

State of California
Fish and Game Commission
Initial Statement of Reasons for Regulatory Action

Amend Section 708.14
Title 14, California Code of Regulations

Re: Big Game Preference Points Reinstatement and
Tag Refunds Due to Public Land Closures

I. Date of Initial Statement of Reasons: September 20, 2021

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: October 14, 2021

Location: Teleconference

(b) Discussion Hearing

Date: December 15-16, 2021

Location: Teleconference

(c) Adoption Hearing

Date: February 16-17, 2022

Location: Sacramento

III. Description of Regulatory Action

(a) Statement of Specific Purpose of Regulatory Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR).

BACKGROUND

The Fish and Game Commission (Commission) periodically considers recommendations from the Department of Fish and Wildlife (Department) in establishing big game mammal hunting regulations. Specifically, the Department manages deer, bighorn sheep, pronghorn antelope and elk resources in California. Deer hunting tags, elk hunting tags, bighorn sheep hunting tags, and pronghorn antelope hunting tags are required to hunt these species in California.

CURRENT REGULATIONS

Regulations describing hunting zones and seasons for deer are described in sections 360 and 361, bighorn sheep in Section 362, pronghorn antelope in Section 363, and elk in Section 364. The Department distributes hunting tags for deer, elk, bighorn sheep, and pronghorn antelope annually via a big game drawing for a specific area and season. Some deer tags for certain hunt zones include both an early archery-only season and a subsequent "general" season by firearm and archery.

Public demand for certain deer tags and all bighorn sheep, pronghorn antelope, and elk hunting tags exceeds the available opportunities; therefore, a modified preference point

system (subsection 708.14(a)) provides preference to hunters who have applied for, but not drawn, tags in past drawings. Before the start of the hunting license year (which runs from July 1 through June 30), a hunter may apply through the Automated License Data System (ALDS) between April 15 and June 2 for a deer, bighorn sheep, pronghorn antelope, or elk hunting tag. If the hunter is not drawn, the hunter receives a preference point which gives that hunter preference in future drawings for that game species. A portion of the tags for each species are issued randomly to allow some opportunity for new hunters or hunters that do not have enough preference points to draw through the preference point portion of the drawing.

Many big game hunts require years of accumulated preference points in order to even have the opportunity. Others require the maximum number of preference points, and are “once in a lifetime” draws. For example, a number of hunt zones for the 2021 season were only available to applicants that had accumulated the maximum number of preference points (19 points for this license year which equates to 19 years of accumulating points) to potentially draw the tag.

For deer, hunters may make up to three hunt choices. Applicants can indicate their preferred first tag choice, which is taken into account along with the number of accumulated preference points. All remaining unsuccessful applications are then sorted by second tag choice, in random number order (starting with the lowest random number to the highest random number). A second round of drawings is then conducted for any zones and hunts with tags remaining without consideration of accumulated points.

Deer tags are classified pursuant to subsection 708.1(a)(2)(A) by three types:

- Premium, which include those tags where the tag quota filled on or before the first business day after July 1 in the immediately preceding license year;
- Restricted, which include all non-Premium tags where the tag quota filled on or before on or before the first business day after August 1 in the immediately preceding license year; and
- Unrestricted, which include those tags where the tag quota did not fill on or before the first business day after August 1 in the immediately preceding license year.

Existing regulations in subsections 708.14(j) and 708.14(k) outline the process for returning a big game tag if a hunter was unable to hunt for under their first choice. That process requires the hunter submit to the Department a written request to retain their existing preference point total and earn one preference point for that year. Request for refunds for bighorn sheep, pronghorn, and elk tag fees also exists under subsection 708.14(k). The Department may consider the request if the tag is returned to the Department’s License and Revenue Branch **before** the season starts for which the tag is valid. There is currently no mechanism for considering the request if the tag is returned to the License and Revenue Branch **after** the season has started.

The proposal would affect hunters who were drawn for the following deer, bighorn sheep, pronghorn antelope, and elk hunts:

DEER

- Those deer zones defined in Title 14, Section 708.1 and described as Premium Deer Hunt Tags
 - The approximate number of premium deer hunt tags eligible for points reinstatement (as of September 16, 2021): **15,037** across 14 archery zones and 6 general zones

BIGHORN SHEEP

- Those zones defined in Title 14, Section 362
 - The approximate number of bighorn sheep hunt tags affected (as of September 16, 2021): **0**. No sheep hunts are affected by known public land closures and thus the proposed regulation.

PRONGHORN ANTELOPE

- Those zones defined in Title 14, section 363
 - The approximate number of pronghorn antelope hunt tags affected (as of September 16, 2021): **106**

ELK

- Those zones defined in Title 14, Section 364
 - The approximate number of elk hunt tags affected (as of September 16, 2021): **113** across 7 general zones, 1 archery zone, and 2 apprentice zones

PROPOSED REGULATORY CHANGES

Regulations to address conditions resulting from the 2021 fire season are needed to allow hunters to return their first tag choice tags after the season starts. The catastrophic and unprecedented 2021 fire season that temporarily closed all national forests in California in early September impacted many of the deer, bighorn sheep, pronghorn antelope, and elk hunting seasons and resulted in a loss of opportunity for many hunters who had “once in a lifetime” hunting tags. The Commission adopted a similar regulation (addition of Section 708.19) for the loss of opportunities during the 2020 wildfire season that authorized the Department to reinstate preference points and refund tag fees for certain bighorn sheep, antelope, and elk hunts if the written requests were submitted to the Department on or before May 1, 2021.

While fire has always been somewhat problematic during big game hunting season, the scale and magnitude has dramatically changed over the past several years. The potential for future public land closures, and increasingly hazardous conditions such as poor air quality, is likely given the increasing likelihood of large-scale wildfires, and closures could more commonly occur later into the summer and fall because environmental conditions are drier and the risk increases. This timeframe for fire susceptibility to public lands overlaps with the start of certain earlier big game seasons, such as those for archery. The resulting loss of opportunity means some hunters receive little or no chance to hunt with tags acquired using many years of accumulated preference points.

PUBLIC LAND CLOSURES

In response to the Dixie Fire and extreme fire conditions, the Pacific Southwest Region of the U.S. Department of Agriculture Forest Service (USFS) (Region 5) closed the Lassen National Forest (NF) from August 12 to November 30, 2021 (Forest Order No. 06-21-08). In response to the Caldor Fire and potential extreme fire conditions, the USFS closed the Eldorado (NF) from August 17 – September 30, 2021 (Forest Order No. 03-21-14). Subsequent closures of nine other NFs became effective from August 22 – September 6, 2021 (Forest Order No. 21-04) and were later replaced by the statewide closure to all 18 NFs from August 31 – September 17, 2021 (Forest Order No. 21-07), which was terminated as of September 15, 2021. Additionally, the Department closed 33 properties surrounding those NFs due to extreme fire conditions, but re-opened those as of September 16, 2021.

The purpose of the proposed regulation is to authorize the Department reinstatement of preference points and award one preference point for the license year for certain deer tags and to refund tag fees, reinstate preference points, and award one preference point for the license year for bighorn sheep, pronghorn antelope, and elk hunts whose hunt zones are inaccessible for sixty-six percent (66%) or more of the season as a result of public land closures.

This package is necessary to allow consideration of lost opportunities resulting from natural disasters such as wildfire, through preference point reinstatement and/or refunds of tag fees by the Department for certain deer, bighorn sheep, pronghorn antelope, and elk tags in the event public lands are closed and inaccessible to hunting.

Amend Subsection 708.14(j): Process for requesting preference point reinstatements and tag refunds for deer.

Subsection 708.14(j) is amended to include new subsection (1) and (2) for deer tags. The words in parentheses “(becoming a tag holder)” are added to clarify terminology of the hunter’s status after they have successfully drawn a tag; therefore, the term “applicant” has been changed to “tag holder” after this first mention in subsection 708.14(j). The words “[may] return their unfilled (i.e., unused) tag and” are added to make clear that returning an unfilled tag should include a written request for preference point reinstatement and/or refund. In one instance, the word “application” has been stricken after the words “resident deer tag” to clarify that the fee paid is for the tag itself. The added words “for that license year” clarify the year for which the +1 preference point would apply. A sentence added at the end of the subsection states how, and the date by which, a tag must be returned to the Department and references the newly added eligibility criteria in subsections 708.14(j)(1) and (2).

Subsection 708.14(j)(1): This new subsection outlines the circumstances under which hunters may return their deer tags and request preference point reinstatement before the season starts, which could be for reasons other than loss of opportunity attributable to public land closures. Language for returning the tag to the Department’s License and Revenue Branch is moved from subsection (j) to this new subsection (j)(1) and expanded to include the post office box address for mailing the written request and clarify when that the request must be received. Including the word “earliest” clarifies that the written request would need to be submitted before the start of the first season when the tag is valid for

more than one season (archery only usually occurs before the “general” season, whereby archery and firearms may be typically used) for that hunting license year. Language describing that the Department may refund the difference between the fee paid for a nonresident deer tag and resident deer tag has been moved from subsection (j) to the end of this new subsection (j)(1), with the striking of the word “application” in two instances after the words “nonresident deer tag” to clarify that the fee paid is for the tag itself.

708.14(j)(2): This new subsection outlines the circumstances under which hunters may return their deer tags and request preference point reinstatement after the season starts, given loss of opportunity due to public land closures.

(A) The Department has determined that when access to the hunt zone is restricted due to a public land closure for more than two-thirds (66 percent) or more of a hunt season, the resulting loss of opportunity would qualify a hunt for the applicable preference point reinstatement and/or tag refunds (for bighorn sheep, pronghorn antelope, or elk only) as proposed in amended subsections 708.14(j) and (k). The threshold of 66% or more was chosen to recognize a basic estimation of the majority of the season that would be unhuntable if public lands are closed, equating to 33% or less of the season available for hunting. Thus, premium deer tag holders whose hunt zones are inaccessible for sixty-six percent (66%) or more of the respective hunt season as a result of public land closures could return their tag with a written request after the season starts to be considered for preference point reinstatement and earn one preference point for the license year.

Subsection 708.14(j)(2)(A) applies to tags issued in the 2021 hunting license year (commencing July 1, 2021). Considering that public lands access restrictions have changed during the preparation of these regulatory documents (fall 2021), this regulation aims to function retroactively. The description of returning the tag to the Department’s License and Revenue Branch is paired with a required postmark date prior to May 1, 2022 in order to allow enough time for Department staff to review and process requests so that points will be restored for customers for the following year’s license application sales. Any requests with a postmark on or after May 1 shall not be considered.

(B) For the hunting license year commencing July 1, 2022, the same 66% threshold for public land closure leading to hunter eligibility to pursue reinstatement applies. The Department requires the hunter submit the unfilled tag and written request for point reinstatement to the Department’s License and Revenue Branch on or prior to February 28 of the current license year. This particular date was chosen as it signifies the end of the month by which the last big game season concludes, allowing for requests for reinstatement to be submitted through February.

Amend Subsection 708.14(k): Process for requesting preference point reinstatements and tag refunds for bighorn sheep, pronghorn antelope, and elk.

Subsection 708.14(k) is amended to include new subsections (1) and (2) for bighorn sheep, pronghorn antelope, and elk. The words in parentheses “(becoming a tag holder)” are added to clarify terminology of the hunter’s status after they have successfully drawn a tag; therefore, the term “applicant” has been changed to “tag holder” after this first mention in subsection 708.14(k). The words “[may] return their unfilled (i.e., unused) tag and” are added to make clear that returning an unfilled tag should include a written request for preference point reinstatement and/or refund. The added word “license” for “that license

year” clarifies the year for which the +1 preference point would apply, and the words “and seek refund of the tag free” clarifies that a refund may be requested. Existing language regarding paying the nonrefundable processing fee as specified in Section 702 remains unchanged. A sentence added at the end of the subsection states how, and the date by which, a tag must be returned to the Department and references the newly added eligibility criteria in subsection 708.14(k)(1) and (2).

Subsection 708.14(k)(1): This new subsection outlines the circumstances under which hunters may return their bighorn sheep, pronghorn antelope, or elk tags and request preference point reinstatement and refund before the season starts, which could be for reasons other than loss of opportunity attributable to public land closures. Language for returning the tag to the Department’s License and Revenue Branch is moved from subsection (k) to this new subsection (k)(1) and expanded to include the post office box address for mailing the written request and clarify when that the request must be received.

Subsection 708.14(k)(2): This new subsection outlines the circumstances under which hunters may return their bighorn sheep, pronghorn antelope, or elk tags and request preference point reinstatement and tag refund after the season starts, given loss of opportunity due to public land closures.

(A) As noted above for justification of subsection 708.14(j)(2)(A), public land closure for 66% or more of a hunt season resulting loss of opportunity would qualify a bighorn sheep, pronghorn antelope, or elk hunt for the applicable preference point reinstatement and tag refunds. Thus, tag holders whose hunt zones are inaccessible for sixty-six percent (66%) or more of the respective hunt season as a result of public land closures could return their tag with a written request after the season starts to be considered for preference point reinstatement and earn one preference point for the license year, and be eligible for a refund.

Subsection 708.14(j)(2)(A), the timeframe for subsection 708.14(k)(2)(A) applies to 2021 hunting license year bighorn sheep, pronghorn antelope, or elk tags, and will function retroactively. The same postmark date of May 1, 2022 and rationale applies as for deer.

(B) As noted above for justification of subsection 708.14(j)(2)(B), the 66% threshold aims to serve as a prescriptive criterion focusing on potential future land closures. The bighorn sheep, pronghorn antelope, or elk hunter would submit the unfilled tag and written request for point reinstatement to the Department’s License and Revenue Branch postmarked on or prior to February 28 of the current license year.

Necessity

This regulation is necessary for the Commission to allow reinstatement of preference points and refund of some tag fees after the start of the season for first tag choice for deer, bighorn sheep, pronghorn antelope, and elk tags that were not usable due to public land closures caused by wildfires.

IMPACT FROM PUBLIC LAND CLOSURES

The Department conducted an analysis to determine which premium deer, bighorn sheep, pronghorn antelope, and elk hunt seasons spatially and temporally overlapped with the affected National Forests as of August 31, 2021, and again on September 16, 2021 with

the re-opening of most forests on September 15, 2021 to assess closures on the numbers of issued tags by species and hunt type. The Department considered loss of opportunity based on the number of days closed of each season and tallied those hunts resulting in 66 percent or greater of days closed.

Table 1 shows the premium deer hunt zones affected by 66% or greater of the season lost due to public land closures, which as of September 16, 2021 included 14 archery hunt zones and 6 general hunt zones, one of which is Apprentice (J-21). Approximately 70 deer hunters had returned their tags prior to the start of their respective seasons. Up to 15,037 premium deer tags could be eligible for return based on the closure criteria. The majority of archery seasons started August 21, 2021, running through September 12, 2021, encompassing the major statewide closure of National Forests. Others starting later, such as X-1 and X-4 share range with the Lassen National Forest, which remains under a closure order through November 30, 2021. For those deer in impacted zones, the following quotas were allocated based on first tag choice and subsequent tag choice for the 2021 license year hunts:

- C-Zone: C-zone tags are issued for use in any of the C-zones. Of the 8,150 quota, 7,022 tags were first choice tags, the remaining 1,130 tags went to second choice.
- D14 Zone: Of the 3,000 quota, 1,860 tags were first choice tags, the remaining 1,140 tags went to second choice.
- D16 Zone: Of the 3,000 quota, 903 tags were first choice tags, the remaining 733 tags went to second choice, 216 went to third choice, and rest went to over the counter.
- A1 Zone: Of the 1,945 quota, 703 tags were first choice, the remaining 1,242 remaining went to second choice.

Table 1. Affected premium deer hunts based on public land closures (as of September 16, 2021).

DEER Impacted Zones	Type	Season Start	Season Close	# days closed/ total hunt days	% Days of Hunt Impacted	1st choice Tags Issued^a
D-14	A	04-Sep-21	26-Sep-21	19/23	83%	1,860
D-16	A	04-Sep-21	26-Sep-21	19/23	83%	903
A-1 Zone C-3 Archery	A	21-Aug-21	12-Sep-21	23/23	100%	703*
A-1 Zone C-4 Archery	A	21-Aug-21	5-Sep-21	16/16	100%	-
A-3 (Zone X-1 Archery)	A	21-Aug-21	12-Sep-21	22/23	96%	100
A-4 (Zone X-2 Archery)	A	21-Aug-21	12-Sep-21	22/23	96%	10
A-5 (Zone X-3a Archery)	A	21-Aug-21	12-Sep-21	22/23	96%	40
A-6 (Zone X-3b Archery)	A	21-Aug-21	12-Sep-21	22/23	96%	71
A-7 (Zone X-4 Archery)	A	21-Aug-21	12-Sep-21	23/23	100%	120
A-11 (Zone X-6a Archery)	A	21-Aug-21	12-Sep-21	22/23	96%	50
A-12 (Zone X-6b Archery)	A	21-Aug-21	12-Sep-21	22/23	96%	90
A-13 (Zone X-7a Archery)	A	21-Aug-21	12-Sep-21	22/23	96%	45
A-14 (Zone X-7b Archery)	A	21-Aug-21	12-Sep-21	22/23	96%	25
A-15 (Zone X-8 Archery)	A	21-Aug-21	12-Sep-21	22/23	96%	40
C-3	G	18-Sep-21	24-Oct-21	37/37	100%	7,020*
C-4	G	18-Sep-21	03-Oct-21	16/16	100%	-
X-1	G	02-Oct-21	17-Oct-21	16/16	100%	786
X-4	G	02-Oct-21	17-Oct-21	16/16	100%	485
G-1 Late Season Buck Hunt for Zone C-4	G	23-Oct-21	31-Oct-21	9/9	100%	2,710
J-21 East Tehama Apprentice Either-Sex Deer Hunt	G AP	18-Sep-21	31-Oct-21	44/44	100%	50
				n/a	Total	15,108

Type: A = Archery; AP = Apprentice; G = General.

^a Quota allocated based on first tag choice and subsequent tag choice for the 2021 license year hunt

* Tags Issued: C-zone tags are issued for use across any of the C-1 through C-4 zones. Tags issued are across this group of zones, though only zones C-3 and C-4 were impacted by public land closures.

For pronghorn antelope, an estimated 106 tags are estimated to be eligible for preference point reinstatement (**Table 2**). This includes 100 general tag holders (8 hunt zones affected) and 6 apprentice tag holders (4 hunt zones affected). The non-apprentice tag holders would be eligible to pursue a refund. Junior (apprentice) hunt tags would not be issued dollar refunds because the tag fee is less than the processing costs. The estimated refund amount of \$127.98 is multiplied by 100 for an estimated total antelope tag refund amount of \$12,798.

For elk, an estimated 113 tags are estimated to be eligible for preference point reinstatement (**Table 3**). This includes 109 general tag holders (7 hunt zones affected), 4 apprentice tag holders (2 hunt zones affected), and an Archery hunt zone. The estimated refund amount of \$443.32 is multiplied by 109 for an estimated total antelope tag refund amount of \$48,322.

Table 2. Affected pronghorn antelope hunts based on public land closures (as of Sept.16, 2021).

PRONGHORN Hunt Name (Hunt Code)	Hunt Type	2021 Tag Quota	Tags returned 16-Sep-21	Season Start	Season Close	# Days Closed/ Total Hunt Days	% Days of Hunt Impacted
Z1 Mount Dome Buck (710)	G	2	1	21-Aug-21	29-Aug-21	8/9	89%
Z2 Clear Lake Buck (720)	G	15	5	21-Aug-21	29-Aug-21	8/9	89%
Z3 Likely Tables Period 1 Buck (730)	G	25	11	21-Aug-21	29-Aug-21	8/9	89%
Z3 Likely Tables Period 2 Buck (732)	G	25	5	04-Sep-21	12-Sep-21	9/9	100%
Z4 Lassen Period 1 Buck (740)	G	35	13	21-Aug-21	29-Aug-21	8/9	89%
Z4 Lassen Period 2 Buck (742)	G	35	20	04-Sep-21	12-Sep-21	9/9	100%
Z5 Big Valley Buck (750)	G	20	8	21-Aug-21	29-Aug-21	8/9	89%
Z6 Surprise Valley Buck (760)	G	10	4	21-Aug-21	29-Aug-21	8/9	89%
Z3 Likely Tables Pd. 1 Either-Sex (734)	AP	5	2	21-Aug-21	29-Aug-21	8/9	89%
Z4 Lassen Period 1 Either-Sex (790)	AP	5	4	21-Aug-21	29-Aug-21	8/9	89%
Z5 Big Valley Either-Sex (780)	AP	1	1	21-Aug-21	29-Aug-21	8/9	89%
Z6 Surprise Valley Either-Sex (766)	AP	4	2	21-Aug-21	29-Aug-21	8/9	89%

SUMMARY OF TABLE 2

Eligible Antelope Tags	G	167	67	Refund/Tag \$ 127.98	Refund total \$ 12,798.00
No refund: Fee paid is less than process fee	AP	15	9	\$ (10.68)	\$ (64.08)
Points Re-instatement Eligible	Total	106			

Type

A = Archery

AP = Apprentice

G = General

Table 3. Affected elk hunts based on public land closures (as of Sept. 16, 2021).

ELK Hunt Name (Hunt code)	Hunt Type	2021 Tag Quota	Tags returned 16-Sep-21	Season Start	Season Close	# Days Closed/ Total Hunt Days	% Days of Hunt Impacted
Northeastern CA either-sex (409)	AP	2	0	15-Sep-21	26-Sep-21	12/12	100%
Marble Mountains either-sex (408)	AP	4	2	08-Sep-21	19-Sep-21	10/12	67%
Northeastern CA either-sex (411)	A	10	1	01-Sep-21	12-Sep-21	12/12	100%
Marble Mountain antlerless (301)	G	8	0	08-Sep-21	19-Sep-21	8/12	67%
Marble Mountain bull (302)	G	34	2	08-Sep-21	19-Sep-21	8/12	67%
Northeastern CA antlerless (304)	G	10	2	10-Nov-21	21-Nov-21	12/12	100%
Northeastern CA bull (305)	G	15	1	15-Sep-21	26-Sep-21	12/12	100%
Siskiyou antlerless (401)	G	20	4	08-Sep-21	19-Sep-21	8/12	67%
Siskiyou bull (300)	G	20	1	08-Sep-21	19-Sep-21	8/12	67%
Lake Pillsbury Pd. 1 antlerless (331)	G	4	1	08-Sep-21	17-Sep-21	8/10	80%

SUMMARY OF TABLE 3

Eligible Elk Tags Refunds	G	121	12	Refund/Tag \$443.32	Refund total \$48,321.88
No refund: Fee paid is less than process fee	AP	6	2	\$ (10.68)	\$ (42.72)
Points Re-instatement Eligible	Total	113			

Type

A = Archery

AP = Apprentice

G = General

This Initial Statement of Reasons documents a maximum impact for effects on individual big game hunters due to public land closures. Actual impacts should be less than the estimated maximums because hunters may avoid public land altogether based on preference or ability to do so. Most zones have some percentage of private property which would allow hunters to hunt despite closures to public lands, depending on the location, and severity of fires or any local ordinances for public safety.

The number of tags affected for the 2022 license year will not be known until after any closures of public lands occur in that license year. For purposes of this document, estimates of affected hunts and tag numbers are assumed to cover the same level of impact as the 2021 license year described herein as of September 16, 2021.

(b) Goals and Benefits of the Regulation

The goal of the proposed regulation is to provide equity of opportunity by allowing certain deer, bighorn sheep, pronghorn antelope, and elk hunters who lost “premium” or “once in a lifetime” hunting opportunities due to public land closures caused by wildfires, the option to obtain tag fee refunds, reinstatement of preference points, and one preference point for the license year. Some hunters with tags for the affected deer, bighorn sheep, pronghorn antelope, and elk hunts used many years (up to 19) of earned preference points to obtain their hunting tags. This proposal would allow hunters with certain tags, who lost opportunities due to public land closures caused by wildfires, to use their accumulated preference points in the future to enter drawings for deer, bighorn sheep, pronghorn antelope, or elk tags. This proposal is consistent with the Department’s efforts to recruit, retain, and reactivate hunters.

(c) Authority and Reference Sections from Fish and Game Code for Regulation

Authority: Sections 200, 203, 219, 265, 270, 275, 331, 332, 1050, 1572, 4302 and 10502, Fish and Game Code.

Reference: Sections 110, 200, 201, 203, 203.1, 219, 255, 265, 270, 275, 331, 332, 713, 1050, 1570, 1571, 1572, 3950, 3951, 4302, 4330, 4331, 4332, 4333, 4336, 4340, 4341, 4902, 10500 and 10502, Fish and Game Code.

(d) Specific Technology or Equipment Required by Regulatory Change

None.

(e) Identification of Reports or Documents Supporting Regulation Change

None.

(f) Public Discussions of Proposed Regulations Prior to Notice Publication

The Commission discussed the proposed regulations at its September 16, 2021 Wildlife Resources Committee virtual meeting. The Department is considering ideas for a future rulemaking that addresses returns of mammal hunting preference points and fee refunds in response to potential future public land closures. Aspects such as standards for eligibility based on the nature of the closures, applicable big game species and hunts, season adjustments, tag return protocols, and other considerations will be considered at that time.

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

The Department evaluated the prospect of reissuing the tags for the following hunt season to the impacted hunters but determined that it was not feasible without significant changes to multiple existing regulatory sections. There is currently no authority to transfer license or tags across license years. Even if it were determined that there was authority to do so, the Department currently does not have an efficient method in place to reissue tags to hunters for the following year and would have to make some operational changes to its licensing system at a minimum which would result in an unbudgeted fiscal cost to the Department. Reissuing tags to the following year would also result in a loss of revenue because fewer tags could be sold the following year.

Additionally, if tags are reissued to hunters, the license system would have to be programmed to remove those tags from those available through the drawing process for next license year, thereby reducing the number of tags available for hunters in the big game drawing and changing the odds of being drawn. A reduction in available tags through the drawing could reduce participation in hunting by the public. This would also result in reductions in Department revenue due to having fewer tags. More than four million acres burned during the unprecedented 2020 fire season. An additional one million acres have burned thus far in the 2021 fire season.

The proposed regulations to reinstate the hunter's preference points and to provide an additional point for the current license year and a refund for bighorn sheep, pronghorn antelope, and elk tags is the most feasible option and least economically impactful. These hunters will remain in the pool of hunters who have maximum points and theoretically have the same or similar odds to draw the tag the next year.

No other alternatives to the proposed regulation were identified.

(b) No Change Alternative

The "no-change" alternative was considered and rejected because it would not meet project objectives of allowing for preference point reinstatement and tag fee returns for certain big game species after a hunt season has started. Given the increased scale and magnitude of closures of public lands statewide due to fires, it would be unfair not to allow certain deer, bighorn sheep, pronghorn antelope, and elk tag holders the opportunity to have their preference points restored, and earn a preference point for the license year, and tags refunded for affected sheep, antelope, and elk hunts. These tags are considered premium opportunities and a once-in-a-lifetime drawing, so allowing hunters to restore their points, earn a preference point for the license year, and receive a refund is justified.

V. Mitigation Measures Required by Regulatory Action

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Considering the relatively small number of tags to be returned from the bighorn sheep, pronghorn antelope, elk and deer tags over the entire state, this proposal is economically neutral to business.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California, Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The Commission anticipates no impact on the creation or elimination of jobs within the state, no impact on the creation of new business, the elimination of existing businesses or the expansion of businesses in California as minor variations in hunting regulations are, by themselves, unlikely to provide a substantial enough economic stimulus to the state. Although the closure of public lands to hunting due to wildfires keeps members of the public from hunting outdoors in potentially dangerous conditions, including hazardous air quality, generally hunting is an outdoor activity that provides health and welfare benefits to California residents, and the closure of public lands limits this activity. Allowing preference point and tag fee returns will ensure these hunters are not unnecessarily and unfairly penalized by unprecedented circumstances beyond their control.

(c) Cost Impacts on a Representative Private Person or Business

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with this proposed action. A \$31.93 nonrefundable big game tag return processing fee per refund, as established in Section 702, is deducted from the amount refunded. The choice to obtain a refund is not required and is purely discretionary for each individual.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State

Only bighorn sheep, pronghorn antelope, and elk tags following the proposed regulations would be eligible for tag refunds as a result of public land closures. The fees and quantities for refunds given the affected hunt areas (as of September 16, 2021) are outlined in **Table 4**. Hunters who request reinstatement of preference points and a refund of tag fees (sheep, pronghorn antelope, and elk only for refunds) under the proposed regulation would receive a refund of their tag fees, reinstatement of their preference points, and earn one preference point for the license year, but they would be required to forfeit the \$31.93 nonrefundable big game tag return processing fee specified in Section 702.

Hunters would be required to forfeit the \$31.93 nonrefundable big game tag return processing fee specified in Section 702. There are 109 resident elk, and 100 pronghorn antelope tags estimated to potentially be impacted by public land closures, as of September 16, 2021. Should every hunter seek refund for every tag, and the total of 209 tags be returned, the Department would expend a total of approximately \$61,120. Junior (apprentice) hunt tags would not be issued dollar refunds because the tag fee is less than the processing costs. All tags returned through this program would be eligible for points reinstatement.

Table 4. Projected Tag Refunds Due to Public Land Closures (as of September 16, 2021)

Tag Type	Tag (Base) Fee	Surcharge	Total Fee	Individual Refund per Tag	Impacted Tags	Total Refund by Hunt
Bighorn Sheep	\$449.00	\$7.50	\$456.50	\$424.57	0	\$0
Resident Pronghorn Antelope	\$155.25	\$4.66	\$159.91	\$127.98	100	\$12,798
Resident Pronghorn Antelope (Apprentice)	\$29.25	\$0.64	\$21.89	No Refund/Points only	(6)	\$0
Resident Elk	\$467.75	\$7.50	\$475.25	\$443.32	109	\$48,321.88
Resident Elk (Apprentice)	\$21.25	\$0.64	\$21.89	No Refund/Points only	(4)	\$0
Tag Return Processing Fee	\$31.00	\$0.93	\$31.93			
			Totals	Points & Refunds	209	\$61,119.88
				Points only	219	

Sources: CDFW Wildlife Branch, and License and Revenue Branch, 2021.

Big game tag fees are used to provide funding for environmental assessment and management of California’s big game populations. For example, the Department’s Big Game Program (Program) is composed of branch and field biologists who work together coordinating programs and implementing projects throughout the state. Biologists prepare monitoring plans, prepare population assessments, compile harvest information, conduct and direct research, enhance and restore habitat, develop hunting season and tag quota proposals, and prepare environmental documents associated with big game management and hunting. The Program is largely supported by hunters through the purchase of hunting licenses and big game tags. The management costs of the program do not change when fires cause forest closures, so some minor cost adjustments may be necessary if increased quantities of refunds are sought.

Additionally, the Department anticipates that the projected increase in the total number of refunds and point reinstatements may exceed staff time currently budgeted for those job tasks. The per tag processing costs and typical annual aggregate costs are summarized in **Table 5** and **Table 6**. In the current hunt season, the total staff time/costs redirected to processing tag refunds and/or points reinstatements is estimated to exceed a typical year by \$291,657.

Table 5. Per Tag Processing Time/Cost by Classification

Classification	Hours	Rate	Total
Phone/Email Customer Service (7.5 min)	0.125	\$ 53.77	\$ 6.72
Seasonal Clerk (1.5 mins.)	0.025	\$ 21.25	\$ 0.53
Associate Govt Program Analyst (1.5 mins.)	0.025	\$ 53.77	\$ 1.34
Program Technician (3 mins.)	0.050	\$ 29.59	\$ 1.48
Mail Machine Operator I (1 min.)	0.017	\$ 30.15	\$ 0.50
Associate Govt Program Analyst (2 mins.)	0.033	\$ 53.77	\$ 1.79
Staff Services Manager I (1 min.)	0.017	\$ 63.68	\$ 1.06
Associate Govt Program Analyst (2 mins.)	0.033	\$ 53.77	\$ 1.79
Reinstatement total time in minutes	19.50	-	\$15.22
Overhead		24.32%	\$3.70
Reinstatement Cost per tag			\$ 18.93
License Revenue Branch, AGPA – (5 mins.)	0.083	\$ 53.77	\$ 4.48
Accounting Officer (Specialist) – (20 mins.)	0.333	\$ 49.09	\$ 16.36
Refund total time in minutes	25.00	-	\$20.84
Overhead		24.32%	\$5.07
Refund Cost per Tag			\$25.91
Reinstatement & Refund Cost per tag		-	\$44.84

Source: California Department of Fish and Wildlife, License and Revenue Branch, 2021. Hourly Rates include benefits and are regular/non-overtime pay rates.

Table 6. Typical, Recent and Projected License and Revenue Branch Tag Processing Costs

Year	Tags	Unit Cost	Processing Cost
Tag Processing Average 2011-2019	80	\$31.93	\$ 2,554.40
2020-21 (Pandemic and Fire Closures)	1,277	\$31.93	\$ 40,774.61
2021-22 (NFS, BLM, & CDFW Public Land Closures)			
• Deer & Apprentice hunt reinstatements	15,037 (deer) +10 (junior)	\$18.93	\$284,839.71
• Elk & Pronghorn refund & reinstatements	209	\$44.84	\$9,371.56
2021-22 Projected Total Costs			\$294,211.27
Additional Costs more than Average Year			\$291,656.87

Source: California Department of Fish and Wildlife, License and Revenue Branch, 2021. ¹For 2011-2019 and 2020-2021, the processing cost is \$31.93 per Section 702, Title 14 CCR (adjusted annually pursuant to FG Code Section 713). For 2021-22, the unit reinstatement cost is \$18.93, and for reinstatement and refund the unit cost is \$44.84, as itemized in Table 2.

NFS = National Forest Service; BLM = Bureau of Land Management; CDFW = California Department of Fish and Wildlife.

(e) Nondiscretionary Costs/Savings to Local Agencies

None.

(f) Programs Mandated on Local Agencies or School Districts

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code

None.

(h) Effect on Housing Costs

None.

VII. Economic Impact Assessment

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State

This regulatory action is not anticipated to create any adverse impacts to businesses or the state economy. The areas of the state that were closed to the public were closed to all access and types of recreation, not just hunting. Any negative impacts are specifically attributed to wildfires and the subsequent public land closures. This specific regulation to refund select tag fees, restore preference points, and award one preference point for the license year permits the mitigation of some of the adverse negative impacts to individuals from the public land closures.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State

The proposed regulation is not anticipated to prompt the creation of new businesses or the elimination of existing businesses within the state. This proposed regulation pertains to preference points and tag refunds that are temporary and necessary to address unprecedented conditions that significantly limited public access and opportunities during a specific time period. The proposed regulation is unlikely to cause the elimination of existing businesses.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State

The proposed preference point reinstatements and tag refunds are unlikely to impact expansion of businesses currently doing business in the state. The proposed regulations are short-term and are not anticipated to sustainably impact the long-term viability of various businesses that serve recreational hunters.

(d) Benefits of the Regulation to the Health and Welfare of California Residents

Although the closure of public lands to hunting due to wildfires keeps members of the public from hunting outdoors in potentially dangerous conditions, including hazardous air quality, generally hunting is an outdoor activity that provides health and welfare benefits to California residents, and the closure of public lands limits this activity. Allowing preference point and tag fee returns will ensure these hunters are not unnecessarily and unfairly penalized by unprecedented circumstances beyond their control.

(e) Benefits of the Regulation to Worker Safety

The proposed regulation will not affect worker safety.

(f) Benefits of the Regulation to the State's Environment

As set forth in Fish and Game Code Section 1801, it is the policy of the state to encourage the conservation, maintenance, and utilization of fish and wildlife resources for the benefit of all the citizens of the state. The objectives of this policy include, but are not limited to, providing recreational opportunities. The hunters affected by the proposed regulation would be eligible to apply for a refund of their bighorn sheep, pronghorn antelope, and elk tag fees and/or reinstatement of deer, bighorn sheep, pronghorn antelope, and elk preference points, and earn one preference point for the license year, thus allowing these hunters to reapply for deer, elk, bighorn sheep, and pronghorn antelope tags using their accumulated preference points in the future. If the preference points are not reinstated and an additional preference point awarded for the license year for the hunters affected by the proposed regulation, these hunters would be less likely to draw the tags required for hunting deer, bighorn sheep, pronghorn antelope, and elk (thereby reducing their opportunity to hunt).

(g) Other Benefits of the Regulation

Preference point reinstatement, award of additional preference points for the license year, and tag fee refunds will help maintain support for hunting programs and conservation efforts by minimizing the impact to the public when their access was significantly impacted by unprecedented, catastrophic wildfire circumstances beyond their control.

Informative Digest/Policy Statement Overview

The California Department of Fish and Wildlife (Department) manages deer, bighorn sheep, pronghorn antelope, and elk resources in California. Deer hunting tags, bighorn sheep hunting tags, pronghorn antelope hunting tags, and elk hunting tags are required to hunt these species in California. The Department distributes hunting tags for certain deer, bighorn sheep, pronghorn antelope, and elk annually via the big game drawing. Public demand for deer, bighorn sheep, pronghorn antelope, and elk hunting tags exceeds the available opportunities; therefore, a modified preference point system (Section 708.14) provides preference to hunters who have applied for, but not received, tags in past drawings. Each year a hunter applies for a deer, bighorn sheep, pronghorn antelope, or elk hunting tag and is not drawn, that hunter receives a preference point which gives that hunter preference in future drawings for that species. A portion of the tag quota for deer, bighorn sheep, pronghorn antelope, and elk tags are allocated by preference point drawing each year. A portion of tags are issued randomly to allow some opportunity for new hunters and hunters that do not have enough preference points to draw through the preference point portion of the drawing.

The 2021 season trails the catastrophic 2020 fire season, and like 2020, has caused unprecedented public land closures, including the temporary closure of all national forests in California. These closures have resulted in a loss of opportunity for hunters who had “once in a lifetime” deer, bighorn sheep, pronghorn antelope, or elk hunting tags. Hunters used many years of accumulated preference points (in many cases 19 years of preference points) to obtain the required tags for the hunts specified in the proposed regulation.

Regulations to address conditions resulting from the 2021 fire season are needed to allow hunters to return their first-choice tags after the season starts. The Department is proposing to amend Section 708.14, subsections (j) (for deer) and (k) (for bighorn sheep, pronghorn antelope, and elk) to allow hunters who lost their opportunity to hunt due to land closures caused by wildfires to return certain deer, bighorn sheep, pronghorn antelope, and elk tags for reinstatement of the preference points used to obtain the tag through the drawing and earn one preference point for the license year after the start of the hunting season. The eligibility for tag refund continues to apply only to the elk, bighorn sheep, and pronghorn antelope tags. Hunters who request a refund would be required to pay the \$31.93 nonrefundable big game tag return processing fee specified in Section 702.

The purpose of the proposed regulation is to authorize the Department to reinstatement of preference points and award one preference point for the license year for certain deer tags and to refund tag fees, reinstate preference points, and award one preference point for the license year for bighorn sheep, pronghorn antelope, and elk hunts whose hunt zones are inaccessible for sixty-six percent (66%) or more of the season as a result of public land closures. Considering that public lands access restrictions have changed during the preparation of these regulatory documents (fall 2021), this regulation aims to function retroactively, whereby written requests for point reinstatements (and refunds, if applicable) would need to be postmarked before May 1, 2022 for consideration. The regulation would act prospectively for the 2022 license year and beyond, and require postmark before February 28 of that license year.

The proposal would affect hunters who were drawn for the following deer, bighorn sheep, pronghorn antelope, and elk hunts:

DEER

- Those deer zones defined in Title 14, Section 708.1 and described as Premium Deer Hunt Tags
 - The approximate number of premium deer hunt tags eligible for points reinstatement (as of September 16, 2021): **15,037** across 14 archery zones and 6 general zones

BIGHORN SHEEP

- Those zones defined in Title 14, Section 362
 - The approximate number of bighorn sheep hunt tags affected (as of September 16, 2021): **0**. No sheep hunts are affected by known public land closures and thus the proposed regulation.

PRONGHORN ANTELOPE

- Those zones defined in Title 14, section 363
 - The approximate number of pronghorn antelope hunt tags affected (as of September 16, 2021): **106**

ELK

- Those zones defined in Title 14, Section 364
 - The approximate number of elk hunt tags affected (as of September 16, 2021): **113** across 7 general zones, 1 archery zone, and 2 apprentice zones

Benefits of the regulations

The proposed regulation will authorize the Department to reinstate preference points and award one additional preference point for the license year for certain deer tags for hunters who lost deer hunting opportunities due to public land closures due to wildfires, and reinstate preference points, award one additional preference point for the license year, and issue tag fee refunds to hunters who lost elk, bighorn sheep, and pronghorn antelope hunting opportunities due to public land closures due to wildfires.

Non-monetary benefits to the public

The Commission expects this proposal will provide non-monetary benefits to the public by promoting fairness in the allocation of public hunting opportunities because hunters who lost deer, elk, bighorn sheep, and pronghorn antelope hunting opportunities will have the ability to have their preference points reinstated, earn a preference point for the license year, and have another chance to obtain a deer, elk, bighorn sheep, or a pronghorn antelope tag in the future.

Consistency and compatibility with existing state regulations

The Commission, pursuant to Fish and Game Code sections 200 and 203, has the sole authority to regulate deer, elk, bighorn sheep, and pronghorn antelope hunting in California. Commission staff has searched the California Code of Regulations and has found the proposed changes pertaining to deer, elk, bighorn sheep, and pronghorn antelope tag allocations are consistent with Title 14. Therefore, the Commission has determined that the proposed amendments are neither inconsistent nor incompatible with existing state regulations.