

Addendum to Final Statement of Reasons for Regulatory Action
Amend Section 230, Title 14, Code of Regulations (CCR)
Re: Game Fish Contests

I. Dates of Statements of Reasons:

- (a) Initial Statement of Reasons Date: March 20, 2022
- (b) Final Statement of Reasons Date: June 21, 2022
- (c) Addendum to Final Statement of Reasons Date: January 4, 2023

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing:

Date: April 21, 2022 Location: Monterey

(b) Discussion Hearing:

Date: May 19, 2022 Location: Teleconference

(c) Adoption Hearing:

Date: June 16, 2022 Location: Los Angeles/ Orange

(d) Consideration of recommended changes to the approved regulatory text:

Date: February 8, 2023 Location: Sacramento

III. Consistency and Compatibility with Existing Regulations.

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. Section 20, article IV, of the California Constitution specifies that the Legislature may delegate to the Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the California Code of Regulations and finds no other state agency regulations pertaining to the issuance of permits for contests offering prizes for the taking of game fish.

IV. Update

The Commission adopted the proposed regulations in June 2022. In accordance with the Administrative Procedures Act, the final approved rulemaking package was submitted to the Office of Administrative Law (OAL). The review by OAL resulted in a number of requested changes to the adopted text. This, in turn, necessitated the withdrawal of the package for the purpose of correction.

In accordance with Government Code 11346.8(c):

“No state agency may adopt, amend, or repeal a regulation which has been changed from that which was originally made available to the public pursuant to Section 11346.5, unless the change is (1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice

that the change could result from the originally proposed regulatory action. If a sufficiently related change is made, the full text of the resulting adoption, amendment, or repeal, with the change clearly indicated, shall be made available to the public for at least 15 days before the agency adopts, amends, or repeals the resulting regulation. Any written comments received regarding the change must be responded to in the final statement of reasons required by Section 11346.9.

The Department believes that the changes are “sufficiently related” to the proposal’s original proposed regulatory action, notice and presentation to the Commission that a 15-day renote will be acceptable to OAL. A 15-day renote will allow the public an opportunity to review the corrections. This Addendum specifically addresses every change, with reasons, made to the Regulatory Text that was adopted on June 16, 2022.

V. Corrections made to the prior adopted regulatory text of Section 230.

The proposed amendments to the adopted regulatory text are indicated as follows:

Original Adopted (6-15-22) Text:

- Original text of Section 230 that was unchanged is not highlighted.
- Original text that was ~~deleted is shown with a single strikethrough.~~
- New text that was added to the Original text is shown with a single underline.

New Amendments to the Adopted Text:

- Deletions to Original text ~~are shown with a double strikethrough;~~
- Additions to Original text of newly proposed text are shown in double underline;
- Deletion of ~~Adopted added text is shown in single underline and double strikethrough.~~
- Adopted text that was deleted but now added back in is shown with a double underline and single strikethrough.

Section. 230(a): There are no corrections to the adopted text of this subsection.

Section 230(b): There are no corrections to the adopted text of this subsection.

Section 230(b)(8): This subsection was shown as deleted in the adopted text out of numerical order, (between new (h) and (i)), there is no change to this deleted text.

Section 230(c): There are no corrections to the adopted text of this subsection.

Section 230(d)(3): The revision date of the form is changed to reflect the amendment of the form DFW 775.

Section 230(d)(4): “The department may require applicants to submit required forms” is deleted and changed to “Applicants shall submit form DFW 774”. The next two sentences are deleted: “When ALDS is required, applicants will need to obtain a GO ID and must complete all required fields in ALDS. When ALDS is required, the department will provide notice containing instructions.” These amendments are necessary to remove the permissive language and clarify that submission of form DFW 774 through ALDS is required. Requiring applicants to use ALDS (Section 700.4, Title 14) is necessary to improve efficiency and tracking of applications and provides a uniform standard for application submission.

Section 230(d)(5): The phrase “unless submission using ALDS is required” is deleted twice; the word “may” is changed to “shall”; the phrase “(see addresses of regional offices attached to form DFW 775)” is deleted and changed to “using the address list on form DFW 775”; “department regional staff document the date and time at which” is added; “accompanied by payment of the permit fee specified in subsection (i) is date-stamped by the receiving regional office or an electronic system” is deleted; these changes remove contingent language for submission of DFW 775 through ALDS. The department intends to amend this section once the form becomes available online at some future point. To clarify the contents of a complete application the word “required” is changed to “applicable”, “and” is deleted “and the application must be accompanied by payment of the permit fee specified in subsection (i).” is added. To clarify where and how an applicant shall submit a DFW 775 “using the address list on form DFW 775” is added.

Section 230(e)(5): For clarification of “multi-day Type A permit” the proposed text is changed to “for contests that begin at or after 4:00 PM and hold a final weigh-in within one hour before sunrise on the next calendar day.” This change allows the department to issue a single-day permit for night contests, which are contests that begin at night on one calendar day and end within one hour before sunset on the following calendar day. It is necessary to distinguish permit type in this section because there are different limits to each permit regarding number of anglers, days of duration, and number of permits issued per day. It is necessary to clarify that the night contest limitation is only applicable to Type A permits under this special condition.

Section 230(f)(1)(A): The first sentence is deleted since the adoption of the new changes will not be effective until after the 2022 season. Subsequently, the 2023 (and later) season is clarified to be offered “annually”. The sentence “The department will choose a time for the initial offering that minimizes conflict with events that are of importance to potential applicants to the extent practicable” is added clarifying the role the department will have in coordinating with applicants the best date available. This provision is further clarified by adding the department website <https://wildlife.ca.gov/Fishing/Inland/Contests> where the Initial Offering dates can be found. The application form DFW 774 date is changed to reflect the amendment of the form.

Section 230(f)(1)(A)(ii): “for the permit” is added. This amendment is necessary to clarify what the applicant is applying for.

Section 230(f)(1)(C): In the first sentence “assign a random number to each form DFW 774 upon receipt of the form and” has been removed from the regulation because random numbers are no longer used in the conflict resolution process.

Section 230(f)(1)(D): In the second sentence “whether” is changed to “the time and location for”; “and if it” is added; “due to public safety requirements” is added clarifying the reason the department will use to select in person or virtual (online/telephone) process. “up to four” is deleted from the third sentence and “two” hours added. In the fourth sentence deleting “four” and adding “two” weeks. This removes permissive language and specifies the time that will be given for in person resolution and virtual resolution. Department past experience has shown that the time differential is needed to successfully conclude conflict resolution. When participants are in-person conflict resolution can happen quickly; when participants are communicating virtually additional time is necessary.

Section 230(f)(1)(E): In the second sentence “decided” is changed to “resolved”. This amendment is necessary to clarify the regulatory language.

Section 230(f)(1)(F): “All information listed on the applicant’s form DFW 775 must match the information the applicant provided on form DFW 774 for the initial offering” is deleted. This amendment is necessary to eliminate issues that could arise from changes in personal information in the time between submission of Form DFW 774 and Form DFW 775. Matching is unnecessary because subsections (f)(1)(A)(i) through (iii) require applicants to certify that they are requesting dates without coordinating, independently and individually, for tournaments they intend to hold. These certifications are necessary to provide a fair process to all applicants.

Section 230(f)(1)(G): In the first sentence “inconsistent information” is deleted as it is subjective and not well defined; “subsection may cause” is changed to “section is cause for”. These amendments are necessary to remove the permissive language and clarify that an incomplete submission will result in a rejection or revocation.

Section 230(f)(1)(I): This subsection is deleted and is changed to “When the initial offering is in person, the complete form DFW 775 and permit fee specified in subsection (i) for all awarded requests shall be submitted on site prior to the conclusion of the initial offering. When the initial offering is virtual, the complete form DFW 775 and payment shall be submitted to the department regional office for the region where the applicant will hold the contest within 10 business days of the initial offering.” These amendments are necessary to remove the permissive authority, provide applicants with clear instructions on where to send form DFW 775 after participating in an in-person or virtual initial offering, and to clarify the regulations.

Section 230(g)(1): In the first sentence “consider” is changed to “evaluate”. This amendment is necessary to remove the permissive language. The sentence: “The department will accept or deny requests based on whether the date and water combination requested is available, whether the change violates any special conditions, and whether the change would be detrimental to the resource” is added to clarify the reasons that change requests may be denied or approved.

Section 230(g)(2) “Permittees may request up to three changes to the originally approved permit” is changed to “Permittees may submit up to three change requests, whether approved or denied, to the approved permit.” This amendment is necessary to clarify the process of change requests in the regulatory language.

Section 230(h): There are no corrections to the adopted text of this subsection.

Section 230(i) “Permit fees shall be subject to annual adjustment pursuant to Section 699” is added. All fees in regulation are subject to annual adjustments in accordance with Fish and Game Code Section 713, which is added as an Authority to this regulation.

Section 230(j): The first sentence is deleted and replaced by “A permittee shall allow an employee of the department to be assigned as an observer and to be present at any contest”; this clarifies that employees of the department will have unfettered access to the contest. The sentence “The department will determine if the assignment of an observer would aid the department’s efforts to ensure compliance with this section and any special conditions” is added to clarify that the department makes the decision.

Section 230(k), former subsection (d) changed to (k). There are no corrections to the adopted text of this subsection.

Section 230(l), former subsection (e) changed to (l). There are no corrections to the adopted text of this subsection.

Section 230(m): The revision date of the form is changed to reflect the amendment of the form DFW 777. There are no other corrections to the adopted text of this subsection.

Section 230(n): The revision date of the form is changed to reflect the amendment of the form DFW 776. There are no corrections to the adopted text of this subsection.

Section 230(o): A new title is given which more closely describes the following provisions.

Section 230(o)(1)(A): “may” is changed to “is authorized to” and “or a request for a permit adjustment” is deleted. The amendments are necessary to clarify the regulatory language.

Section 230(o)(1)(A)(i): The phrase “or approval of a permit adjustment” is deleted. This amendment is necessary to clarify the regulations.

Section 230(o)(1)(A)(ii): The phrase “adhere to” is changed to “substantially comply with”. This amendment is necessary to account for a broader range of circumstances based on the factors in (o)(5).

Section 230(o)(1)(A)(iii): is changed to Section 230(o)(1)(C).

Section 230(o)(1)(B): this subsection is added referencing the factors as set forth in (o)(5) to be used in determining the basis for denial of an application. This amendment is necessary to clarify the regulations.

Section 230(o)(1)(C): The former subsection 230(o)(1)(A)(iii) is changed to (C). “The department notifies” is deleted and changed to “When an application is denied, the department shall notify”. These amendments are necessary to clarify the exclusive conjunction and define the department’s actions.

Section 230(o)(2)(A): “may” is changed to “is authorized to” clarifying the regulatory language.

Section 230(o)(2)(A)(i): The word “substantially” is added to clarify the regulations. This addition is necessary to provide flexibility if the permittee did not comply with permit conditions but the violation was minor, not willful, or due to unforeseen circumstances (such as mechanical failure). The addition of “substantially” relaxes the regulation and gives the permittee the opportunity to work with the department in correcting minor or technical issues with reduced or no penalties. It was added to acknowledge that violations have different levels of severity on a spectrum from slight to egregious. This also allows the department to adapt remedial actions based on the severity of the infraction.

Section 230(o)(2)(A)(ii): The phrase “adhere to” is changed to “substantially comply with”. This addition is necessary to provide flexibility if the permittee made a minor error such as incorrectly completing the form.

Section 230(o)(2)(A)(iii): is changed to Section 230(o)(2)(C).

Section 230(o)(2)(B): This subsection is added referencing the factors to be used in determining the basis for denial of an application. This amendment is necessary to clarify the regulations.

Section 230(o)(2)(C): “The department notifies” is deleted and changed to “When an application is denied, the department shall notify”. These amendments are necessary to clarify the exclusive conjunction and define the department’s actions.

Section 230(o)(3): This subsection is deleted and is now captured in (o)(5). This amendment is necessary to clarify the regulations.

Section 230(o)(4): The subsection is renumbered from to (o)(3).

Section 230(o)(3): The subsection is renumbered from (o)(4). The numbers of the referenced subsections are changed because of the renumbering of those subsections.

Section 230(o)(3)(A): The phrase “or the determination of a request for reconsideration according to (o)(6)” adds the requirement for the department to provide written notice for the determination of reconsideration. This addition matches the uniform and transparent process for termination and revocation and will document clear reasoning for the applicant or permittee.

Section 230(o)(3)(B): “DFW 774 or” is deleted. This amendment is necessary as the address information will be that of the permittee on form DFW 775 and to clarify the regulations.

Section 230(o)(4): A new subsection is added, with a new title, ~~describing~~ containing the factors to be considered for the termination of a permitted contest. This amendment is necessary to provide permittees with advance information about circumstances and actions which might lead to termination of a permitted contest.

Section 230(o)(4)(A): A new subsection sets the Department’s authority in all matters relating to terminating the permitted contest. Termination without notice is necessary due to the immediacy of the violations or impact to the resource.

Section 230(o)(4)(A)(i): Failure to comply with terms and conditions of the application or permit.

Section 230(o)(4)(A)(ii): Violation or substantial impact to the resource of the application or permit.

Section 230(o)(4)(B): New subsection points to the factors in (o)(5) for termination.

Section 230(o)(5): A new subsection (o)(5) is added to specify the factors to be used to determine (o)(1) Denial, (o)(2) Revocation, (o)(4) Termination; and (o)(6) Reconsideration.

Section 230(o)(5)(A): It is necessary to consider an applicant/permittee’s past actions as past behavior provides context to the violation and could indicate the good or bad faith of the applicant/permittee in complying with the requirements of this section.

Section 230(o)(5)(B): It is necessary to consider the willfulness of an applicant/permittee’s actions because unintentional or inadvertent violations may warrant less severe remedial action than deliberate violations by the applicant/permittee.

Section 230(o)(5)(C): It is necessary to consider nature, scope, and gravity of the violation because the nature, scope, and gravity of the violation may or may not warrant denial, revocation, or termination, and the violation may be correctable.

Section 230(o)(5)(D): It is necessary to consider an applicant/permittee's cooperation with the department because cooperation and forthright communication may indicate good faith and intent to remediate the effect of a violation, which in turn may dictate the need for remedial action.

Section 230(o)(6): This subsection is renumbered from (o)(5). These amendments are necessary to provide a standard process for reconsideration in the regulations.

Section 230(o)(6)(A): The phrase "or a requested permit adjustment" is deleted because reconsideration does not apply to permit adjustments. The last sentence of the adopted text of (A) is deleted and rephrased as subsection (o)(6)(B).

Section 230(o)(6)(B): In a new subsection (B) the Department will re-evaluate the applicant/permittee's reasons, all information available, and the factors in (o)(5) which led the Department to deny the application or revoke the permit. This section is necessary to clarify the process the department will use to reconsider, and to clarify the factors the department will use to determine whether a reversal of a decision to deny or revoke a permit is warranted.

Section 230(o)(6)(C): The Department will notify the requestor of its decision in accordance with subsection (o)(3) to continue the uniform and transparent process, and document clear reasoning for the applicant or permittee.

VI. Corrections made to the adopted forms:

The proposed amendments to the adopted forms (of June 16, 2022) are indicated as follows:

Original Adopted (6-15-22) form:

- Original text on the form that was unchanged is not highlighted.

New Amendments to the Adopted form:

- Deletions to Original form ~~are shown with a double strikethrough;~~
- Additions to Original text of newly proposed form are shown in double underline;

FORM DFW 774 INITIAL OFFERING APPLICATION FOR "TYPE A" GAME FISH CONTESTS

- The date of the form is updated to indicate the amendments.
- Instruction 7(d): "Cannot be more than two days after start date" has been changed to "The Contest shall not exceed 3 days in duration" to clarify how long a contest can be held.
- Instruction 7(e): This instruction has been deleted as it is not needed.
- Instruction 10: "If required by the department under section 230(d)(4)," is deleted; "completed electronically" is changed to "submitted"; "by following the instructions on the department's Fishing Contest website" is deleted. These amendments are necessary to clarify the process as set forth in the amended regulations that form DFW 774 will be submitted through ALDS.

FORM DFW 775 APPLICATION FOR PERMIT TO OFFER PRIZES FOR TAKING OF GAME FISH

- Header: Removed “2022” because this form will be used annually. Revision date is changed to reflect this amendment to the form.
- Title: Removed “Permit Fee for 2022” and added “The permit fee is specified in” and “and is subject to annual adjustments in accordance with Section 699, T14, CCR, and Fish and Game Code Section 713.” These changes are necessary to clarify where to find the fee and how it is adjusted.
- “\$70.30” is deleted since the fee is updated annually in accordance with FGC 713.
- The note “*If form DFW 775 ...” is deleted since the form will not be submitted in ALDS.
- Section 2. The note “All non-target species not listed above must be immediately released” has been deleted because this regulation does not preclude harvesting of fish that would otherwise be legal with the possession of a valid fishing license outside the auspices of a contest.
- Section 3. Conditions for all Contests: 2, 3, 4: Deleted since these conditions are specified in regulation and are applicable to all contests. Subsequent numbers are changed accordingly. The word “form” is not capitalized and is changed.
- Section 4. The phrase “Additional conditions as follows:” is deleted, and a new sentence added that any other conditions will be an attachment to the permit.
- Section 5. The first paragraph describing the locations where applications may be submitted is deleted and rewritten. The new instructions clearly state where each type of application shall be submitted in accordance with the amended regulatory text. “unless ALDS is required pursuant to subdivision (d)(4).” is deleted since this application is not submitted in ALDS.
- INSTRUCTIONS FOR APPLICATION FOR PERMIT TO OFFER PRIZES FOR TAKING OF GAME FISH: “conditions” is changed to “instructions”; “and (f)” is added; and “California Code of Regulations” is changed to “CCR”, these changes add clarity.
- Instruction 5 – Department Regional Office Locations: The original instructions are deleted because they are clearly specified in Section 5 above. The instruction was changed to “Submit your application according to the instructions listed in Section 5 above” to clarify what instructions the form is referencing.

FORM DFW 776, FISHING CONTEST REPORT

- Header: The date of the form is updated to indicate the amendments.
- Section 3: “combined weight of all fish” is added to the Total Weight field; “Required for Type C” is deleted; “Combined length of all fish” is added to the Total Length field; a field to report “Largest Fish” in “length (in.) is added. These amendments are intended to clarify the reporting questions, remove the requirement to collect length data for Type-C permits, and provide opportunity for permittees to report the length of their largest fish.

- NOTICE: “can” is changed to “may”; “denial of applications or” is added; “current” is deleted; “and/or suspension of right to apply for permits and participate in contests” is deleted; “pursuant to” is added; “Complete contest report online at” is changed to “Find complete contest reporting information on the”. These amendments are necessary to provide clarification of remedial actions and where to find additional information.

FORM DFW 777, AQUATIC INVASIVE SPECIES SELF-INSPECTION CERTIFICATION FOR GAME FISH CONTESTS.

- The date has been changed to be consistent with the other amended forms.
- There are no other changes to this form.