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May 14, 2021

RE: Correction to Regulation 2 CCR 406-16, Chapter W-16 (Parks and Wildlife Procedural Rules)
Rule Opinion Correction 2021-00318 (correction to Tracking No: 2021-00064)

Dear Sir or Madam:

On March 17, 2021, the Colorado Parks and Wildlife Commission (CPW) amended 2 C.C.R. 406-16; Chapter W-16 (Parks and Wildlife Procedural Rules). Pursuant to § 24-4-103(11)(d)(II), C.R.S., the amended regulation, together with the Attorney General's rule opinion, was submitted to the Secretary of State within 20 days of promulgation under tracking number 2021-00064. Typographical errors have since been discovered.

Specifically, the March 17, 2021 rulemaking inserted a new subpart 3 into regulation #1601(B) regarding mid-suspension review. CPW neglected to renumber the following subparts and has done so in the attached corrected filing.

Pursuant to the rulemaking provisions of the Colorado Administrative Procedures Act, typographical and other non-substantive errors may be corrected upon submission of a request by the agency. C.R.S. § 24-4-103(11)(d)(II).

The corrected pages are attached to this filing. In accordance with C.R.S. § 24-4-103(11)(d)(II), I have reviewed these errors and have determined that they are non-substantive.

PHILIP J. WEISER
Attorney General

/s/ Jake Matter
JAKE MATTER
Senior Assistant Attorney General
Parks Wildlife and Trust Lands Unit
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CORRECTED FINAL REGULATIONS – CHAPTER W-16 - PARKS AND WILDLIFE PROCEDURAL RULES

ARTICLE I - MEETINGS

#1601 - Conduct of Meetings

B. Adjudicatory Hearings

3. Mid-Suspension Review

- a. Except as specified in subsection b. of this regulation, any person who has had their privilege of applying for, purchasing, or exercising the benefits conferred by any or all licenses issued by the division pursuant to articles 1 to 6 of title 33 (“license privileges”) may file a petition for mid-suspension review seeking to modify the expiration date of their suspension. Such petitions may be filed once every five years either:
 - 1) After half of a suspension of at least 20 years, but less than a lifetime, has elapsed; or
 - 2) After fifteen years of a lifetime suspension have elapsed.
- b. Applicability
 - 1) Any person who has had their license privileges suspended by the commission for less than 20 years may not file a petition for mid-suspension review.
 - 2) Any person who has had their license privileges suspended by the commission on two or more occasions may not file a petition for mid-suspension review.
 - 3) Any person who has been convicted of wildlife violations of another state, or any Canadian province, United States territory, or federal agency which is a member of the “Wildlife Violator Compact,” §§ 24-60-2601 – 2604, CRS, since the date of the hearing examiner’s initial decision entered pursuant to § 33-6-106(7), CRS, may not file a petition for mid-suspension review.
 - 4) Any person who has been charged with wildlife violations of another state, or any Canadian province, United States territory, or federal agency which is a member of the “Wildlife Violator Compact,” §§ 24-60-2601 – 2604, CRS, since the date of the hearing examiner’s initial decision entered pursuant to § 33-6-106(7), CRS, may not file a petition for mid-suspension review until such charges are finally resolved.
- c. Contents of petition for mid-suspension review and course of proceedings
 - 1) The petition for mid-suspension review must include an affidavit signed by the petitioner under penalty of perjury stating:
 - a. The petitioner has not had their license privileges suspended by the commission on two or more occasions;
 - b. The petitioner has not been convicted of wildlife violations of another state, or any Canadian province, United States territory, or federal agency which is a member of the “Wildlife Violator Compact,” §§ 24-60-2601 – 2604, CRS, since the date of the hearing examiner’s initial decision entered pursuant to 33-6-106(7), CRS; and,
 - c. There are no pending charges against the petitioner for wildlife violations of another state, or any Canadian province, United States territory, or federal agency which is a member of the “Wildlife Violator Compact,” §§ 24-60-2601 – 2604, CRS.
 - 2) The petition for mid-suspension review must include a detailed justification for the request. Time served on the suspension, and/or financial penalties incurred do not constitute good cause for modifying the expiration date of any suspension.

- 3) The petition for mid-suspension review must demonstrate the petitioner's ongoing and concerted efforts to ameliorate the harm caused by their violation(s) in the form of education, mentoring, volunteering, wildlife conservation efforts, or other means.
 - 4) The division may file a response to the petition. Unless the commission directs otherwise, there will be no oral presentations or further submittals to the commission and the petition will be placed on the consent agenda with an appropriate recommendation by the Director.
- d. Standard of review: The commission, in its discretion, may modify the duration of a previously-imposed license suspension if the petitioner proves the duration of their original suspension no longer serves the remedial purpose of protecting the state's wildlife. The commission shall consider the totality of the circumstances, which include, but need not be limited to, the following factors:
- 1) The credibility of the petitioner's written statements or testimony, if any;
 - 2) The credibility of written statements by third parties;
 - 3) The adequacy of petitioner's ameliorative efforts;
 - 4) The risk of future wildlife offenses; and,
 - 5) Aggravating or mitigating factors leading to the original suspension.

4. 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.

5. 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

Basis and Purpose:

Adding a Process for Certain Persons to Petition the Commission to End or Modify a Current License Suspension under Certain Conditions

Prior to 2012, persons seeking relief from their wildlife license suspension were able to request that the Commission review their suspension. The Commission relied on its exclusive statutory authority to exercise its discretion on whether to review, or grant relief, to a petitioner. In 2012, the General Assembly passed §33-6-106(9), which required the Commission to hold a mid-suspension review for suspensions of 10 years or more, provided that the suspended party met certain eligibility requirements. §33-6-106(9) had a 5-year sunset provision and the regulation that supported §33-6-106(9) was removed following the sunset.

Recently, the Commission expressed interest in creating a process enabling certain persons to have an opportunity to request the Commission modify their prior license suspension. This rule defines what classes of persons may file a petition for mid-suspension review with the Commission and provides illustrative criteria for the Commission to consider in evaluating such a request.

The Commission has the exclusive authority to suspend the privilege of applying for, purchasing, or exercising the benefits conferred by any or all licenses issued by the Division. §33-6-106(1) The Commission also has the authority, by appropriate rules and regulations, to determine under what circumstances, when, in which localities, by what means, what sex of, and in what amounts and numbers the wildlife of this state may be taken. §33-1-106(1)(a).

The text was corrected after adoption to incorporate the correct numbering of regulations following the addition of #1601.B.3.

This statement of basis and purpose can be obtained from the Colorado Division of Parks and Wildlife, Office of the Regulations Manager by emailing dnr_cpw_planning@state.co.us. This statement of basis and purpose is not currently 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: § 33-6-106, C.R.S. and §33-1-106(1)(a), C.R.S.

EFFECTIVE DATE - THESE REGULATIONS SHALL BECOME EFFECTIVE MAY 1, 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 17TH DAY OF MARCH, 2021.

**APPROVED:
Marvin McDaniel
Chair**

**ATTEST:
Marie Haskett
Secretary**