder, death of the license holder's immediate family member, military deployment, jury duty, or for Division error. Requests must have a valid U.S. postmark, or be submitted at a Division office at least fourteen (14) days prior to the opening day of the applicable turkey season or thirty (30) days prior to the opening day of any other season for which the license was issued.
1. All refunds shall be requested on a form provided by or in the format requested by the Division.
 2. All requests for license refunds must be accompanied by the entire license and carcass tag when applicable.
 3. Refunds may be requested by mail or in person at any Division office.

4. Refunds shall only be issued to the person whose name appears on the license.
5. Licenses purchased through non-Division license agents will be refunded at cost less license agent fee.
6. No refunds shall be made on any special licenses listed in 33-4-102(2), C.R.S., or any auction or raffle licenses as provided for in 33-4-116 or 33-4-116.5, C.R.S., or on any exchanged license, or on any license that costs less than \$15.00 with the exceptions of resident youth turkey and resident youth big game licenses, or to any person whose license privileges have been suspended by the Commission.
7. When the \$15.00 processing fee exceeds the original refund amount, no refund shall be issued and the remainder of the processing fee shall be waived.
8. Except for deer, elk, pronghorn, and bear hunt codes which required 5 or more resident preference points to draw as determined by the current year's limited license draw, as well as bighorn sheep, mountain goat, moose, public Ranching for Wildlife antlered and either-sex deer and elk, and buck and either-sex pronghorn, all other limited licenses that are returned for refund or preference point restoration will be available for reissue after the refund request has been processed using the current leftover license list and following all license purchase regulations.
9. Deer, elk, pronghorn, and bear hunt code licenses which required 5 or more resident preference points to draw as determined by the current year's limited license draw, as well as bighorn sheep, mountain goat, moose, public Ranching for Wildlife antlered and either-sex deer and elk, and buck and either-sex pronghorn licenses returned for refund or preference point restoration will be reissued by the Division manually. If the next in line regular draw list applicant accepts one of the aforementioned first choice licenses that has been returned and reissued, all accumulated preference points for that species become void. If a license cannot be manually reissued to one of the first five people on the regular draw list, the license will become available for reissue using the current leftover license list. Public Ranching for Wildlife licenses will not be reissued within thirty (30) days of the start date for the respective hunt code.
10. Requests for refunds after the opening of the season will be accompanied by sufficient evidence demonstrating that the license has not been used and circumstances precluded the licensee from being able to use the license. In addition, to be eligible for a refund the failure to apply for a refund less than thirty (30) days prior to the opening day of the season for which the license was issued cannot be due to a lack of diligence on the part of the licensee. The Division's License Administration Manager will render a decision on the refund request on behalf of the Division and the Commission and such decision shall constitute final agency action. Circumstances for which reimbursement will be considered shall be limited to:
 - a. Extreme medical circumstances involving the license holder.
 - b. Death of the license holder or death of a license holder's immediate family member.
 - c. Active members of the United States armed forces whose military deployment overlaps with the season dates of the license.
 - d. Individuals on jury duty whose jury duty service overlaps with the season dates of the license.

B. Other Refunds

1. Refunds or antlerless licenses may be issued in any unit approved by the Division for the same species in the same year to hunters who harvest a deer, elk or moose in which Chronic Wasting Disease (CWD) is detected through the Division's CWD monitoring or testing programs. Where there is no open season or insufficient time remains to reasonably exercise the benefits of a license granted in the same year, the Division may issue the licensee an antlerless license for the same species in the following year in the same Game Management Unit where the CWD detected animal was harvested, or if antlerless hunting is not permitted in the applicable GMU, the Division may designate a substitute GMU. If the season closes prior to October 31 in the unit, the license will be valid through October 31. The provisions of this regulation shall apply to any hunter who harvests a moose after January 1, 2006 in which CWD is detected. Licenses issued pursuant to this provision shall not be considered part of the quota otherwise established by the Commission for that GMU.

C. Restoration of Preference Points

1. License preference points used to obtain the license will not be restored except as follows:
 - a. No later than fourteen (14) days prior to the opening day of the applicable turkey season for turkey licenses or thirty (30) days prior to the opening day of the season for all other licenses, preference points may be restored to the pre-drawing level in lieu of a refund at the licensee's request.
 - b. Less than fourteen (14) days prior to the opening day of the applicable turkey season for turkey licenses or thirty (30) days prior to the opening of the season for all other licenses, the License Administration Manager may restore preference points to the pre-drawing level in lieu of a refund for:
 1. Extreme medical circumstances involving the license holder; or
 2. Death of a license holder's immediate family member.
 - c. The License Administration Manager may restore license preference points to the pre-drawing level and issue a monetary refund for:
 1. Active members of the United States armed forces whose military deployment overlaps with the season dates of the returned license.
 2. Individuals on jury duty whose jury duty service overlaps with the season dates of the returned license.

Requests for refunds and restoration of license preference points due to military deployment or jury duty will be accompanied by sufficient evidence demonstrating that the license has not been used and circumstances precluded the licensee from being able to use the license. In addition, sufficient documentation is required to prove military deployment or jury duty service.

D. Time Restriction

1. In no event shall a refund or preference point restoration be made where the request is submitted more than thirty (30) days after the opening of the season for which the license was

issued. Provided further that all time limits will be extended for active members of the United States armed forces whose military service requirements precluded their application for a refund or preference point restoration within said periods.

E. Director Disaster Relief Authority

1. When, in the determination of the Director, existing Parks and Wildlife regulations will have a significant negative impact following a natural disaster that displaces persons from their homes, or closes areas to public access and results in a time-critical demand for use of park resources or a complete (or near complete) loss of hunting opportunity, the Director is authorized to take emergency administrative actions, including, but not limited to:
 - a. Issuance of license fee refunds.
 - b. Restoration of preference points.
 - c. Exchange of big game hunting licenses for leftover or over-the-counter licenses.
 - d. Suspension of length of stay camping limits on Division-owned or controlled properties.
 - e. Imposition of administrative requirements associated with the application for relief granted under this section.

#1671 – Sponsorships and Waivers

- A. Area Wildlife Managers may provide state wildlife area access or entry licenses or permits issued pursuant to 33-4-102(3), C.R.S up to \$500 in value per fiscal year, per Area, to be used as sponsorships as a part of a fundraiser, promotion or marketing effort for local community supporting partners.
- B. Any state wildlife area access or entry license or permit fee issued pursuant to 33-4-102(3), C.R.S. may be waived for Division sponsored education, outreach, volunteer or safety activities (events); for supporting partner activities (events) and research activities that directly support the Division; for official business by other governmental agencies conducted on state wildlife areas or for Division administrative purposes.

#1672 - Reimbursement for processing costs associated with CWD positive animals

A. Costs incurred for processing CWD positive animals

1. Hunters may request reimbursement from the Division for the reasonable costs actually incurred when processing any animal that:
 - a. receives a positive test result from a USDA approved contract laboratory using a USDA approved test;
 - b. is untestable as a result of any act or omission of the Division; or
 - c. is untestable for any reason and was required to be submitted for testing by regulation.
2. All requests for reimbursement shall be submitted on the forms provided by the Division and accompanied by receipts supporting the amount of reimbursement requested, except that reimbursement for processing shall be allowed without receipts in the amount of \$50. Reimbursement with receipts is limited to no more than \$100 per animal for private processing

supplies or \$200 per animal for commercial processing except for moose. The maximum reimbursement for commercial processing for moose is \$250.00.

#1673 – Alcohol

- A.** Upon recommendation of the park manager or area wildlife manager, the region manager may establish and enforce a temporary closure or restriction on any lands and waters under the supervision, administration, or jurisdiction of the Division to alcohol consumption when the region manager concludes that the closure or restriction is necessary to assure the health, safety and welfare of the public, users or staff, or protection of resources. The park manager or area wildlife manager and the region manager shall consider factors, including but not limited to, the effect or potential effect of alcohol consumption on employee and user safety, property appearance, atmosphere, noise levels, conflicts with other uses or users, the demand for law enforcement, the potential impacts to park or wildlife resources and the demand on Division staff.
- B.** Whenever such temporary closure or restriction is instituted, the area(s) involved shall be posted indicating the nature and purpose of the closure.

Basis and Purpose:

The statements of basis and purpose for these regulations can be viewed and copies obtained from the Colorado Division of Parks and Wildlife, Office of the Regulations Manager, Policy and Planning Unit, 1313 Sherman, Room 111, Denver, CO 80203.

Revising the process by which the Division and Commission respond to citizen petitions for rulemaking

Previous regulations prompted staff to file a rulemaking notice with the Secretary of State if a petitioner filed a complete citizen petition for rulemaking on time. This presumed the Commission wanted to consider making a regulatory change and obligated the staff to analyze the petition without the benefit of any direction from the Commission. In addition, previous regulations granted citizen petitioners the opportunity to make oral presentations to the Commission, which may not be necessary in all circumstances and limited CPW's ability to manage Commission meeting agendas. The new regulations require petitioners to provide contact information, a copy of the proposed rule (preferably in redline format), the reasons for the proposed rule, and a statement of the Commission's statutory authority. The new regulations do not put a strict timeline on when citizen petitions would be noticed for rulemaking and do not automatically grant citizen petitioners the opportunity to make an oral presentation to the Commission concerning their petition. Citizens always have that right during public comment. These amendments maximize CPW's flexibility in responding to citizen petitions while retaining the public's ability to bring forward proposed regulatory changes.

The primary statutory authority for these regulations can be found in § 24-4-103, C.R.S., and the state Wildlife Act, §§ 33-1-101 to 33-6-209, C.R.S., specifically including, but not limited to: §§ 33-1-106, C.R.S.

EFFECTIVE DATE - THESE REGULATIONS SHALL BECOME EFFECTIVE JULY 1, 2020 AND SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL REPEALED, AMENDED OR SUPERSEDED.

APPROVED AND ADOPTED BY THE PARKS AND WILDLIFE COMMISSION OF THE STATE OF COLORADO THIS 7TH DAY OF MAY, 2020.

APPROVED:
Michelle Zimmerman
Acting Chair

ATTEST:
James Vigil
Secretary

COLORADO PARKS AND WILDLIFE COMMISSION POLICY

Title: PUBLIC CITIZEN PETITIONS TO INITIATE RULEMAKING-
PETITIONS
Effective Date: July 8, 2016

I. AUTHORITY

~~As a state rulemaking body, the Parks and Wildlife Commission is required by law to operate pursuant to section 24-4-103(7), C.R.S. This section gives any interested person the right to petition for the issuance, amendment, or repeal of a rule. The statute also states that the timeframe for action on such petitions shall be at the discretion of the agency. However, if the Commission chooses to postpone a petition, it is required to consider the petition when it next addresses related rulemaking matters.~~

I. PURPOSE

Colorado law enables citizens to request agencies adopt, revise or repeal regulations. Agencies have substantial discretion to grant or deny such requests. If granted, a rulemaking process ensues. If denied, the citizen make seek judicial review of the agency's denial. This guidance provides a general overview of the processes applicable to such petitions.

II. AUTHORITY

C.R.S. 24-4-103. Rule-making - procedure - definitions - statutory citation correction

III. POLICY STATEMENT

The Parks and Wildlife Commission recognizes that public participation in decisions regarding the management of the state's wildlife and park resources is both desirable and necessary. ~~A petition for~~Citizen petitions to initiate rulemaking ~~is~~are one of the many methods available to the public to allow for active engagement ~~in the rulemaking process. A standard with CPW. A transparent~~ procedure for the consideration of ~~publics such~~ petitions is essential to ensure fair and equitable treatment of such ~~documents, and petitions. This policy~~ is intended to ~~enable~~inform the public ~~to be informed about the most effective manner in which to~~how to effectively introduce petitions to the Commission's regulatory process. In addition, a ~~uniform standard establishes the~~ framework is established for the petitioner to set forth

sufficient facts and supporting documentation to provide the Commission with the appropriate information to form the basis for Commission action.

IV. IMPLEMENTATION

A. Required Information

Petitions presented to the Commission must include the petitioner's name ~~and sufficient, contact information to enable, a copy of~~ the Commission to make an initial determination about whether to accept modified rule as proposed (preferably in redline format), and the ~~petition rationale for further consideration, the proposed rule change.~~ The petition ~~should refer to the regulation proposed for modification, and should~~ must be submitted ~~through in writing to the Division to the Commission.~~ Petitioners may contact Division staff for related forms, assistance with the process, or any other information necessary for submission of a citizen petition.

B. Consideration of petitions

~~Petitioners should be prepared to submit~~ A petition is considered complete documentation in support when it meets all of the rule-changes proposed in their petition.

~~Once a requirements as outlined in #1606 of the Commission's regulations. Once a complete~~ petition is received, ~~staff will recommend to the Director, in consultation with the Commission the Chair, will determine the process and~~ likely schedule for considering it, likely within the following guidelines:

- ~~• If the petition corresponds to a regulatory chapter which is scheduled for review by the Commission on an annual basis, the petition will be heard during the rulemaking hearings applicable to that chapter.~~
- ~~• If the petition corresponds to a regulatory chapter which is not scheduled for review by the Commission on an annual basis, the petition will be heard at the Commission's next possible regularly scheduled hearing within the public notice requirements of the State Administrative Procedures Act.~~
- In order to maintain consistency in regulations and regulatory process, ~~the Commission generally will not consider~~ a citizen petition addressing a regulation passed, with full process, within the previous 12 months will be disfavored.
- In order to maintain consistency in regulations and regulatory process, petitions requesting ~~reconsideration of five~~ consideration

~~of regulations the Division opens on a periodic basis or for multi-year season structure decisions during planning (e.g., the Division's Five-Year Big Game Season Structure) received outside the applicable five-year review period are will be disfavored, and petitioners.~~ Petitioners wishing to address such issues will generally be asked to participate in the Division's next applicable ~~Five-Year Big Game Season Structure~~ planning process.

- Resubmission of denied petitions will ~~only be accepted~~ disfavored until after a full calendar year, and generally considered only if new and substantial information has been added to the petition.

Within statutory guidelines, the Commission Chair, acting on behalf of the Commission, will determine when and how a petition is placed on the agenda for a specific Commission meeting. A petition may be placed on the main agenda or the consent agenda.

If the Division supports the petition, Division staff will recommend the petition for inclusion on a meeting agenda for the Commission's consideration and to proceed with rulemaking. Note: initiating rulemaking does not guarantee the passage or repeal of a rule. Instead, it initiates the process whereby the passage or repeal of a rule can, but not necessarily will, occur.

If the Division opposes the petition, Division staff will recommend placing the petition on the consent agenda for denial with a memo from the Director or Division personnel explaining such opposition. Petitioners will generally not be given time at the podium to present Division-opposed petitions. The Commission is not obligated to take public comment through dedicated agenda time; however, the public is always free to comment at meetings using the Commission's general public comment procedures. The Commission is free to take a Division-opposed petition off the consent agenda, and subsequently, either affirm or overrule the staff recommendation, with or without hearing from the petitioner.

If the Division neither supports nor opposes the petition, the Director and Commission Chair will determine the process for consideration. This may or may not include feedback from or collaboration with the petitioner.

When a determination is made regarding the placement of a petition on a specific agenda, petitioners will be notified ~~immediately~~ of that decision, ~~and will be made aware of their opportunity to testify in support of their petition.~~

~~Public petitions should initially be placed on the rulemaking agenda-~~

~~clearly separated from other rulemaking matters brought forward by staff. The agenda and rulemaking notice specifically will notice the petition for action by the Commission. Thus, the petitioner should understand that the Commission will either take action to move the petition forward or deny the petition.~~

~~At the initial hearing, the petitioner will be given an opportunity to present the petition advance. Staff may be requested to present its position on the petition to assist Commission deliberations. Any decision to support, reject, or modify the petition will be made based upon the information placed in the record at the time of the hearing.~~

If the Commission ~~accepts the~~grants a citizen petition ~~for further consideration to initiate rulemaking~~, the petitioner ~~will and other stakeholders may~~ be asked to work with staff to develop regulatory language and provide any other information or materials requested by the Commission. Within statutory guidelines, the Commission reserves the right to determine the schedule for moving the petition forward, including continuance beyond the regularly-scheduled two-step regulations process. ~~Denial of a petition constitutes final action by the Commission.~~

Denial of a petition constitutes final action by the Commission.

Any decision to support, reject, or modify a petition will be made based upon the information placed in the record.

Petitioners should be aware that signatures of supporters are not required for submission of a petition. Further, submission of multiple petitions asking for similar Commission action is disfavored, and such petitioners may be asked to coordinate their petitions.

Interpretative documents or general statements of policy, such as this guidance, are not meant to be binding as rules under the State Administrative Procedure Act. § 24-4-103(1), C.R.S.

COLORADO PARKS AND WILDLIFE COMMISSION POLICY

Title: CITIZEN PETITIONS TO INITIATE RULEMAKING
Effective Date:

I. PURPOSE

Colorado law enables citizens to request agencies adopt, revise or repeal regulations. Agencies have substantial discretion to grant or deny such requests. If granted, a rulemaking process ensues. If denied, the citizen make seek judicial review of the agency's denial. This guidance provides a general overview of the processes applicable to such petitions.

II. AUTHORITY

C.R.S. 24-4-103. Rule-making - procedure - definitions - statutory citation correction

III. POLICY STATEMENT

The Parks and Wildlife Commission recognizes that public participation in decisions regarding the management of the state's wildlife and park resources is both desirable and necessary. Citizen petitions to initiate rulemaking are one of the many methods available to the public to allow for active engagement with CPW. A transparent procedure for the consideration of such petitions is essential to ensure fair and equitable treatment of such petitions. This policy is intended to inform the public about how to effectively introduce petitions to the Commission's regulatory process. In addition, a framework is established for the petitioner to set forth sufficient facts and supporting documentation to provide the Commission with the appropriate information to form the basis for Commission action.

IV. IMPLEMENTATION

A. Required Information

Petitions presented to the Commission must include the petitioner's name, contact information, a copy of the modified rule as proposed (preferably in redline format), and the rationale for the proposed rule change. The petition must be submitted in writing to the Division. Petitioners may contact Division staff for related forms, assistance with the process, or any other information necessary for

submission of a citizen petition.

B. Consideration of petitions

A petition is considered complete when it meets all of the requirements as outlined in #1606 of the Commission's regulations. Once a complete petition is received, the Director, in consultation with the Commission Chair, will determine the process and schedule for considering it, likely within the following guidelines:

- In order to maintain consistency in regulations and regulatory process, a citizen petition addressing a regulation passed, with full process, within the previous 12 months will be disfavored.
- In order to maintain consistency in regulations and regulatory process, petitions requesting consideration of regulations the Division opens on a periodic basis or for multi-year planning (e.g., the Division's Five-Year Big Game Season Structure) received outside the applicable review period will be disfavored. Petitioners wishing to address such issues will generally be asked to participate in the Division's next applicable planning process.
- Resubmission of denied petitions will be disfavored until after a full calendar year, and generally considered only if new and substantial information has been added to the petition.

Within statutory guidelines, the Commission Chair, acting on behalf of the Commission, will determine when and how a petition is placed on the agenda for a specific Commission meeting. A petition may be placed on the main agenda or the consent agenda.

If the Division supports the petition, Division staff will recommend the petition for inclusion on a meeting agenda for the Commission's consideration and to proceed with rulemaking. Note: initiating rulemaking does not guarantee the passage or repeal of a rule. Instead, it initiates the process whereby the passage or repeal of a rule can, but not necessarily will, occur.

If the Division opposes the petition, Division staff will recommend placing the petition on the consent agenda for denial with a memo from the Director or Division personnel explaining such opposition. Petitioners will generally not be given time at the podium to present Division-opposed petitions. The Commission is not obligated to take public comment through dedicated agenda time; however, the public is always free to comment at meetings using the Commission's general public comment procedures. The Commission is free to take a Division-opposed petition off the consent agenda, and subsequently, either affirm or overrule the staff recommendation, with or without hearing from the

petitioner.

If the Division neither supports nor opposes the petition, the Director and Commission Chair will determine the process for consideration. This may or may not include feedback from or collaboration with the petitioner.

When a determination is made regarding the placement of a petition on a specific agenda, petitioners will be notified of that decision in advance. Staff may be requested to present its position on the petition to assist Commission deliberations.

If the Commission grants a citizen petition to initiate rulemaking, the petitioner and other stakeholders may be asked to work with staff to develop regulatory language and provide any other information or materials requested by the Commission. Within statutory guidelines, the Commission reserves the right to determine the schedule for moving the petition forward, including continuance beyond the regularly-scheduled two-step regulations process.

Denial of a petition constitutes final action by the Commission.

Any decision to support, reject, or modify a petition will be made based upon the information placed in the record.

Petitioners should be aware that signatures of supporters are not required for submission of a petition. Further, submission of multiple petitions asking for similar Commission action is disfavored, and such petitioners may be asked to coordinate their petitions.

Interpretative documents or general statements of policy, such as this guidance, are not meant to be binding as rules under the State Administrative Procedure Act. § 24-4-103(1), C.R.S.