

STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND GAME  
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION  
(Pre-Publication of Notice Statement)

Amend Section 703  
Title 14, California Code of Regulations (CCR)  
Re: Inspections, Facilities and Miscellaneous Applications, Tags, Seals, Licenses,  
Permits and Fees

I. Date of Initial Statement of Reasons:

II. Dates and Locations of Scheduled Hearings:

(a) Public Hearing:	Date:	September 10, 2012
	Location:	Sacramento

III. Description of Regulatory Action:

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

1. Restricted Species Inspections (other than aquaculture) and Fees

Existing regulations specify the conditions under which an individual or entity can lawfully possess restricted species in California. The proposed regulatory change provides for inspection and cost recovery. The fee for inspections would be based on the number of enclosures that a facility has, using actual inspection information that the Department gained from limited testing of the method on permitted facilities.

Additionally, there is a provision in regulation that essentially delegated Department authority for facility inspections to veterinarians and resulted in waived fees to permit holders. The Department has determined that the authority needs to be with the Department in order to properly comply with state law; and that the Department still had incurred costs/expenses even when a veterinarian exercised the approval. Consequently, the Department has not been recovering costs of the program as is specified in current statute.

Proposed Regulations

Consideration and adoption of these proposed regulations will result in the following:

The major changes would include a new fee structure (Section 703 lists fees) for inspections that is based on the number of enclosures for restricted

species.

Establishes annual inspection fees based on the number of enclosures (and resulting estimated cost to the Department to conduct such inspections) for restricted species permits and their facilities.

Establishes fees for administration and development of an Eligible Local Entity (ELE), and a Memorandum of Understanding (MOU) process.

Additional minor editorial and cleanup changes to these sections are also made.

(b) Authority and Reference:

Authority cited: Fish and Game Code Sections 713, 1002, 1050, 1053, 2118, 2120, 2122, 2150, 2150.2 and 2157, Fish and Game Code.

Reference: Sections 713, 1050, 1053, 2116, 2116.5, 2117, 2118, 2120, 2125, 2150, 2150.2, 2151, 2157, 2190, 2193, 2271, 12000 and 12002, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change:

None

(d) Identification of Reports or Documents Supporting Regulation Change:

There are no reports that the Department is aware of on this topic.

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

Portions of these proposed regulatory changes were discussed at meetings of the Director's Animal Advisory Committee between 2003 and 2012.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives were identified. The intent of the regulation proposal is to come into compliance with Fish and Game Code statute 2150.2.

(b) No Change Alternative:

The no change alternative would result in the Commission and Department being out of compliance with the mandate of the Fish and Game Code as expressed in several of the code sections related to *Chapter 2, Importation, Transportation, and Sheltering of Restricted Live Wild Animals (Sections 2116-2195)*.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, or would be as effective as and less burdensome to the affected private persons than the proposed regulation.

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 actions proposed will permit cost recovery for the Department for compliance with existing statutes as it relates to permitting and possessing of live restricted wild animals in California.

The action will increase the workload and costs to the Department; however these costs will be borne by the permit holders whose fees will increase as a result to fully cover the cost of the program as required by state law. Pursuant to Section 2150.2 of the Fish and Game Code, the Department shall establish fees for permits, permit applications and facility inspection in amounts sufficient to cover the costs of administering, implementing, and enforcing these regulations.

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businessmen 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 small number of permits issued over the entire state, this proposal is economically neutral to business and applies evenly to resident and nonresident permittees.

(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.

Currently most Restricted Species permittees choose to have their own veterinarians conduct facility inspections. The impacted veterinarians are generally employed otherwise and may still be employed by these facilities to conduct medical exams and other duties dealing with the health of the animals at the facility.

This regulation change will neither create new businesses in California or eliminate businesses currently doing business in this state nor expand the businesses currently doing business in this state. It will modify and increase the cost to businesses with restricted species permits. It is unknown

whether the added cost will create or eliminate any of them as a business entity.

(c) Cost Impacts on Representative Private Person or Business

As the number of permitted persons for all Restricted Species permits is small (approximately 300 permittees statewide) the impacts are not consequential to the State. However, there will be cost impacts that a representative private person or business who is among the 300 permittees would necessarily incur in reasonable compliance with this proposed action. Fish and Game Code Section 2150.2 states the Department “shall establish fees... in amounts sufficient to cover the costs...” The reason that costs/person will increase is that previously, the Department did not inspect all facilities, which it must now do, or must now enter into an agreement to do. There is a high amount of Department staff time needed for reviewing/approving applications and/or conducting inspections. The inspection fees created by this mandated regulatory package will range from \$221.27 - \$2,994.77, depending on the number of enclosures a permittee has. The majority of the permittees have less than 100 animals listed on their inventory of animals submitted to the Department placing them in a category where the maximum inspection fee would be \$512.22 annually. The annual increase in fees for the majority of the permittees will be almost \$600.00 annually. The facilities with the largest number of enclosures are mostly larger zoos or businesses.

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

Statutorily, there must be no net cost to the State. All costs, such as those incurred for application reviews, processing, issuing permits, maintaining databases, inspections, development and maintenance of a mammal registry, and other administrative or enforcement costs will be fully offset by fees paid by the regulated parties.

(e) Other Nondiscretionary Costs/Savings to Local Agencies.

The effects to local agencies are unknown at this time.

(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.

None.

(h) Effect on Housing Costs.

None.

## **INFORMATIVE DIGEST (Policy Statement Overview)**

Existing regulations specify the conditions under which an individual or entity can lawfully possess restricted species in California. The proposed regulatory change provides for inspection and cost recovery. The fee for inspections would be based on the number of enclosures that a facility has, using actual inspection information that the Department gained from limited testing of the method on permitted facilities.

Additionally, there is a provision in regulation that essentially delegated Department authority for facility inspections to veterinarians and resulted in waived fees to permit holders. The Department has determined that the authority needs to be with the Department in order to properly comply with state law; and that the Department still had incurred costs/expenses even when a veterinarian exercised the approval. Consequently, the Department has not been recovering costs of the program as is specified in current statute.

### **Proposed Regulations**

Consideration and adoption of these proposed regulations will result in the following:

The major changes would include a new fee structure (Section 703 lists fees) for inspections that is based on the number of enclosures for restricted species.

Establishes annual inspection fees based on the number of enclosures (and resulting estimated cost to the Department to conduct such inspections) for restricted species permits and their facilities.

Establishes fees for administration and development of an ELE and MOU process.

Additional minor editorial and cleanup changes to these sections are also made.

### **Fee Structure Analysis**

Additionally, an existing provision in regulation essentially delegated Department authority for facility inspections to veterinarians in most cases and resulted in waived fees to permit holders, yet the Department was still incurring costs for administration and enforcement of the regulations. The Department has determined that the authority for inspections needs to be with the Department either directly, or through a memorandum of understanding process.

Fish & Game Code section 2150.2 requires that the inspection program include fees sufficient to cover the costs of the program. To conform to this requirement, the Department must eliminate the veterinarian "fee waiver" provision. Because the Department is obligated to conduct its own inspections under Fish & Game Code section 2150.4 regardless of whether or not a veterinarian also inspects the animals, the fee waiver would cause the Department to conduct inspections without receiving any compensation; were the Department to do so, the program would not be self-funding.

The Department has assessed the anticipated costs to implement this inspection program and based on its professional judgment, has estimated the annual costs for inspection of facilities and associated administrative work (Table 1). The Department is proposing to use a state personnel classification, "Retired Annuitant," to hire retired Department Law Enforcement Officers to inspect restricted species facilities and the cost of the fee will be based on the number of enclosures a facility has.

**Table 1. Estimated Inspection Costs for Restricted Species Permits with (1-5) Enclosures**

<i>Beginning of Fee Scale</i>		
3.5 enclosures <sup>1</sup>	X 7.80 <sup>2</sup>	\$27.30
½ paperwork	Hourly rate \$39.85/2	\$19.92
2 hrs. Mileage	120 miles x 0.60 cents/mi <sup>3</sup>	\$72.00
2 hrs. Employee time driving <sup>4</sup>	\$38.85 x 2	\$79.70
Technological equip (computers/printers/office space/supplies/ Admin/cell phone <sup>5</sup>		\$27.27
<b>Total Cost</b>		<b>\$221.27</b>

**Table 2. Fees based on Enclosures for (6-25) Enclosures**

**Added additional 30 minutes of Paperwork due to the higher number of enclosures**

Avg. 15.5 enclosures	X 7.80	\$120.90
Staff time of 1 hr paperwork (for this category based on # of enclosures)		39.85
Gas, Technology, Employee drive time		178.97
<b>Total Cost</b>		<b>\$312.45</b>

**Additional Categories of Animal Enclosures and Fees**

<b>26-50 Enclosures</b>	<b>\$512.22</b>
<b>51-100 Enclosures</b>	<b>\$807.72</b>
<b>100-500+ Enclosures</b>	<b>\$2,994.77</b>

**These are estimated average costs. Some enclosures may take longer than 12 minutes. Smaller enclosures for reptiles and rodents may take less.**

Footnotes

- 1) The average of 1-5 = 3.5 enclosures.
- 2) The cost of 12 minutes work based on an hourly wage of \$39.85 for retired annuitant.
- 3) Estimated 60 mph x 2 =120 miles/ state reimbursement is 0.60 cents per mile.
- 4) Travel time is estimated considering travel in Southern California as well as N. California.
- 5) Computer/printer/ programmed set up= \$1500.00+ \$500 (for office space, office supplies, phones, additional staff time for admin support & staff review) (estimated 2 retired annuitants per Region (six regions) x 12 =24,000/ 4 (computer replacement will only be needed about every 4 years) = 6,000 / 260 restricted species permittees (not including research, fish and aquaculture)= \$27.27 per permittee/ per year.

Permitted individuals and facilities for restricted species occur throughout the state. Currently, the Department has approximately 260 permitted facilities (not including research facilities and aquaculture) that would require inspection. The Department estimates two Retired Annuitants will be used in each Region to handle the workload. Annuitants will use personal vehicles and obtain reimbursement. Overnight stays will not be likely because each region will ideally have two annuitants for conducting inspections.

Hourly wage for enforcement personnel is \$39.85 including 29 percent Department overhead (overhead includes funding for Accounting, Human Resources, Information Technology, and Personnel).

Average estimated drive time to and from locations is 2 hours and distance of 160 miles. State reimbursement is \$0.60 cents per mile and extrapolates to \$72.00 per inspection. For large facilities, the annuitant may have to drive back and forth two or three days. Additional drive time was not added to the larger facilities. Because the Department does not currently conduct inspections, the fee structure is based on documentation available and averages. Fees may be adjusted in the future as data dictates.

The Department has documentation that a facility with one enclosure took a Department employee fifteen minutes to inspect. The Department also has documentation that the largest facility in California with around 500 enclosures required 68 hours (about 8 minutes per enclosure). The average time it took to inspect an enclosure between the two facilities is 12 minutes.

If the Department bases a fee structure on every animal enclosure taking an average of 12 minutes it can then set a fee that 1 minute of inspection time takes \$0.65 cents therefore \$0.65 cents x 12 minutes = \$ 7.80 per enclosure. Some enclosures will take longer to inspect (i.e., large outdoor enclosures of ½ acre or more, or enclosures with violations) than 12 minutes and some enclosures will take less than 12 minutes such as rodent or reptile aquariums. Because there are so many different types of enclosures and facilities in California, a fee base has to be developed based on an average time.

Calculations for technology are difficult to address because the Department would eventually desire to develop and implement an electronic inspection form used on a computer or tablet for efficiency. In the interest of simplicity and because determining actual costs is not yet possible since the Department has never inspected all restricted species facilities, the Department is using a fee mainly based on the cost for 12 (2 in each of the 6 regions) computers, \$1,500.00 (includes one laptop, printer and standard programs used by the state), and a conservative estimate on the cost for all other needed materials and supplies as \$500.00 per year for each annuitant (2 annuitants in each of the 6 regions) to be divided by all permittees. The materials included in the sum



of \$500.00 annually are: cell phones, office space, fax, administrative support, and office supplies.

The Department has included a fee category for “re-inspections”. Re-inspections may be needed for violations or non-compliant issues. The “re- inspection” fee is based on a half hour of employee time (\$19.92) to inspect the non-compliant issue or violation and the average drive time of two hours of employee time (\$79.70) and the state mileage reimbursement for 120 (x \$0.60 cents) miles (\$72.00) = \$171.62. The decision of whether a re-inspection is needed will be at the discretion of the officer. Some non-compliant issues or violations may be easily resolved and other documentation such as photos may be acceptable instead of a site visit. Annuitants will handle these situations on a case-by-case basis.

In order to identify the correct inspection fee prior to inspection, the permittee shall be required to submit a map of all enclosures that house restricted species listed on the applicant’s inventory. A map requirement is not considered an expense because most facilities will already have such maps for emergency preparedness plans or staff information. Each enclosure shall be numbered on the map and physically at the location of the enclosure to help the inspector identify enclosures. The cage number shall be a minimum of two inches in height, permanently affixed and easily visible. Dimensions of enclosures shall be submitted with the map for ease of further identifying cages and confirming that minimum standards for caging are met. Because some enclosures are divided, the definition of an enclosure will need to be defined in the regulations. If a large structure/enclosure is divided, housing different species, each division holding a separate species shall be considered a separate enclosure. If one enclosure (undivided) holds more than one species that coexist successfully, only one enclosure shall be identified.

**Benefits of the Regulation:**

Concurrence with Fish and Game Code:

The Department must come into compliance with the State Fish and Game Code Section 2150.5. With the department conducting inspections, the inspection process statewide will be conducted in a more consistent fashion assuring thorough inspections and in addition to having more consistency, the department will also be able to take necessary action, immediately, if a violation of the regulations are found. This will insure caging minimum standards, animal welfare, and all other facets of the restricted species regulations are being complied with in a timely manner. As a result, this manner of inspections, may reduce public safety issues in regards to dangerous animal escapes and attacks.

Benefits to the Environment: Currently, the department does not conduct yearly inspections of restricted species facilities in California. This regulation change, overall, will have no effect to the environment because the animals involved are “captive”. Where this regulation may have “some” effect on the environment is in the aspect of the department being more familiar with each facility and monitoring for violations on a regular basis. There are two possible ways captive animals could cause a problem in the environment: 1. If non-native animals escape and establish breeding populations in California; 2. If restricted species are imported into California with a wildlife disease and

the disease spreads to native wildlife. Conducting regular, consistent and thorough inspections by the Department may help to reduce the probability of either scenario.

Promotion of Businesses That Rely on Restricted Species Facilities. This will have no known effect on businesses in California other than veterinarians who may have collected additional fees for conducting bi-annual inspections for restricted species facilities. The Department has no records of how much veterinarians charged facilities for bi-annual inspections and if this regulation change will amount to the permittees paying more or less for an inspection.

#### Health and Welfare of California Residents

This regulation will not have any effect on the overall health and Welfare of California Residents except “public safety, “ in regards to, dangerous animal escapes. Animal escapes may be reduced due to more consistent inspection of minimum caging standards by the Department.

The department has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the department has concluded that these are the only regulations that concern state agency inspections for species listed as restricted in CCR T-14 Section 671.

**Section 703, Title 14, CCR, is amended to read:**

**ALTERNATIVE 1 FOR SECTION 703**

**703. Miscellaneous Applications, Tags, Seals, Licenses, Permits, and Fees.**

(a) Applications, Forms and Fees for January 1 through December 31 (Calendar Year).

(1) Permits for Restricted Species

(A) 2011 Restricted Species Permit Fees

1. Restricted Species Permit Application (New)	\$101.50
2. Restricted Species Permit Application (Amended or Renewal)	\$ 52.00
3. Animal Care – Welfare Species	\$ 51.50
4. Animal Care - Detrimental Species	\$433.25
5. Aquaculture	\$433.25
6. AZA – Detrimental Species	\$433.25
7. Breeding	\$433.25
8. Resident Broker/Dealer	\$433.25
9. Nonresident Broker/Dealer	\$866.00
10. Resident Exhibiting	\$433.25
11. Nonresident Exhibiting	\$866.00
12. Native Species Exhibiting	\$433.25
13. Resident Nuisance Bird Abatement	\$433.25
14. Nonresident Nuisance Bird Abatement	\$866.00
15. Research – Detrimental Species	\$433.25
16. Shelter	\$ 51.50
17. Single Event Breeding for Exhibitors	\$ 51.50
18. Fish	\$433.25

19. Fee for ~~two bi-annual inspections~~ annual inspection (All permits except Aquaculture) based on number of Animal Enclosures: ~~\$173.25~~

1-5 Enclosures	<u>\$221.27</u>
6-25 Enclosures	<u>\$312.45</u>
26-50 Enclosures	<u>\$512.22</u>
51-100 Enclosures	<u>\$807.72</u>
101-500+ Enclosures	<u>\$2,994.77</u>

20. Fee for ~~two~~ one bi-annual inspections (Aquaculture and Fish) ~~\$3,000.00~~ \$1,500.00

21. Hourly ~~fee~~ fee for re-inspections for violations or non-compliance issues longer than 2 hours ~~\$55.00~~ 171.62

22. ELE and MOU fee ~~\$433.25~~ \$433.25

23. ELE and MOU renewal fee ~~\$ 52.00~~ \$ 52.00

(B) New Restricted Species Permit Application (FG 1312 (~~New 11/10~~ Rev. 3/12)), incorporated by reference herein.

1. Any person applying for all permits specified in subsections 671.1(b)(1)-(12), except for the permit specified in subsection 671.1(b)(7) (Native Species Exhibiting Permit), shall submit this application when applying for a new permit.

(C) Native Species Exhibiting Permit Amendment Request form (FG 1312a (~~New 11/10~~ Rev. 3/12)), incorporated by reference herein.

1. Any person with a valid Native Species Exhibiting Permit specified in subsection 671.1(b)(7) and requests to add species, change authorizations and conditions or change the facility's name and/or address shall submit this form.

(D) New Native Species Exhibiting Permit Application (FG 1312b (~~New 11/10~~ Rev. 3/12)), incorporated by reference herein.

1. Any person applying for the Native Species Exhibiting Permit specified in subsection 671.1(b)(7) shall submit this application when applying for a new permit.

(E) Restricted Species Permit Inventory of Animals form (FG 1313 (~~New 11/10~~Rev. 3/12)), incorporated by reference herein.

1. Any person applying for any permits specified in subsections 671.1(b)(1) – (12), except for the permit specified in subsection 671.1(b)(7) (Native Species Exhibiting Permit), shall submit this form when applying for a new permit.

(F) Native Species Exhibiting Permit Inventory of Animals form (FG 1313a (~~New 11/10~~Rev. 3/12)), incorporated by reference herein.

1. Any person applying for the Native Species Exhibiting Permit specified in subsection 671.1(b)(7) shall submit this form when applying for a new permit.

(G) Restricted Species Permit Amendment Request form (FG 1313b (~~New 11/10~~Rev. 3/12)), incorporated by reference herein.

1. Any person with a valid permit specified in subsections 671.1(b)(1) – (12), except for the permit specified in subsection 671.1(b)(7) (Native Species Exhibiting Permit), and requests to add species, change authorizations and conditions or change the facility's name and/or address shall submit this form.

(H) Restricted Species Nonresident Exhibiting Permit Itinerary form (FG 1316 (New 11/10)), incorporated by reference herein.

1. Any person applying for a Nonresident Exhibiting Permit specified in subsection 671.1(b)(6) or amending an existing itinerary on file with the department shall submit this form as required in subsection 671.1(c)~~(2)(G)~~(3)(F).

(I) Any person renewing an existing restricted species permit specified in Section 671.1(b), shall submit their request using an annual report generated and provided by the department.

(b) Pursuant to the provisions of Section 699, Title 14, the department shall annually adjust the fees of all licenses, stamps, permits, tags, or other entitlements required by regulations set forth in this section.

**NOTE:**

Authority cited: Sections 713, 1002, 1050, 1053, 2118, 2120, 2122, 2150, 2150.2, and 2157, Fish and Game Code. Reference: Sections 713, 1050, 1053, 2116, 2116.5, 2117, 2118, 2120, 2125, 2150, 2150.2, 2151, 2157, 2190, 2193, 2271, 12000, and 12002, Fish and Game Code