

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

ARTICLE V - Reasonable Accommodations for Persons with Disabilities

#1680 – Reasonable Accommodations

- A. The Director shall have the authority to grant variances from the regulations adopted by the Parks and Wildlife Commission, including but not limited to manner of take and access accommodations, for the sole purpose of providing reasonable accommodations to persons with disabilities.
- B. Application for such accommodations must be made on a form available from and submitted to the Division at least 30 days prior to the requested effective date.
- C. Such applications will be reviewed on a case-by-case basis and supporting documentation may be required. If an accommodation is authorized, the applicant will be provided with a special permit listing the accommodation and any conditions of its use.
 - 1. When shooting from a motor vehicle is authorized, the permittee is authorized to discharge a firearm or release an arrow from a stationary motor vehicle only after all forward motion has ceased and the motor has been turned off or is incapable of forward motion. No shooting may be done from a public road.
- D. Permits are free of charge, and valid for the time period designated on the permit. Permits shall be presented for inspection upon request by an officer of the Division.
- E. Hunters with permits must be accompanied by another person when necessary to ensure that the wildlife taken is retrieved and properly prepared for human consumption. Such person may dispatch wounded wildlife when so authorized as a condition of the permit.
- F. Persons provided with any accommodation under this regulation shall comply with all other applicable laws and regulations. Permits allow variances only from regulations specifically addressed and only in the manner and under the circumstances set forth therein.
- G. A service animal is defined as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the handler's disability. The crime deterrent effects of an animal's presence and the provisions of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

Basis and Purpose:

The Colorado Parks and Wildlife Commission (Commission or CPW) issues this statement of basis and purpose pursuant to the Administrative Procedure Act, § 24-4-103(4)(c), CRS. This statement relates to new and amended rules adopted by the Commission on January 17, 2023, regarding accommodations for persons with disabilities. CPW repealed W-0:005 in its entirety and recodified amended accommodation regulations in W-16:1680.

Federal and state law prohibit state and local governments from unlawfully discriminating on the basis of disability in their services, programs, and activities. *See* 42 USC § 12132 (Title II of the Americans with Disabilities Act (ADA)); § 24-34-801, CRS (Colorado statute prohibiting such discrimination). Colorado statutes and regulations related to accommodations for persons with disabilities are intended to be “substantially equivalent to federal law.” 3 CCR § 708-1:60.1. This means that Colorado law provides substantive rights, procedures, and remedies comparable to federal law. CPW updated its regulations in this rulemaking to be more consistent with developments in the law.

I. Background and the Amended ADA

In 1990, the federal ADA was signed into law. The US Supreme Court subsequently issued rulings narrowly construing the ADA, making it more difficult for people to obtain protection under the law. In 2008, congress amended the ADA to reverse these narrow rulings and to make it easier for people to obtain protection. In 2010, the Department of Justice (DOJ) issued new regulations implementing the amended ADA, codified at 28 C.F.R. § 35.

Federal disability statutes and regulations apply to CPW regardless of whether CPW has similar regulations. For this reason, it is unnecessary and potentially confusing for CPW to have lengthy regulations attempting to paraphrase federal law. This statement explains the regulatory changes CPW made in this rulemaking and its reasons for doing so.

II. Purposes of the amended regulations

- A. Relocation of CPW’s disability related regulations – Prior to this rulemaking, CPW’s disability related regulations were codified in Chapter W:0:005 (Reasonable Accommodations); 2 CCR 406:0. The CPW regulations in Chapters W:0 through W:15 generally apply to CPW’s wildlife programs. CPW relocated its amended accommodation regulations to Chapter W:16, 2 CCR 406:16, in this rulemaking because the chapter applies broadly to all of CPW’s parks *and* wildlife programs.

CPW relocated its regulations to make it clear to the public that the ADA applies to all of CPW's operations and to avoid confusion.

- B. The Director's authority to issue variances – Prior to this rulemaking, the Director of the Division of Parks and Wildlife (Director) had “authority to grant variances from the regulations adopted by the Wildlife Commission [sic] ... for the sole purpose of providing reasonable accommodations to persons with a significant impairment of a major life function resulting in functional impairment under the Americans with Disabilities Act.” W-5:005:A. This regulation was outdated because it did not refer to the combined Parks and Wildlife Commission. This regulation was also problematic because it loosely paraphrased federal law. The amended regulation has been streamlined to simply state the Director has authority to issue variances as necessary to comply with federal and state disability laws.
- C. Bases for denial of applications seeking specific accommodations – Prior to this rulemaking, CPW regulation W:0:005:A:1 identified three scenarios where CPW would not be legally required to provide an applicant's desired accommodation, loosely paraphrasing federal regulations. These standards have been removed because the paraphrasing was imprecise, and the federal standards already apply by operation of law.
- D. Standards of proof – Prior to this rulemaking, CPW regulation W:0:005:C required individuals seeking an accommodation permit to support their application with a statement from a healthcare professional opining on the severity of their disability and the anticipated effectiveness of their desired accommodation. This requirement has been removed to make CPW regulations more consistent with federal law. The amended rule enables CPW to require applicants to provide evidence in support of their applications in appropriate, limited circumstances. These changes are consistent with federal regulations implementing the amended ADA, which state that the question of whether someone is disabled “usually will not require scientific, medical, or statistical evidence.” 28 C.F.R. § 35, App. C. *See also*, 28 C.F.R. § 35.108 (individuals seeking an accommodation need not meet a “demanding standard” to prove they are disabled).
- E. Editorial changes – The amended rule has been edited to use plain language and make it easier to understand.

III. **Specific statutory authority for the new and amended rules**

§ 33-1-104, CRS (“The commission shall establish objectives within the state policy, ... which will enable the division to develop, manage, and maintain sound programs of hunting, fishing, trapping, and other wildlife-related outdoor recreational activities. Such objectives shall employ a multiple-use concept of management.”).

§ 33-10-106(3)(a), CRS (“The commission shall ... [r]elate the parks and outdoor recreation programs to the populations and economies of the regions to be served....”).

§ 33-9-102(2), CRS (“In addition to any other specific grant of rule-making authority, the commission may adopt or revise any rules ... that the commission deems necessary or convenient to effect the purposes of, and fulfill its duties under, this title.”).

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 or by visiting the Division of Parks and Wildlife headquarters at 6060 Broadway, Denver, CO, 80216.

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 March 2, 2023 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 ON THIS 17TH DAY OF JANUARY, 2023.

**APPROVED:
Carrie Besnette Hauser
Chair**

**ATTEST:
Marie Haskett
Secretary**