

State of California
Fish and Game Commission
Final 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. Date of Pre-adoption statement of Reasons: January 31, 2022
- III. Date of Final Statement of Reasons: March 4, 2022

IV. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: October 14, 2021

Location: Teleconference

(b) Discussion Hearing

Date: December 16, 2021

Location: Teleconference

(c) Adoption Hearing

Date: February 17, 2022

Location: Teleconference

V. Update:

Previous descriptions for the Fish and Game Commission (Commission) public hearing process of this proposed regulation change for big game preference point reinstatement and tag refunds in the event of public land closures due to wildfire have characterized it as effective for two years while a longer-term solution for preference point reinstatement and tag refunds is developed by the California Department of Fish and Wildlife (Department). Thus, at its February 17, 2022 meeting, the Commission, when presented with two options as to how to move forward, adopted the first option for regulations as amended and described in the Pre-Adoption Statement of Reasons (PSOR - removing the term 'deer' from subsection 708.14(k)(2)(A)) and authorized a 15-day continuation notice to clarify for the public that the regulation does not sunset after two years.

The final list of eligible hunts will be available for the public to view to confirm eligibility at: <https://wildlife.ca.gov/Licensing/Hunting#9941888-exchanges-returns-preference-points>.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations

Responses to public comments received through January 11, 2022 are reflected in the PSOR.

Below follows responses to comments received between January 12 and February 17, 2022.

Written Comment, Colin Gallagher, January 21, 2022

- Summarized comment: Commenter states that they had previously submitted the following comments on December 10, 2021 to the Commission against the proposal and alleges that they weren't included in the rulemaking record. Given the timeframe of submission in advance of February 17, 2022 adoption hearing, these comments should be considered.
- Response: The commenter's concerns were addressed on page 4 of the Pre-Adoption Statement of Reasons (PSOR) that was made available with the [meeting materials](#) for the February meeting.
- Summarized comment: Recommends the alternative which would reject the proposal for Big Game Preference Points Reinstatement and Tag Refunds, to not adopt the proposed changes in regulations, and instead, ensure that any policies adopted do not result in closures that force hunters out of areas that they commonly rely upon.
- Response: As noted in Section IX(b) of this FSOR, the Department did consider and reject the alternative to the proposal. 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.
- Summarized comment: With respect to land policies specific to fire hazard, closures must be limited to those areas actually on fire (incident areas) and buffer zones reasonably around the incident area - not entire regions and state(s).
- Response: Closure orders for USFS and BLM properties are issued and administered by those agencies. The Commission and CDFW cannot determine or limit closure areas administered by other state or Federal agencies. Fire restrictions or temporary public land closures are used to reduce the risk of new wildfires, enhance access for firefighters, and protect the public. Decisions for closures on Department lands are made for safety and public access considerations.

Written Comment, Marilyn Jasper (Public Interest Coalition), February 3, 2022

- Summarized comment: Tag refunds should not be considered for land closures, fires, floods, bad weather, poor visibility with consistent fog, excessive heat, or any number of reasons, including illness. Opposes the proposal for setting a precedent and urges denial by the Commission.
- Response: The Department acknowledges the opposition to the proposal.

Oral Comment, Marilyn Jasper (Public Interest Coalition), February 17, 2022

- Opposes tag refunds and the recommends no to the no sunset option.

- Response: The Department acknowledges the opposition to the proposal.

Oral Comment, Chris Gallagher (Private individual), February 17, 2022

- Supports proposal.
- Response: The Department appreciates the comments and continued support.

Oral Comment, Daniel Hernandez (Private individual), February 17, 2022

- Supports proposal option one [adopt the regulatory text as proposed but clarifying for the public with a 15-day continuation notice that the regulations as proposed are permanent].
- Response: The Department appreciates the comments and continued support.

Oral Comment, Roy Griffith (CA Rifle and Pistol Association), February 17, 2022

- Supports proposal.
- Response: The Department appreciates the comments and continued support.

Oral Comment, Taylor Ryan (Private individual), February 17, 2022

- Supports proposal. Prefers tags were carried over to the next year.
- Response: The Department appreciates the comments and continued support. As noted in Section IX(a) of this FSOR, the Department did consider carrying over tags to the following year. There is currently no authority to transfer licenses or tags across license years. Even if it was determined that there is 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, at a minimum, would have to make some operational changes to its licensing system which would result in an unbudgeted fiscal cost to the Department.

Oral Comment, Dan Ryan (Private individual), February 17, 2022

- Supports proposal.
- Response: The Department appreciates the comments and continued support.

Oral Comment, Mike Costello (Private individual), February 17, 2022

- Supports proposal.
- Response: The Department appreciates the comments and continued support.

Oral Comment, Jeff Green (Private individual), February 17, 2022

- Supports proposal.
- Response: The Department appreciates the comments and continued support.

Oral Comment, James Fey (Private individual), February 17, 2022

- Stated that CDFW can close CDFW lands such as wildlife areas.

- Response: The Department appreciates the comments and continued support.

Oral Comment, Bill Gaines (California Deer Association, Rocky Mountain Elk Foundation, Wild Bighorn Sheep Foundation), February 17, 2022

- Supports proposal.
- Response: The Department appreciates the comments and continued support.

Oral Comment, Tanner Scheurer (Private individual), February 17, 2022

- Supports proposal.
- Response: The Department appreciates the comments and continued support.

Oral Comment, Devin O'Dea (CA Backcountry Hunters and Anglers), February 17, 2022

- Supports proposal.
- Response: The Department appreciates the comments and continued support.

Oral Comment, Skylar Coleman (Private individual), February 17, 2022

- Supports proposal.
- Response: The Department appreciates the comments and continued support.

On February 18, 2022, the Commission posted notice of the 15-day continuation period. The summary of comments and responses between February 18 and March 4, 2022 are included below.

Written comment, Colin Gallagher, February 18, 2022

- Summarized comment: ...I have consistently opposed the tag and points refund concepts - beginning from the time last year when these concepts were aggressively pushed by Fish and Game in hearings...This is also why I opposed staff's recommendation at the Fish and Game Commission for the regulatory change titled OAL Notice Number Z-2021-1102-06 - Big Game Preference Points Reinstatement and Tag Refunds Due to Public Land Closures...There is no guarantee when you go hunting that you will get an animal nor should there be...Rather, that should be remedied by addressing the policies (primarily in the USDA-FS, and also in the CDFW lands) that cause them to deny hunters access...I have consistently maintained that with respect to land policies specific to fire hazard, closures must be limited to those areas actually on fire (incident areas) and buffer zones reasonably around the incident area - not entire regions and state(s)...
- Response: The Department acknowledges the opposition to the proposal. Closure orders for USFS and BLM properties are issued and administered by those agencies. The Commission and CDFW cannot determine or limit closure areas administered by other state or Federal agencies. Fire restrictions or temporary public land closures are used to reduce the risk of new wildfires, enhance access for firefighters, and protect the public. Decisions for closures on Department lands are made for safety and public access considerations.

Written comment, Deniz Bolbol, February 18, 2022

- Summarized comment: ...I strongly oppose the proposed regulation "to authorize the Department to consider 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 ..." ...
- Response: The Department acknowledges the opposition to the proposal.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
715 P Street
Sacramento, California 95814

VIII. Location of Department Files:

Department of Fish and Wildlife
715 P Street
Sacramento, California 95814

IX. 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.

(c) Description of Reasonable Alternatives that Would Lessen Adverse Impact on Small Business

None.

X. 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 Type	Tag (Base) Fee	Surcharge	Total Fee	Individual Refund per Tag	Impacted Tags	Total Refund by Hunt
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

Classification	Hours	Rate	Total
Overhead		24.32%	\$5.07
<i>Refund Cost per Tag</i>			\$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.

Updated 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.

Update

The Commission adopted the regulatory text as described in the Pre-Adopt Statement of Reasons on February 17, 2022 and concluded a 15-day continuation notice on March 4, 2022.

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.