



COLORADO

Parks and Wildlife

Department of Natural Resources

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Denver, CO 80203
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TO: Members of the Colorado Parks and Wildlife Commission
FROM: Krista Heiner, Regulations Manager
RE: Chapter W-16 Draft Regulations for the November 2020 Parks and Wildlife Commission Meeting
DATE: November 6, 2020

Draft regulatory changes for Chapter W-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 or krista.heiner@state.co.us.

Agenda Item 24: Chapter W-16 - "Parks and Wildlife Procedural Rules" 2 CCR 406-16 (Step 1 of 2)

Clarifying Processes Applicable to License Suspension Appeals

On the advice of the Attorney General's Office, regulation #1601.B.2 regarding the process for license suspension appeals has been revised to align with the Administrative Procedures Act judicial review provision. Specifically, the license suspension appeals deadlines have been clarified and pegged to CPW's mailing of a certificate of service, not the licensee's receipt of those mailings. Additionally, the previous provision that allowed a licensee to obtain a stay of suspension from CPW after final agency action has been removed, while preserving the licensee's ability to obtain a stay in judicial review action as permitted by the Administrative Procedures Act.



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 a~~ 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 initial decision shall advise ~~the licensee of their him or her of the~~ right to appeal ~~the~~ initial decision to the Commission. Any person seeking or otherwise requiring Commission review of the hearing examiner's initial decision shall file a written notice of appeal ~~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 the licensee's receipt of the hearing examiner's initial decision, but no later than 45 days from the date contained in the certificate of service accompanying the initial decision. The notice of appeal must be sent to "CPW License Appeals" 6060 Broadway, Denver, CO 80216. If a timely appeal is not made to the Commission, the hearing examiner's initial decision shall become final, effective 45 days from the date contained in the certificate of service accompanying the initial decision 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 ~~notice of appeal~~ 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 ~~notice of appeal~~request for review and any additional written materials and documentary evidence provided to the Commission by the hearing examiner in response to the ~~notice of appeal~~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~~notice of appeal is received by the Commission at least thirty days prior to the meeting. The final decision of the Commission ~~is shall become~~ effective upon mailing to the licensee and must contain a certificate of mailing 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

11/06/2020

Basis and Purpose
Chapter W-16 - Procedural Rules

Basis and Purpose:

Clarifying Processes Applicable to License Suspension Appeals

On the advice of the Attorney General's Office, regulation #1601.B.2 regarding the process for license suspension appeals has been revised to align with the Administrative Procedures Act judicial review provision. Specifically, the license suspension appeals deadlines have been clarified and pegged to CPW's mailing of a certificate of service, not the licensee's receipt of those mailings. Additionally, the previous provision that allowed a licensee to obtain a stay of suspension from CPW after final agency action has been removed, while preserving the licensee's ability to obtain a stay in judicial review action as permitted by the Administrative Procedures Act.

The statements of basis and purpose for these regulations can be obtained from the Colorado Division of Parks and Wildlife, Office of the Regulations Manager by emailing dnr_cpw_planning@state.co.us. The statements of basis and purpose are not available at the Division of Parks and Wildlife headquarters due to the closure of these facilities to the public in light of the COVID-19 pandemic.

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 MARCH 2, 2021 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 13TH DAY OF JANUARY, 2021.

APPROVED:
Marvin McDaniel
Chair

ATTEST:
Marie Haskett
Secretary