INITIAL STATEMENT OF REASONS

TITLE 14. NATURAL RESOURCES
DIVISION 1. FISH AND GAME COMMISSION – DEPARTMENT OF FISH AND GAME
SUBDIVISION 3. GENERAL REGULATIONS
CHAPTER 3. MISCELLANEOUS

ADDING SECTIONS 709 and 709.1
TITLE 14 CALIFORNIA CODE OF REGULATIONS
(HUNTER EDUCATION INSTRUCTOR INCENTIVE PROGRAM)

SPECIFIC PURPOSE OF THE REGULATIONS

A pilot Hunter Education Incentive Program was implemented in 2008 in order to address the declining number of Hunter Education Instructors as well as to encourage current instructors to retain their certification and "active" status. This program consisted of Private Lands Management (PLM) tags and hunts donated by private hunting clubs. Although a limited number of opportunities were provided through the pilot program, the number of certified hunter education instructors climbed from 400 prior to implementation of the program to approximately 850 currently. Compliance with required training has increased from 50% prior to 2008 to well over 90% in 2010, and class numbers have increased from an average of 1,800 per year to over 2,000 in 2010.

The regulatory change proposal creates specific eligibility criteria for Department of Fish and Game (DFG) hunter education instructors to participate in the Hunter Education Incentive Program (Program). The purpose of this Program is to recruit new instructors and retain certified instructors in order to build a sufficient volunteer corps to address unmet public demand for mandatory classes. These criteria include hunter education instructor (instructor) status, length of service, in-service training requirements, compliance with existing game laws, and payment of an application fee. The package proposes to reward long-term instructor service by providing additional entries in the drawing. For example, instructors must complete three (3) years of service in order to participate in the Program.

The proposal creates a drawing system to equitably distribute the opportunities provided under this program. Eligible instructors will be assigned a random number with those assigned the lowest random numbers receiving the highest rated opportunities. The proposal establishes a system to re-distribute tags in the event any instructor is unable or unwilling to utilize the opportunity provided. The proposal also requires the payment of all state tag and seal fees as appropriate

Specifically:

- 1) Section 709(a) describes what incentives will be available and restricts eligibility to certified hunter education instructors;
 - 709(b) identifies eligibility criteria required for program participation;
 - 709(c) identifies the drawing process used to distribute the individual incentives;
- 2) Section 709.1(a) describes what big game fund raising tag incentives will be available using a random drawing system to eligible certified hunter education instructors.
 - 709.1(b) identifies eligibility criteria specific to participation in big game fund raising tag opportunities.
 - 709.1(c) identifies the drawing process used to distribute the big game fund raising tag opportunities.

The specific benefits anticipated by the proposed adoption of this regulation are primarly nonmonetary in nature. It is anticipated there will be additional hunter educaton classes available throughout the state. This will increase California's citizen's understanding of hunter safety practices, principles of conservation, and sportsmanship. The regulation creates specific eligibility criteria for the distribution of volunteer instructor incentives thereby preventing discrimination, and instead assuring fairness and social equity. The regulation also adopts a random draw system, results of which are open to the public to assure transparency.

The proposed regulation has been evaluated and not found to be inconsistent or incompatible with existing state or federal regulations. Fish and Game Code Section 3051 (f) authorizes the Department to adopt these proposed regulations. The proposed regulations implement recent amendments to Fish and Game Code section 3051(e).

NECESSITY

On September 28, 2010 Assembly Bill 1254 amended Fish and Game Code section 3051 (e)(1) to read; "In order to recruit and retain hunter education instructors, the department shall offer special hunting opportunities to qualified hunter education instructors by providing a limited number of existing tags and other hunting opportunities."

This proposed regulation creates a drawing system to equitably distribute the opportunities provided under this program. Opportunities were chosen to meet the specific needs of recruiting and recognizing volunteer hunter education instructors. Certified Hunter Education Instructors were polled to determine what incentives would be held in high regard. Big game tags, guided hunts, hunting opportunities and firearms topped the list. Efforts were made to secure incentives and a pilot program was implemented in 2008 in order to address the declining number of Hunter Education Instructors as well as to encourage current instructors to retain their certification and "active" status.

The regulation creates specific eligibility criteria for the distribution of volunteer instructor incentives thereby preventing discrimination, and instead assuring fairness and social equity. Additionally the regulatory change creates specific eligibility criteria for DFG certified hunter education instructors to participate in the random draw of big game fund raising tags set aside for certified HEIs only. Section 709(b) (2) requires an instructor have a minimum of three years service before they are eligible for incentives. This is important because instructors who are active with the program over three years are more likely to remain with the program. This section also increases opportunities for each additional ten years of service. This is important because the second purpose of this program is to retain skilled veteran instructors and keep them in the program. Section 709 b (2) (3) covers additional eligibility criteria to maintain certified instructor status. Teaching at least one class annually in necessary to keep instructor skills sharp, remain current on laws and regulations. Income and expense statements are required by instructors to insure they are not charging excessive class fees, are within policy and thereby do not jeopardize federal grant funding. During the pilot Hunter Education Incentive Program implemented in 2008 to present it was determined the five day notification period described in section 709 (c)(3) was to long and it was therefore reduced to three (3) days to expedite the notification process.

The primary difference between sections 709 and 709.1 is section 709 is designed to distribute a wide range of incentives, including but not limited to, big game tags, fully guided hunts, upland game hunts and firearms. Section 709.1 only covers big game tags provided by the Department of Fish and Game requiring an application fee and/or are designated as state fund raising big game tag. Application fees are required to be paid for applicants who wish to apply for fund raising tags. Opportunities awarded under section 709 are distributed by a random electronic draw of the Hunter Education Instructor database. Big game tags awarded under section 709.1 are awarded by a random electronic draw of applicants received by California Department of Fish and Game's License and Revenue Branch. Section 709(b) (2) states; "To be eligible to participate in a drawing, instructors must have been in active status for a minimum of three (3) consecutive years, inclusive of the year prior to the drawing. Instructors will earn an additional drawing entry for every ten (10) years of active service." There is no similar section in 709.1 that increases a HEIs odds of being drawn based on years of service because the draw is based on entries purchased and not years of service.

PROBLEM ADDRESSED WITH THIS RULEMAKING

Current law requires all first time hunters in California be trained in Hunter Education and requires the department to designate instructors to meet the mandate. Fish and Game Code Section 3049 Legislative intent, declarations and findings, states; "It is the intent of the Legislature in enacting this article to ensure the health and safety of its citizens engaged in activities requiring the use of hunting implements. The legislation finds and declares that individuals who engage in hunting should possess an adequate understanding of hunter safety practices, principles of conservation, and sportsmanship. It is also the intent of the Legislature that persons so engaged be mindful of their responsibilities to others, toward wildlife, and toward their natural environment. The department shall take all steps necessary to carry out the provisions of this article."

Fish and Game Code 3051, Course of instruction; certification of completion, states in part; "(a) The Department shall provide for a course of instruction in hunter education, principles of conservation, and sportsmanship,..." and "(b) The department may designate as a hunter education instructor any person found by it to be competent to give instruction in the courses required in this article. A person so appointed shall give that course of instruction, and, upon completion thereof, shall issue to the person instructed a certificate of completion as provided by the department in hunter safety, principles of conservation, and sportsmanship."

In California, Hunter Education classes are taught by volunteer instructors. Hunter Education Instructor (HEI) numbers have been declining in California since the 1970's. By 2008, HEI numbers were too low to meet the demand for classes. In efforts to increase instructor numbers to meet the demand for state mandated classes the department developed the Hunter Education Instructor Incentive Program.

The primary purpose of the Hunter Education Instructor Incentive Program is to recruit new instructors and to retain certified instructors. The goal is to build a sufficient volunteer corps to address the unmet public demand for mandatory classes. Based on calls received by the Department of Fish and Game (DFG) and Hunter Education Instructors (HEIs) statewide, 1,000 or more potential hunters are turned away each year due to lack of available hunter education classes. California Hunting license sales continue to decline (from 317,059 in 1999 to 295,687 in 2008). This loss of potential new hunters translates to a loss of revenue in hunting license and tag sales.

A second purpose is to recognize the long standing professional volunteer service of certified instructors to the state. During fiscal year 2011/2012 alone, certified instructors provided 2,855 classes statewide with an enrollment of 32,692 students. These men and woman donated 24,419 hours of their personal time to DFG valued conservatively at \$953,806 (value based on hourly wage of a warden range B at \$39.06 / hour).

This regulatory change proposal creates specific eligibility criteria for Department of Fish and Game (DFG) HEIs to participate in the hunter education incentive program. These criteria include employment status, length of service, in-service training requirements, compliance with existing game laws, and payment of an application fee. The proposal rewards long-term service by providing additional entries in the drawing. For example, instructors must complete three (3) years service in order to participate in the incentive program and will earn an additional entry for each additional ten (10) years of service.

The proposal also creates a drawing system to equitably distribute the opportunities provided under this program. Eligible instructors will be assigned a random number with those assigned the lowest random numbers receiving the highest rated opportunities. The proposal establishes a system to re-distribute tags in the event any instructor is unable or unwilling to utilize the opportunity provided, and establishes an appeal process regarding procedures and results of the drawing. The proposal also may require the payment of all state tag and seal fees as appropriate.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

Staff reviewed the United States Fish and Wildlife Services' Annual Hunter Education Reports for fiscal years 2007/08, 2008/09, and 2009/10 for hunter education instructor information. Staff did not rely on any other technical, theoretical, or empirical studies or reports in proposing the adoption of these regulations.

Creation of the Hunter Education Incentive Program has been the topic of discussion at several Fish and Game Commission (FGC) meetings since 2008 as well as at the FGC's Al Taucher Committee to Preserve Hunting and Fishing Opportunities. Additionally, the concept has been discussed and approved at the DFG Executive and Legislative levels with the result of the enactment of AB1254 (Berryhill) on September 28, 2010. The proposed regulations implement this legislation.

Public comments regarding the proposed regulation resulting from the public notification will be evaluated for inclusion in the final verbatim and responses will be prepared and submitted for all comments as part of the regulatory process. Additional public comments regarding this regulatory proposal will be solicited at a public meeting to be scheduled in Sacramento, CA.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

Regulations for implementing Section 3051 of the Fish and Game Code currently do not exist. This proposed regulation package is needed to establish the program and a process for fairly distributing opportunities.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL OR OTHER BUSINESSES

The proposed regulatory 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. Therefore, the Department has not identified any alternatives that will lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposal is to establish the Program, define eligibility criteria, and an equitable system for allocating a limited number of hunting opportunities. Given the number of these opportunities that will be provided and the area over which they are distributed, this proposal is economically neutral to business.

Section 709 is ADDED to read:

§ 709. Hunter Education Instructor Incentive Program

- (a) Under the Hunter Education Instructor Incentive Program ("Incentive Program"), the department shall award incentives including, but not limited to, big game tags provided voluntarily by licensed Private Lands Management areas, Cooperative Elk or Deer Hunting areas, or other tags or hunts designated by the department, other hunting opportunities, and firearms, to eligible department-certified Hunter Education Instructors. The incentives shall be awarded annually in a random drawing according to the following rules.
- (b) Eligibility Criteria
- (1) Only certified instructors who meet the following eligibility criteria may participate in Incentive Program drawings.
- (2) To be eligible to participate in a drawing, instructors must have been in active status for a minimum of three (3) consecutive years, inclusive of the year prior to the drawing. Instructors will earn an additional drawing entry for every ten (10) years of active service.
- (3) To maintain active status, an instructor shall complete in-service training requirements, teach or assist in teaching at least one course per calendar year, and submit an annual income and expense record. The instructor must meet these requirements by December 31st of any given year to be considered eligible for an Incentive Program drawing offered the following year.
- (4) Instructors with revoked or suspended Hunter Education Instructor certification are ineligible to participate in Incentive Program drawings.
- (5) Paid staff within the department's Hunter Education Program are ineligible to participate in Incentive Program drawings.
- (6) Instructors who are drawn and accept a tag or hunt shall not be eligible to participate in the next five annual Incentive Program drawings.
- (c) Incentive Program Drawing Procedures
- (1) Each eligible instructor listed in the department's Hunter Education Instructor database shall be assigned a random number in the drawing for each year's pool of donated or department-designated tags or hunts. This drawing will commence in the second week of July each year and proceed until all available tags or hunts are issued. Alternate instructors may be drawn to ensure that all tags or hunts are claimed.
- (2) Among the instructors that are drawn, the instructor that is drawn first shall select a tag or hunt from the available tags or hunts, and further selections shall proceed based upon the order in which instructors were drawn.
- (3) If any instructor fails to accept or select an available tag or hunt within three (3) days of being notified by phone, the instructor's selection rights will be forfeited and the next instructor in order will be contacted.
- (4) If an instructor who accepted a tag or hunt later declines the opportunity and notifies the department, prior to the opening day of the relevant season, that they will not participate in the selected hunt, alternate instructors shall be contacted in the order they were drawn and offered the opportunity to accept the tag or hunt.

- (5) Instructors who accept a tag are required to pay the applicable tag fee set forth in the Fish and Game Code or these regulations.
- (6) Accumulated preference points from general big game drawings shall not be considered or applied in any Hunter Education Instructor Incentive Program drawings.

Note: Authority cited: Sections 702, 3051, and 4334 Fish and Game Code.

Reference: Sections 3049, 3050, and 3051, Fish and Game Code.

Section 709.1 is ADDED to read:

709.1 Hunter Education Instructor Incentive Program Big Game Tag Drawing (a) Following the effective date of this regulation, the department shall award the following big game license tag(s) using a random drawing system to eligible department-certified Hunter Education Instructors:

- (1) Open zone deer, as described in Fish and Game Code section 360
- (2) Any additional big game license tags described in Fish and Game Code sections 360, 361, 363, and 364.
- (b) Eligibility Criteria
- (1) Only certified instructors who meet the following eligibility criteria may participate in Incentive Program drawings.
- (2) To be eligible to participate in a drawing, instructors must have been in active status for a minimum of three (3) consecutive years, inclusive of the year prior to the drawing.
- (3) To maintain active status, an instructor shall complete in-service training requirements, teach or assist in teaching at least one course per calendar year, and submit an annual income and expense record. The instructor must meet these requirements by December 31st of any given year to be considered eligible for an Incentive Program drawing offered the following year.
- (4) Instructors with revoked or suspended Hunter Education Instructor certification are ineligible to participate in Incentive Program drawings.
- (5) Paid staff within the department's Hunter Education Program are ineligible to participate in Incentive Program drawings.
- (6) Instructors who are drawn and accept a tag or hunt shall not be eligible to participate in the next five annual Incentive Program drawings.
- (c) General Conditions
- (1) To enter a drawing for a Hunter Education Instructor big game tag described in subsection (a), an eligible instructor shall pay the nonrefundable application fee for a fund-raising tag random drawing entry form as specified in section 702 on or before June 2nd each year.
- (2) Tags will only be issued to instructors with valid annual California hunting licenses.
- (3) Hunter Education Instructors may apply for up to three fund-raising tag random drawings per license year.

- (4) No applicant shall earn a preference point through this application process.
- (5) Accumulated preference points from general big game drawings shall not be considered or applied in any Hunter Education Instructor Incentive Program drawings.
- (6) Hunter Education Instructor Incentive Program big game tags are non-transferrable.
- (7) Successful applicants and a list of alternates for each big game tag will be determined by random drawing within 10 business days following the application deadline date. If the drawing is delayed due to circumstances beyond the department's control, the department shall conduct the drawing at the earliest date possible.
- (8) Unsuccessful applicants shall not be notified.
- (9) Successful applicants shall claim their tags at the License and Revenue Branch, 1740 N. Market Blvd., Sacramento, CA 95834 by 5:00 p.m. on July 15 each year. If the deadline to claim the tags falls on a weekend or holiday, applicants can claim the tags until 5:00 p.m. on the first state business day following the deadline. Unclaimed tags shall be awarded to alternates in the order drawn.

Note: Authority cited: Sections 702, 3051, and 4334 Fish and Game Code. Reference: Sections 3049, 3050, and 3051, Fish and Game Code.