

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 203, 355, 356, 3003.1, 3004.5, 3800, 4009.5, and 4150 of the Fish and Game Code and to implement, interpret or make specific Sections 200, 202, 203, 203.1, 206, 207, 215, 220, 355, 356, 2005, 2055, 3003.1, 3004.5, 3683, 3800, 3950, 4000, 4001, 4002, 4003, 4004, 4009.5, 4150, and 4902 of said Code, proposes to amend 311, 353, 464, 465, 475, and 485; repeal Section 355; and, add Section 250.1, Title 14, California Code of Regulations, relating to prohibition on the use of lead projectiles and ammunition using lead projectiles for the take of wildlife with firearms.

Informative Digest/Policy Statement Overview

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Assembly Bill 711 (Chapter 742, Statutes of 2013) was signed by the Governor on October 11, 2013, and took effect on January 1, 2014. This legislative action amended Section 3004.5 of the Fish and Game Code, and requires the Fish and Game Commission (Commission) to promulgate regulations to ban the use of lead ammunition when taking any wildlife with a firearm not later than July 2019. The new law expands the existing requirement to use nonlead ammunition within the California condor range and requires the Commission to:

- Promulgate regulations by July 1, 2015, that phase in the requirements of Section 3004.5;
- Require partial or full implementation of the new regulations, if practicable, before July 1, 2019; and
- Maintain existing condor range restrictions and nonlead certification process until the new regulations are implemented.

The Department of Fish and Wildlife (Department) held a series of 16 public meetings throughout the state between January and August 2014. In addition, the Department provided presentations at the Commission's Wildlife Resources Committee (WRC) meetings in January, July, and September 2014 outlining proposals to phase in the required use of nonlead ammunition for the taking all wildlife with a firearm by July 2019.

The Department's revised regulatory recommendation, shown below, was presented at the Commission's September 2014 WRC meeting.

Phase 1 - Starting July 1, 2015, nonlead ammunition will be required for taking all wildlife on state Wildlife Areas and Ecological Reserves. These Department lands constitute approximately 925,000 acres in California, with high ecological values and relatively large numbers of hunters. In addition to hunters on Department lands, nonlead ammunition will be required for hunters taking Nelson bighorn sheep anywhere in California. This requirement will affect a small number of hunters as very limited numbers of Nelson bighorn sheep tags are issued annually. In 2014, fourteen tags were issued in California.

Phase 2 - Starting July 1, 2016, nonlead ammunition will be required when taking upland game birds with a shotgun, except for dove, quail, and snipe, and any game birds taken on licensed game bird clubs. In addition, nonlead ammunition will be required when

using a shotgun to take resident small game mammals, furbearing mammals, nongame mammals, nongame birds, and any wildlife for depredation purposes. It will still be legal to take these animals with traditional lead rimfire and lead centerfire ammunition during phase 2. These revisions will allow partial implementation as required due to availability of nonlead shotgun ammunition as required by existing federal waterfowl regulations. The exception for permitted licensed game bird clubs takes into account the use of domesticated game birds at these facilities.

Phase 3 - Starting July 1, 2019, nonlead ammunition would be required when taking any wildlife with a firearm.

The proposed regulatory changes are intended to implement AB 711 while balancing the statutory requirements and deadlines with the complex nature of ammunition production, retail availability and consumer demand. The proposed regulations generally rely on more readily available nonlead rifle and shotgun ammunition during the first three years of the transition in order to give ammunition manufacturers more time to meet the increased demand for nonlead ammunition in California after July 1, 2019.

Proposed Changes

Amend Division 1, Subdivision 2, Title 14, CCR.

The title of the subdivision will be expanded to Game, Furbearers, Nongame, and Depredators.

Add Section 250.1, Title 14, CCR.

This new section will include the existing nonlead requirements that apply when taking specified wildlife in the California condor range and new requirements to phase in the statewide nonlead mandate pursuant to Section 3004.5 of the Fish and Game Code.

Subsection (a) describes the general purpose of the regulation.

Subsection (b) defines “projectile,” “nonlead ammunition,” “nonlead projectile,” and makes it clear that shotgun ammunition containing pellets composed of materials approved as nontoxic by the U.S. Fish and Wildlife Service, as identified in Section 507.1 of these regulations, is considered certified. These provisions increase public understanding and enhance the clarity of the regulation.

Subsection (c) includes general provisions.

- (1) It is unlawful to possess any projectile containing lead in excess of the amount allowed in these regulations and a firearm capable of firing the projectile while taking or attempting to take wildlife.
- (2) The possession of a projectile containing lead in excess of the amount allowed in these regulations without possessing a firearm capable of firing the projectile is not a violation of this section.
- (3) This section is not intended to prohibit the possession of concealable firearms containing lead ammunition, provided that the firearm is possessed for personal protection and is not used to take or assist in the take of wildlife.

Subsection (d) specifies the phased approach to prohibit the use of lead ammunition when

taking wildlife, as required by the amendments to Section 3005.5 of the Fish and Game Code.

Phase 1 - Effective July 1, 2015, it shall be unlawful to use, or possess with any firearm capable of firing, any projectile(s) not certified as nonlead when taking:

- (A) Nelson bighorn sheep as authorized by Fish and Game Code Section 4902;
- or
- (B) All wildlife in any wildlife area or ecological reserve, as described in sections 551, 552 and 630 of these regulations.

Phase 2 - Effective July 1, 2016, it shall be unlawful to use, or possess with any shotgun capable of firing, any projectile(s) not certified as nonlead as described in subsection (b)(3) when taking:

- (A) Upland game birds as included in Fish and Game Code Section 3683, except for dove, quail, snipe, and any game birds taken under the authority of a licensed game bird club as provided for in sections 600 and 600.4 of these regulations;
- (B) Resident small game mammals as defined in Section 257 of these regulations;
- (C) Fur-bearing mammals as defined by Fish and Game Code Section 4000;
- (D) Nongame mammals as defined by Fish and Game Code Section 4150;
- (E) Nongame birds as defined by Fish and Game Code Section 3800; or
- (F) Any wildlife for depredation purposes, regardless of whether the take is authorized by a permit issued pursuant to sections 401 or 402 of these regulations.

Phase 3 - Effective July 1, 2019, it shall be unlawful to use, or possess with any firearm capable of firing, any projectile(s) not certified as nonlead when taking any wildlife for any purpose in this state.

Subsection (e) continues the existing restrictions on the use of lead ammunition in the condor range, as required by subdivision (i) of Fish and Game Code Section 3004.5. These restrictions are currently set forth in subsection (h) of Section 353 and subsection (f) of Section 475. This section will be repealed when the statewide ban on the use of lead ammunition when taking wildlife goes into effect on July 1, 2019.

Subsection (f) contains the language specifying the nonlead ammunition certification process moved and updated from existing Section 355.

Amend Section 311, Title 14, CCR.

This section will be amended to add cross reference to the new 250.1 regulations to improve clarity and consistency of the regulations. This revision will align and simplify Title 14 regulations.

Amend Section 353, Title 14, CCR.

This section will be amended to remove subsection (h) since the definition of nonlead projectiles and methods of take within the condor range are integrated in subsections (d)(3) and (e) of the new Section 250.1, Title 14, CCR, with an added cross reference to the new section. Other proposed amendments will revise the current exceptions in subsection (a) into two subsections (definitions and exceptions) along with minor changes to improve clarity and consistency of the regulations.

Amend Section 464, Title 14, CCR.

This section will be amended to add cross reference to the new 250.1 regulations to improve clarity and consistency of the regulations. This revision will align and simplify Title 14 regulations.

Amend Section 465, Title 14, CCR.

This section will be amended to add cross reference to the new 250.1 regulations to improve clarity and consistency of the regulations. This revision will align and simplify Title 14 regulations.

Amend Section 475, Title 14, CCR.

This section will be amended to remove subsection (f) since the definition of nonlead projectiles and methods of take within the condor range are integrated in subsections (d)(3) and (e) of the new Section 250.1, Title 14, CCR, with an added cross reference to the new section.

Amend Section 485, Title 14, CCR.

This section will be amended to add cross reference to the new 250.1 regulations to improve clarity and consistency of the regulations. This revision will align and simplify Title 14 regulations.

Repeal Section 355, Title 14, CCR.

This section is proposed to be repealed since the ammunition certification process is integrated in subsection (f) of the new Section 250.1, Title 14, CCR.

Benefits of the Proposed Regulations

The benefits of the proposed regulations to the environment are through the elimination of a source of toxic lead substances that may be deleterious to wildlife and sustainable management of California's wildlife resources.

The proposed regulations are neither inconsistent nor duplicative of existing State or federal regulations. The proposed regulation will complement federal law because, unlike federal regulations prohibiting use of nontoxic shot when taking waterfowl, the proposed regulations will prohibit use of lead ammunition when taking any wildlife. Commission staff has searched the California Code of Regulations and has found no other State regulations related to the prohibition on the use of lead projectiles and ammunition for the take of wildlife with firearms.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Resources Building Auditorium, 1416 Ninth St., in the Sacramento, California, on February 12, 2015, at 8 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Flamingo Conference and Resort Center, 2777 Fourth St., in the Santa Rosa, California, on April 9, at 8 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before March 26, 2015, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the

Commission office, must be received before Noon on April 3. All comments must be received no later than April 9, 2015, at the hearing in Santa Rosa, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Caren Woodson at the preceding address or phone number. **Craig Martz, Department of Fish and Wildlife, phone (916) 653-4674, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Analysis

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 Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The Commission does not anticipate significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The principle businesses that are expected to be impacted by the proposed regulatory changes are manufacturers and retailers of hunting equipment and businesses that serve hunters on recreational hunting trips. The proposed implementation schedule is structured to limit expected impacts on hunters

and hunting-related businesses that may be affected by the regulation. The availability of ammunition types is a central factor that influenced the timing of the phases so as to minimize any interruption in hunting activity caused by nonlead ammunition supply deficiencies.

- (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 does not anticipate significant impacts on the creation of new business or the elimination of existing businesses in California. However, some new business activity may be spurred to serve hunters' needs for nonlead ammunition, hand-loaded bullets, and practice time on shooting ranges.

The Commission does not anticipate any significant impacts on the creation or elimination of jobs within the State because the nonlead ban will be phased in to minimize any disruptions in hunting activity across four years. The multiplier for jobs in the hunting, ammunition manufacturing, and outdoor sports retail sectors is 17 jobs per million dollars in direct expenditure. Although we anticipate less disruption, if full implementation precipitates a five percent reduction in hunting activity, approximately 230 jobs could be eliminated across the state.

The Commission anticipates the potential for the expansion of businesses currently doing business in California that manufacture or sell nonlead ammunition. Hunting guides and/or shooting ranges that may aid in the acquisition of and/or the transition to the use of nonlead ammunition may also have the potential to expand.

The Commission anticipates benefits to the health and welfare of California residents through better management of toxic lead substances that may be deleterious to those who consume wild game.

The Commission does not anticipate any benefits to worker safety because this regulatory action will not impact working conditions or worker safety.

The Commission anticipates benefits to the environment through the elimination of a source of toxic lead substances that may be deleterious to wildlife.

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

A representative private person could spend an average of \$184 or expect to incur approximately a seven percent increase in annual hunting equipment expenditures in reasonable compliance with the proposed action.

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

The Department has an estimated \$45,000 in regulation development and outreach costs in the year prior to promulgation of the regulation that will be absorbable in that year. The regulation has the potential to reduce licenses and tags sales revenue for the

Department. If full implementation precipitates a five percent decline in hunting activity, the Department license and tag sales revenue could be reduced by approximately \$1 million. However, past experience with restricting the use of lead ammunition in the condor range suggests that potential declines in license and tag sales will be less than five percent (for more detail on changes in tag sales within the condor range, please see pages 17-19 in the attached Standardized Regulatory Impact Assessment).

Any potential reduction in the number of licenses sold is not expected to significantly impact Federal Pittman-Robertson Funding allocations to the state. The impact of a potential decline in hunting activity of five percent is estimated to result in an approximately \$34,000 drop in the state's Pittman-Robertson allocation. The state may experience a decline, but it will be more a function of an anticipated drop in the total quantity of funds collected across the country.

- (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.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Sonke Mastrup
Executive Director

Dated: